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The Treasury

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## Enhancing oversight and governance of managed investment schemes

The Super Members Council (SMC) thanks Treasury for the opportunity to make a submission to this consultation. The Super Members Council advocates for more than 12 million everyday Australians, bringing a strong, independent, member first voice to every policy discussion, grounded in our mission to safeguard and advance their long-term financial wellbeing.

SMC welcomes Treasury's consultation on enhancing oversight and governance of managed investment schemes (MIS) as an important first step toward strengthening consumer protections in the higher-risk parts of the superannuation system. The recent failures of schemes such as Shield and First Guardian have demonstrated the significant and lasting harm that can occur when retail investors and superannuation members are exposed to poorly governed, highly leveraged or conflicted investment structures. Strengthening MIS oversight—particularly around governance, conflicts management, financial resilience, liquidity practices and ASIC's visibility of emerging risks—is therefore essential not only for market integrity but for protecting members from unsuitable investments, loss of capital, and destabilising shocks to their retirement savings.

While these measures are much needed, SMC recognises that they represent only one part of the broader consumer-protection challenge. Treasury's work must continue as part of an integrated, comprehensive system-wide strategy that addresses the root causes of member harm—including inappropriate distribution practices, aggressive or misleading switching inducements, high-risk lead-generation models, and advice pathways that place members into products inconsistent with their needs and risk profile. Strengthened MIS governance is a critical foundation, but it will not on its own prevent the types of losses and unsuitable investment exposures that have affected members in recent years. Comprehensive protections require coordinated reforms that collectively safeguard members at the point of contact, the point of advice, and the point of product selection. Advancing these reforms in totality will provide consistent, end-to-end protection for consumers, reduce the likelihood of harmful switches into inappropriate products, and help rebuild confidence and trust in a system designed to support Australians' long-term financial wellbeing. A policy response that is retrospective or confined to one segment of the system risks repeating these failures, which are littered in MIS history including: Timbercorp (2009); Great Southern (2009); Wilmott Forest (2010); Gunns Plantation (2012); and Australian Fiduciaries Limited (2024). While this paper clearly responds directly to the fact pattern of Shield and First Guardian, it's clear there is a broader structural issue here from this history.

SMC supports the consultation's direction and highlights four critical gaps that must be addressed alongside the current consultation proposals:

- **Conflicted incentives and related-party structures:** the MIS reforms should also include remuneration through indirect revenue flows, ownership links, and their impact on risky super switching at scale. Without fully closing these channels, governance reforms alone will not realign incentives with members' best interests.
- **Substantive product safety and financial resilience:** All products receiving tax-preferred super savings must be required to demonstrate that they are safe, transparent, and adequately capitalised. Stronger governance is also insufficient if products lack meaningful due diligence, liquidity discipline, or the financial buffers, necessary to protect members.
- **Stronger switching safeguards:** Super switching is a moment of heightened consumer vulnerability. Improved regulatory visibility is essential, and it must be matched by stronger accountability for those recommending or facilitating switching activity. These parties should also be obligated to report potentially harmful or high-risk switching behaviours to regulators to support early detection and intervention. Establishing this standard would help ensure switching advice is evidence-based, transparent, and genuinely in members' best interests.



We also consider it essential for consumer protection that the Delivering Better Financial Outcomes (DBFO) reforms proceed without delay. These reforms are critical to improve access to affordable, quality financial advice and further avert the current risk of super fund members being pulled into the hands of lead-generators. Strengthening access to intra-fund advice, clarifying adviser roles, and enabling timely well-designed nudges at key decision points will materially reduce members' exposure to high-risk, lead-generator-driven pathways. These reforms are essential to ensure Australians can access guidance and advice from safe and trusted sources. By swiftly legislating these reforms, the Government can help protect consumers from cold calling, lead generation schemes, and other unscrupulous practices that have caused significant harm.

This consultation represents an important and foundational step toward strengthening consumer protection within the super and investment systems. Taking a holistic approach will enhance oversight and governance and help prevent failures before they occur - delivering stronger, more enduring protections for members.

