Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

M3 and RI SUBMISSIONS ARISING FROM CASE STUDIES INVOLVING MR A, MR HARRIS AND MR DOYLE

INTRODUCTION

1. These submissions, in response to findings submitted by Counsel Assisting as being open, are made by Millennium 3 Financial Services Pty Limited (**M3**) in relation to the case studies of its former authorised representatives "Mr A", and Mr Chris Harris of Moneyworks Pty Limited, and RI Advice Group Pty Limited (**RI**) concerning RI's former authorised representative Mr John Doyle of Carrington Financial Services Pty Limited.

2. To avoid doubt, these submissions are not made on behalf of the former authorised representatives referred to above.

3. In respect of each case study, these submissions:

   (a) set out a summary of the evidence which, in the submission of M3 (in the case studies of Mr A and Mr Harris) and RI (in the case study of Mr Doyle), is relevant to the findings that Counsel Assisting has submitted are open; and

   (b) address whether or not each of those findings are open on the basis of that evidence.

4. M3 and RI do not know whether the Commission has afforded procedural fairness to Mr A, Mr Harris and Moneyworks Pty Limited, and Mr Doyle and Carrington Financial Services Pty Limited in respect of those findings submitted by Counsel Assisting to be open to be made by the Commission concerning each of them. M3 and RI submit that no findings should be made to the effect that any of those individuals or entities may have engaged in misconduct without them first having been afforded the opportunity to adduce evidence and make submissions in relation to the proposed findings.

5. General questions raised by Counsel Assisting in relation to the three case studies referred to above, and other case studies about which the Commission heard evidence during the hearings conducted from 16 to 27 April 2018, will be addressed in a separate submission in accordance with directions made on 27 April 2018.

CASE STUDY: MR A

Summary of evidence

6. Mr A was an authorised representative of M3 from September 2009 to October 2012. He was the sole director of a corporate authorised representative of M3 during that same period.[1]

7. M3 suspended Mr A's and the corporate authorised representative's authority to act as authorised representatives of M3 in September 2012, and terminated that authority with effect from October 2012, after Mr A received very poor ratings in three successive advice assurance audits.[2] The reports for those audits were dated 1 April 2011, 7 December

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[1] Statement of Kieran Forde dated 12 April 2018 (**First Forde Statement**) (Ex. 2.194) at [15] (ANZ.999.006.0001 at 0011).

[2] First Forde Statement (Ex. 2.194) at [16]-[17] (ANZ.999.006.0001 at 0011-0012).

2011 and 15 August 2012, and related to audits carried out on five of Mr A's files in each of February 2011, November 2011 and August 2012.[3]

8. Following the first of those audits, particular files were remediated and Mr A was also placed on "pre-vetting" for certain types of advice.[4] Mr A's next two audits took place sooner than the annual timeframe that generally applied to advice assurance audits of M3's advisers at the time. There was extensive remediation and training of Mr A after the second audit.[5] Despite that remediation and training, the August 2012 audit showed that Mr A had again provided SMSF[6] advice without submitting advice to be pre-vetted as required by M3's pre-vetting policy. As a consequence, M3 acted promptly to terminate Mr A's authority to act as its authorised representative.[7]

9. Unbeknownst to M3 at the time, in June and July 2011, Mr A had encouraged five of his SMSF clients to invest in the purchase of an apartment in a marina development in the amounts of $100,000 each (in the case of four clients) and $200,000 (in the case of one client) (the **property investment**).[8] Each of those clients appears to have caused funds to be paid to an entity associated with Mr A to be used for payment of the 30% deposit on the purchase price of the apartment, stamp duty and the cost of furnishing the apartment. Another entity associated with Mr A entered into a contract for sale of land on 11 July 2011 to buy the apartment for a total purchase price of $1,665,000.[9] That entity subsequently became the registered proprietor of the apartment in August 2011, subject to a mortgage granted to the vendor to secure payment of $1,158,500, being the balance of the purchase price.[10]

10. The property investment was not on M3's approved product list or otherwise authorised by M3, and Mr A was not permitted under his authorisation by M3 to provide advice to invest in particular properties.[11]

11. Mr A sent an email to at least some of the clients on 17 August 2011 informing them that "we now own an investment property".[12] Mr A did not disclose to the investors that the entity to whom they had paid their funds was not in fact the purchaser of the property, that Mr A was associated with another entity that was the purchaser, or that Mr A had personally guaranteed payment of the deposit of $496,500 when he caused that entity to enter into a contract to purchase the property on 11 July 2011. Mr A also did not clearly disclose that ANZ was not the mortgagee of the property,[13] having previously represented

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[3] First Forde Statement (Ex. 2.194) at [16] (ANZ.999.006.0001 at 0011-0012) and KMF-7 (ANZ.800.267.4827), KMF-8 (ANZ.800.267.4835) and KMF-9 (ANZ.800.267.4819).

[4] T1711:45–1712:5.

