

# MEDIA RELEASE



For Immediate Release

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Comments on ASIC report on Soft Dollar payments and benefits

## ACCC should prosecute the FPA

The AIA believes that the FPA is guilty of false and misleading statements and should be taken to task by the ACCC under the Trade Practices Act. The latest report from ASIC (research report on soft dollar benefits in the financial planning industry) confirms what has been known for years.

The FPA has since 1997 been telling the public that they should only use their Financial Planning members because they are bound by a code of ethics. The FPA Code of Ethics, Rule 106 sets out the requirements for their members in relation to soft dollar payments (see details below).

The AIA is a fan of Rule 106 which basically says that any planner accepting any financial or other benefit must disclose it. Clear and simple, but far too strict to be acceptable to FPA members who have chosen to ignore the rule en masse and with the full knowledge and acceptance of the FPA. However this has not stopped the FPA using the code of ethics as a primary reason for the consumer to place their trust and their money with FPA members. The AIA believes this to be false and misleading conduct and want the ACCC to take immediate action.

Commenting on this particular rule ASIC says -there appears to be to have been significant non compliance with this Rule and with the requirements of the existing law

For reasons that are a mystery to us ASIC does not intend taking any action on their findings although it is clear from the report that they have information that would empower them to prosecute and cancel licences. No, ASIC prefers to request the offenders to "review their internal procedures and documents" - no time frame is mentioned so the wet lettuce may be well and truly wilted by the time any improvement is observed. ASIC has known of the breaches of both the law and the FPA code of ethics for years. The AIA has provided information to senior ASIC officials on many occasions and is frustrated by the continual lack of action by ASIC who seem to believe that consultation and compromise with the financial planning industry is a better alternative. The AIA strongly disagrees because such a course of inaction is quite obviously not working.

In spite of the law and the FPA code of ethics introduced 7 years ago soft dollar payments are more common today and easier to not disclose.

Anyone with even the slightest knowledge of the financial planning industry knows that the FPA has never policed compliance with their much touted code of ethics and yet use the code as a selling point for their members. This is false and misleading and if ASIC will not take action then the ACCC should. It is worth remembering that it was the actions of the ACCC that shut down Henry Kaye's property scam in the face of ASIC's impotence.

We cannot understand why ASIC does not take the action it is empowered to against the licencees it mentions in the report. These law breakers have no excuse having recently applied for, and been granted, a license under the new regime; a regime which we were told would provide significantly greater protection for consumers. The new law did not significantly increase the disclosure requirements and even if the breaches occurred before 11<sup>th</sup> March they are still breaches and we do not understand why they are being forgiven.

Consumers should understand that they are on their own. They cannot rely on or expect any protection from the authorities. Consumers know now that almost everyone in the financial

planning industry is up to something and the chances are that they are conflicted and thus cannot act in the consumer's best interest. While it is a shame for the tiny percentage of financial planners that do act properly, the best advice for consumers is to avoid using financial planners until they behave properly or are forced to do so.

## BACKGROUND

### The FACTS about financial planners

- Planners at Banks and other institutions are paid extra to recommend and sell the boss's investments (source: ASIC report on preferential payments)
- Planners at small and boutique financial planning firms that are owned by an institution, although operating under a different name, choose the ultimate owners investments for 80 to 85% of recommendations (source: FPA)
- Non disclosure or inadequate disclosure of payments and benefits provided by investment providers to influence the planners recommendations is common and the regulator will not prosecute (source: ASIC research report on Soft Dollar benefits)
- The FPA has failed to police and enforce its code of ethics and ASIC does not prosecute.
- A major funds manager recently announced it had purchased a financial planning firm for 100 million dollars at a price earnings ratio in excess of 600. On the face of it a very unwise purchase which could only be justified if they knew that the flow of funds to their products would increase dramatically.
- 70% plus of all so called financial planners are owned by Banks and other financial institutions and the vast majority of the remainder are paid by them. RIP independent advice; hello bias.

### Comment on IFSA & FPA Proposals

In their latest report ASIC commends the IFSA/FPA Proposals which has bewildered us. The proposals are a significant watering down of the FPA code of ethics in that they provide qualification on the level of disclosure for different types of soft dollar payments and benefits and that they do not apply to payments and benefits made by a dealer to its representatives and employees.

### The FPA Code of Ethics says:

'**Rule 106** in the provision of any written recommendation (or a transaction affected by Rule 118) a member must disclose the following particulars to the client in writing:

- remuneration, fees, commissions or any other pecuniary or nonpecuniary benefit whether direct or indirect, received or receivable by the member, the member's Principal, or an associate in connection with the financial planning service;

- any other benefit reasonably capable of influencing the making of the recommendation;

The disclosure of particulars must be expressed as a minimum in percentage terms and included in the recommendation prepared and issued by the member.

These particulars should be expressed in dollar terms where practicable.'

*ASIC's latest report says "This FPA rule was introduced in May 1997 and is similar to the new Corporations Act provisions. Judging by the examples of disclosure we have seen, there appears to have been significant non-compliance with this Rule."*

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