**SMC recommends that Treasury:**

- 1) Broaden the reform scope beyond MIS governance: Treasury should treat MIS reforms as part of a wider package of consumer protection reforms addressing conflicted remuneration, advice-product integration, lead-generation practices and superannuation switching pathways that expose members to harm.
- 2) Require compliance plans to test product safety, not just process: Compliance plans for MISs receiving super savings should be required to demonstrate scheme-specific due diligence on investment strategy, liquidity, valuation and counterparty risk, with clear accountability for responsible decision-makers (including directors, executives and Responsible Managers).
- 3) Amend the liability framework so enforcement focuses on material contraventions of compliance plans, aligning incentives toward higher-quality, risk-focused governance.
- 4) Extend the Financial Accountability Regime (FAR) to Responsible Entities (REs), by making them an Accountable Entity.
- 5) Make recognised audit and assurance standards compulsory for compliance plan audits to ensure material governance weaknesses are identified and escalated before consumer harm occurs.
- 6) Require responsible entities to disclose prescribed conflict-of-interest information when notifying ASIC of compliance committee appointments, removals or resignations, enabling more effective risk-based supervision.
- 7) Prohibit related-party transactions, with narrow exceptions, capturing indirect and economic conflicts that incentivise inappropriate switching of super savings.
- 8) Introduce risk-sensitive financial requirements for responsible entities: Strengthen MIS financial requirements using a scalable, risk-based approach linked to funds under management, to fund remediation, absorb operational failures, and support orderly wind-downs without member losses.
- 9) Enhance ASIC's powers to collect consistent data on performance, fees, assets, liquidity and risk across MIS-based investment pathways receiving super savings, supporting earlier regulatory intervention.
- 10) Place switching alert obligations where they belong - with lead-generation, advisers, and licensees who recommend and are incentivised to switch people out of APRA regulated, high performing funds.



## About the Super Members Council

We are a strong voice advocating for the interests of 12 million Australians who have over \$1.6 trillion in retirement savings managed by profit-to-member super funds. Our purpose is to protect and advance the interests of those millions of super fund members throughout their lives, advocating on their behalf to ensure super policy is stable, effective, and equitable. We produce rigorous research and analysis and work with Parliamentarians and policy makers across the full breadth of Parliament.

### 1. Strengthen the regulatory framework for compliance

SMC supports Treasury's proposal to strengthen the regulatory framework for compliance plans, including more detailed scheme-specific requirements, a focus on material contraventions, and mandatory audit and assurance standards.

However, strengthened compliance requirements will only be effective if they move beyond procedural formality and meaningfully test whether products receiving Australian's precious super savings are substantively safe for members. Compliance plans should therefore demonstrate product-level due diligence, including clear articulation of investment strategy, liquidity management, valuation methodologies, counterparty exposures, and operational risks.

#### 1.1 Introduce stricter compliance plan requirements, such as requiring a detailed description of the nature of the scheme and its investment strategy, and information outlining how significant risks will be identified, monitored and managed

SMC supports the introduction of stricter compliance plan requirements for MIS.

However, enhanced compliance plan requirements will only be effective if they move beyond generic, process-driven documentation, and instead require substantive, scheme-specific assessments of product safety. Recent collapses have demonstrated that existing compliance frameworks can function as "process theatre", appearing robust on paper while failing to prevent members' superannuation savings being exposed to unsuitable, opaque and high-risk structures.

Consistent with this, SMC considers that compliance plans should serve as an important risk management mechanism, ensuring that schemes receiving tax-preferred super savings are subject to robust governance. Compliance plans should be strengthened to require explicit consideration of key product-level risks, including:

- the clarity and sustainability of the investment strategy,
- liquidity management arrangements,
- valuation methodologies, and
- material counterparty and operational risks.

Such assessments should be specific to the scheme in question and should not be capable of being satisfied through generic plans. Elevating these requirements would help ensure that compliance plans operate as genuine tools for proactive risk identification and management.

In summary, SMC supports Proposal 1.1 but recommends that stricter compliance plan requirements be explicitly designed to:

- ensure that products receiving super savings are safe and appropriate in substance, not merely compliant in form; and
- close the gap between formal governance processes and real-world consumer experiences, as exposed by recent MIS failures.

#### 1.2. Amend the liability framework for compliance plans, such that liability attaches only to material contraventions of a plan, to incentivise higher quality plans

SMC supports the proposed amendment to limit liability to material contraventions of compliance plans. This reform addresses a critical perverse incentive in the current framework and would drive meaningful improvements in governance standards.



Under the existing strict liability regime (Corporations Act ss 601FC and 601FD), responsible entities can incur civil penalties for any breach of a compliance plan, however minor. Shifting liability to material contraventions would encourage responsible entities to develop robust, tailored plans incorporating specific risk identification, monitoring processes, and controls without fear of disproportionate penalties for administrative oversights. When paired with Proposal 1.1's stricter content requirements this creates a more robust dual mechanism.

SMC also recommends Treasury extend the Financial Accountability Regime (FAR) to Responsible Entities (REs) of a registered scheme as an Accountable Entity, reflecting its control over scheme property, operations and investor outcomes. Senior executives and directors of the RE with responsibility for scheme governance, investment oversight, outsourcing arrangements, custody (where applicable), administration (where applicable) and risk management would be formally appointed as accountable persons, subject to statutory obligations to take reasonable steps to prevent prudential, operational and conduct failures. As with RSE licensees, FAR would not regulate investment performance, or commercial risk-taking, but would impose clear personal accountability for governance failures, conflicted distribution arrangements, inadequate due diligence, and breakdowns in oversight of delegated service providers.

We make this recommendation not lightly. The collapse of Shield and First Guardian exposed a systemic weakness in Australia's financial services framework: accountability was diffused across advisers, platforms, trustees and REs, with no single party clearly responsible for product suitability or risk oversight. This fragmentation allowed governance failures to persist unchecked. APRA's subsequent review reinforced that accountability cannot be outsourced and highlighted the need for clearer, individual responsibility for risk and decision-making.

While FAR now applies to super trustees, REs of MIS - despite managing billions of dollars of investor funds and exercising significant discretion over product design, risk management and disclosure - remain outside the regime. Existing obligations under the Corporations Act focus on entity level duties and lack the personal accountability, transparency and enforceability embedded in FAR.

It would also align with the Financial Services Royal Commission's emphasis on strengthening individual accountability, improving governance standards, and ensuring that responsibility for misconduct cannot be obscured by complex industry structures. This reform would deliver a more consistent, system-wide accountability framework and ensure entities entrusted with managing Australians' superannuation wealth are held to the same high standards across the whole super sector.

- **Complementary accountability layers:** Materiality for REs (scheme-level, ASIC-enforced) aligns with FAR's individual focus (entity-level, APRA/ASIC joint enforcement), creating tiered incentives without duplication. ASIC should confirm this avoids unintended conflicts while enhancing end-to-end protections for super members.
- **Trustee risk mitigation:** Detailed MIS plans mandated under Proposal 1.1 would give FAR-accountable executives auditable evidence of underlying scheme governance, aiding compliance with FAR responsibilities for investment strategy and non-financial risks. ASIC analysis should quantify this synergy, particularly for platform/SMSF switching risks.
- **Regulatory consistency:** FAR's proportional enforcement philosophy (targeting serious failings) mirrors materiality's focus. ASIC should assess whether plan breaches could trigger FAR notifications for trustees with material MIS exposures, ensuring cohesive supervision across ASIC/APRA boundaries.
- **Consumer protections:** Enhanced MIS governance reduces CSLR claims and system strain. ASIC should model how this reform, viewed through a FAR lens, prevents Shield-style failures spreading to retirement savings.

### 1.3. Make existing audit and assurance standards mandatory for auditors of compliance plans

SMC supports Proposal 1.3 to make existing audit and assurance standards mandatory for auditors of compliance plans. Doing so will transform compliance plan audits from a largely procedural exercise into an effective safeguard for investors, including super members.

ASIC's 2025 review revealed widespread weaknesses in both the content of plans and the assurance applied to them. Despite identified deficiencies, none of the 23 auditors involved issued a qualified opinion over three audit cycles. From a consumer protection perspective this indicates that the existing assurance mechanism is not reliably surfacing material governance weaknesses before harm



occurs. SMC agrees that:

- Auditors should be mandated to apply recognised assurance methodologies to compliance plans, analogous to the discipline applied to financial report audits under section 307A.
- Clear, enforceable benchmarks should apply to support ASIC and CADB oversight.

Ineffective compliance plans and audits increase Australians' exposure to governance-related losses as illustrated by collapses such as Shield and First Guardian.

Strengthening audit requirements:

- Increases early detection of governance and risk management failures.
- Reduces the probability and severity of large-scale losses of retirement savings, alleviating future pressure on the CSLR and the Age Pension.
- Represents a proportionate strengthening of an existing safeguard rather than creating a new, duplicative regime.

#### **1.4. Require responsible entities to notify ASIC of the appointment, removal or resignation of committee members.**

SMC supports Proposal 1.4 as a baseline transparency measure; however, it could be strengthened by incorporating targeted disclosure of conflicts of interest, particularly in relation to related-party directorships and roles.

Notifying ASIC of appointments, removals and resignations will improve regulatory visibility and may provide early indicators of governance stress. Notification of names alone is not sufficient to assess whether a compliance committee is independent or effective.

SMC recommends that notification requirements include, at a minimum, disclosures covering:

- Whether the compliance committee member is a director, officer or employee of the RE or any related body corporate.
- Whether the member holds roles or interests in entities to which the scheme provides, or may provide, finance or capital.
- Any other positions that may reasonably give rise to conflicts of interest.

This information would significantly enhance ASIC's ability to assess governance risk and prioritise supervisory action where members face elevated risk of harm.

#### **2. Require responsible entities of registered MISs to have a majority of external directors and remove the option of having a mandatory compliance committee instead.**

SMC supports stronger board governance for REs noting that board composition requirements alone will not adequately address the underlying drivers of consumer harm. The Corporations Act defines external directors mainly by their employment status and senior roles or interests in the RE or related entities. While this is an important baseline test, it can be met even where:

- Directors hold multiple positions across a corporate group or across several REs and schemes.
- Directors are embedded in business models that rely heavily on intra-group or related-party transactions.
- Economic and relational ties create strong incentives to favour group interests or related entities over scheme members.

A director may be "external" or "independent" in a narrow, technical sense, yet still be subject to significant practical conflicts that impair their ability to act solely in members' best interests.

In cases such as Shield Master Fund and First Guardian Master Fund, key features included:

- Extensive related-party loans and investments.
- Overlapping directorships and roles across REs, responsible entities' shareholders and related borrowers or investee entities.
- Board and governance structures that did not provide effective challenge to conflicted proposals or high-risk strategies.

In these circumstances, the critical question for Australians is not whether directors met a formal independence definition, but whether they were in fact free from conflicts.



SMC recommends that, in implementing Proposal 2, ASIC should ensure that the regime emphasises substantive conflict management rather than relying solely on a majority-external or “independent” label. In particular:

- There should be stronger expectations and, where appropriate, rules around related-party transactions (Proposal 3), disclosure of cross-directorships and other relevant interests, and board composition across corporate groups.
- ASIC’s governance guidance and surveillance should explicitly focus on the actual conflict profiles of directors and boards, including patterns of overlapping roles and the use of MIS structures with significant intra-group dealings.
- Supervisory assessment should consider how boards and individual directors behave in practice in conflicted situations not only whether they meet the letter of an independence definition.

### **3. Prohibit responsible entities of registered MISs from conducting related party transactions, with limited exceptions.**

SMC supports prohibiting related-party transactions by responsible entities (REs) of managed investment schemes (MIS). However, related-party dealings are only one manifestation of a broader conflict-of-interest problem that can arise both within the RE/MIS (e.g. self-dealing, cross-subsidies, or preferential arrangements that advantage connected parties over members) and in the distribution of the MIS (e.g. remuneration structures, lead-generation pipelines, ownership links, or other incentives that bias recommendations). The prohibition should be framed broadly at a principles-based level to capture indirect and non-obvious forms of value transfer. Without this breadth of a behavioural coverage, REs and distribution partners will be able to re-engineer conflicted arrangements so that they fall technically outside a narrow related-party definition while preserving the same economic incentives that have driven misconduct in past failures.

Treasury recognises that there are legitimate business models involving related-party arrangements. SMC agrees that outright prohibition without exceptions could be disproportionate and could disrupt established, efficient structures that do not give rise to harm. SMC therefore supports an exception regime, focused on clearly defined structures. This should be supplemented by conditions around any exception, including:

- Disclosure of the structure, fee flows and related-party relationships in the Product Disclosure Statement and ongoing reports.
- Independent oversight at board level and, where appropriate, independent valuation and conflicts committees.
- Enhanced reporting to ASIC on any use of the exceptions, to facilitate targeted supervision.

### **4. Amend the framework for setting financial requirements for responsible entities, such as setting more specific requirements.**

MISs are often marketed as flexible, sophisticated or specialist exposures that can sit alongside or in super products. However, without robust, risk-sensitive capital backing comparable to superannuation operational risk reserves, REs can operate these products with very limited capacity to absorb the consequences of their own operational failures or misconduct. For example, under ASIC RG166, an RE must hold the greater of \$150,000 or 0.5% of the average scheme property or 10% of average scheme revenue. This means an RE operating \$20 billion of retail schemes may legally operate with \$5 million in capital.

SMC supports Treasury’s proposal to strengthen financial and capital requirements for responsible entities of MISs. Current arrangements do not provide sufficient assurance that entities holding or directing large volumes of super savings have the financial resilience to withstand operational failures and fraud.

SMC recommends that MIS financial requirements explicitly adopt a scalable, risk-sensitive design, similar in concept to APRA-regulated trustees’ operational risk financial requirement (ORFR). The framework should target operational risk, not investment loss. Key elements should include a base requirement plus a variable component linked to funds under management for each registered MIS (or group of schemes), recognising that the scale of potential remediation and wind-down costs increases with member balances at risk.



As with super operational risk reserves, capital should be calibrated to cover, at a minimum:

- Administrative failure
- Absorb operational and governance failures.
- Fraud remediation and compensation for loss caused by misconduct of the RE or its agents.
- Orderly wind-down or transition to a new RE.
- Align these with the treatment of RSEs under APRA prudential standards.

SMC further supports:

- Setting the high-level objectives of the MIS financial requirements in primary legislation or regulations.
- Allowing ASIC to calibrate detailed quantitative parameters (e.g. thresholds, risk-sensitive adjustments) via legislative instruments, in consultation with industry and regarding consistency with APRA’s approach for superannuation operational risk reserves.
- Requiring REs to undertake stress testing.

## 5. Increase ASIC’s data collection powers on the retail MIS sector.

SMC supports the expansion of ASIC’s data collection powers to enable earlier identification of emerging risks in the retail MIS sector where appropriate to do so. The proposed shift toward enhanced data-driven surveillance should be accompanied by the development of clear ASIC-led guidance outlining how collected data will be used.

A more practical and efficient solution for trustees would involve ASIC leveraging existing Australian Taxation Office (ATO) systems and information-sharing mechanisms, such as the Fund Validation Service for APRA-regulated funds and the Self-Managed Superannuation Fund Verification Service (SVS). Incorporating ASIC-identified high-risk MISs into these systems would provide an effective upstream safeguard.

## 6. Alerts to ASIC about superannuation switching

SMC strongly supports measures that prevent members from being harmed by inappropriate or misleading superannuation switching, particularly where switches lead to higher fees, loss of valuable default insurance, unsuitable risk exposure, or avoidable tax consequences. However, placing a primary alerts obligation on transferring trustees—the very entities that members are exiting—is unlikely to reduce harm in practice. It risks producing costly compliance activity that does not reach members at the gravest point of risk and may delay legitimate rollovers.

Proposal 6 would require trustees to report instances or patterns of switching that appear suspicious, high-risk or potentially misleading. SMC is concerned that a trustee led alerts regime will not meaningfully improve member experiences because trustees have limited visibility into advice context, remuneration drivers, or the destination product’s risk and fee profile. A member first and more efficient and effective approach would focus obligations on the initiators of the switching chain—lead generators, advisers and licensees—and to leverage existing cross agency datasets. This would enable earlier, clearer warnings to members at the point of initiation and stronger disruption of harmful distribution practices, while preserving low friction processing for legitimate member directed rollovers.

*Why a trustee-led alert regime is problematic*

- **Undefined “suspicious” behaviour:** The proposal does not define what constitutes “suspicious” or “high-risk” switching. Without clear objective parameters and practicable indicators, trustees face uncertainty, litigation exposure, and member complaints, while regulators may receive inconsistent and cautious reporting. Furthermore, a suspicions-based regime erodes the current evidence-driven culture, risking inconsistent application across trustees with flow on affects to the member experience. False reports may disrupt switching, delaying legitimate transfers for members who seek an alternative experience or product.
- **Limited visibility of adviser-initiated rollovers.** There is no requirement for advised members to have a TPA in place with their originating fund. It can be difficult for trustees to identify and capture all adviser-initiated rollovers. Research by SMC found that only 31% of rollovers to platforms and SMSFs were accompanied by a TPA, making it difficult to identify advice-related switching and detect patterns.
- **Electronic straight through switching.** More than 95% of rollovers out of a fund are initiated electronically by receiving funds and processed straight-through, once standard AML/CTF controls are passed. Originating funds typically see the transaction, not the “behaviour” or



advice context limiting ability to interpret risk signals that might imply high-risk switching. High noise, low signal. If reportable behaviours are framed too broadly (eg age or balance thresholds or all SMSF rollovers), trustees will generate large volumes of alerts about benign activity - diluting regulator focus from genuine high-risk cases

- **Incomplete data.** Transferring trustees usually cannot see the members chosen investment options (e.g. MIS)/constraining their ability to assess the suitability or risk.
- **Unclear regulator feedback loop.** Trustees already make referrals through existing portals but have historically rarely received acknowledgement, prioritisation signals or outcome feedback.

#### *Placing obligations on those driving the switching*

If a mandatory alerts regime were to exist, SMC recommends the following:

- **Put obligations on initiators.** Those who initiate, recommend and benefit from switching - advisers and advice licensees (and where applicable lead-generators). In the Shield and First Guardian cases, it was lead generators and their associated advisers who encouraged members to roll out of existing products, including MySuper and other low-cost, diversified super options, into complex and higher-risk MISs.
- **Strengthen licensee level data to ASIC.** ASIC to enhance data collection directly from advice licensees on superannuation rollovers and related product flows, building on the approaches used in REP 562. That report examined how large advice licensees' structure and use approved product lists (APLs) and highlighted that although around 79 per cent of products on APLs were external, approximately 68 per cent of client funds were still invested in in-house products.<sup>1</sup> This demonstrates that ASIC can and does collect granular data from advice licensees about how advice is driving product flows, including the relationship between APLs and where client money is ultimately invested.
- **Regulator risk-alerts to trustees.** Based on above, ASIC should maintain and circulate a live list of high-risk advisers, licensees, products and schemes. Trustees could then report switching activity involving destination funds or products that ASIC has identified and communicated as higher risk or otherwise problematic. Such reporting would necessarily occur on an "after-the-fact" basis and would be contingent on clear, up-to-date information from ASIC about the relevant funds and schemes.
- **Leverage existing datasets.** The Australian Taxation Office, AUSTRAC and APRA already hold complementary datasets on rollover activity, suspicious transactions and fund-level movements. Treasury should therefore consider how these existing data sources could be better integrated to provide a more complete picture of super switching behaviour, and identify any targeted uplifts needed to address current gaps. This approach would minimise regulatory burden while enhancing the accuracy and efficiency of oversight.
- **Standardise TPAs for advised rollovers.** Require a TPA (or equivalent digital authorisation) where advice is involved so trustees can reliably identify advice-initiated switches and contribute meaningful data.
- **Close conflicted-remuneration pathways in distribution.** Require REs and advisers to certify that total remuneration and economic interests—including ownership links and benefits to related entities—do not increase as a result of any recommended switch. This targets the incentive structures that have historically driven harmful switching and complements our broader conflicts recommendations.
- **Establish a clear feedback loop.** Regulators should acknowledge and triage alerts, share outcomes with trustees and licensees, and publish de-identified, periodic insights so the system continually learns and improves.

In closing, SMC welcomes this consultation as a critical element of a broader, coordinated set of consumer protection reforms being progressed by Government. Enhancing oversight and governance of MISs is a necessary step, but it will only deliver enduring improvements for consumers if implemented alongside complementary and comprehensive reforms on advice quality, conflicted remuneration and incentives, distribution practices and superannuation switching. Each of these reforms is essential and collectively they form a coherent framework for preventing consumer harm before it occurs. SMC welcomes ongoing engagement with Treasury and ASIC on the design and sequencing of this broader reform agenda.

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<sup>1</sup> ASIC, [ASIC reports on how large financial institutions manage conflicts of interest in financial advice](#), 24 January 2018