[5] First Forde Statement (Ex. 2.194) at KMF-10 (ANZ.800.308.5037).

[6] Self-managed superannuation fund.

[7] First Forde Statement (Ex. 2.194) at KMF-10 (ANZ.800.308.5037).

[8] T1712:10 and following.

[9] First Forde Statement (Ex. 2.194) at KMF-33 (ANZ.800.401.0606 at 0657-0658).

[10] First Forde Statement (Ex. 2.194) at KMF-31 (ANZ.800.401.0860 at 0888-0889 and 0970-0985), being a copy of the mortgage dated 17 August 2011 and a side deed between the vendor and the purchaser dated 11 July 2011, respectively.

[11] First Forde Statement (Ex. 2.194) at [87(b)] (ANZ.999.006.0001 at 0020); T1713:27-33.

[12] First Forde Statement (Ex. 2.194) at KMF-12 (ANZ.800.401.0436 at 0531).

[13] In his email dated 17 August 2011, Mr A indirectly disclosed that the title to the property would be held by an entity that was not ANZ "as security under the mortgage, pending payment of the balance of the purchase price": First Forde Statement (Ex. 2.194) at KMF-12 (ANZ.800.401.0436).

to at least some of the investors that there would be a first mortgage to ANZ with no interest payable for 18 months.[14]

12. As one of the investors later asserted, it appears that Mr A had in 2011 painted a rosy picture of potential investment returns and represented that Mr A thought the investors could make a good quick return by selling the property for a significantly higher price within a short timeframe.[15] Although Mr A asserted to one investor that valuations had been obtained,[16] M3 understands that none of the investors were provided with a copy of a valuation for the property. The evidence before the Commission does not reveal any reasonable basis for Mr A's representations to the investors about potential investment returns on the property.

13. Nearly a year after the property was purchased, Mr A, or another authorised representative of M3 who worked with him, arranged for investors to enter into a unit trust deed in relation to the property investment. The unit trust deed was dated 22 June 2012,[17] although it is clear that at least some of the investors did not execute it until July 2012 or later.[18] It is also not apparent on the evidence before the Commission whether or not all investors did execute the deed.

14. In August 2013, Mr A informed the investors that they had each lost their funds in the property investment.[19] The property was later sold at the direction of the mortgagee for $1.1 million,[20] which was less than the balance of the purchase price secured by the mortgage. That meant that there was no equity left in the property for the registered proprietor or the five investors (if it be the case that the registered proprietor held the property on trust for the investors).[21]

15. In September 2013, one of the investors made a complaint to M3 about Mr A's conduct in relation to the property investment and sought compensation from M3 in respect of the $100,000 they had lost, plus interest. M3 settled the complaint for $50,000 in September

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[14] First Forde Statement (Ex. 2.194) at KMF-31 (ANZ.800.401.0860 at 0869) and KMF-12 (ANZ.800.401.0436 at 0514).

[15] See, for example First Forde Statement (Ex. 2.194) at KMF-12 (ANZ.800.401.0436 at 0503), being an email from Mr A to one of the investors on 25 July 2011 and KMF-31 (ANZ.800.401.0860 at 0867), being an email from Mr A to another investor on 27 June 2011 in which Mr A asserted "*I know that we will make between 20 and 50% over a 4 to 6 month period*".

[16] First Forde Statement (Ex. 2.194) at KMF-31 (ANZ.800.401.0860 at 0865) being an email from Mr A to one of the investors dated 28 June 2011, in which Mr A asserted that "*We received bank valuations in September 2010 and Feb 2011 FROM 2 DIFFERENT GROUPS. Both are at least 100k higher than what we will purchase it for…*"

[17] A partial copy of the unit trust deed is at: First Forde Statement (Ex. 2.194) at KMF-12 (ANZ.800.401.0436 at 0543-0572) (without the execution pages). More complete copies are at: First Forde Statement (Ex. 2.194) at KMF-31 (ANZ.800.401.0860 at 0986-1018) and KMF-33 (ANZ.800.401.0010 at 0687-0719), although those copies do not contain signatures for all investors.

[18] First Forde Statement (Ex. 2.194) at KMF-12 (ANZ.800.401.0436 at 0531) being an email dated 12 July 2012 from an authorised representative of M3 to one of the investors which stated, among other things, "*I would like to arrange a time to come and see you … to sign the property trust deeds.*"

[19] First Forde Statement (Ex. 2.194) at KMF-12 (ANZ.800.401.0436 at 0539).

[20] First Forde Statement (Ex. 2.194) at KMF-20 (ANZ.800.394.0378 at 0379) and KMF-31 (ANZ.800.401.0860 at 0883) which indicates that the sale occurred in March 2014.

[21] Mr A appears to have executed a Declaration of Trust as a deed on behalf of the purchaser of the apartment (in his capacity as its sole director and secretary), in which the purchaser purported to acknowledge that the purchasing entity would have no beneficial interest in the apartment and that the apartment would be held on trust: First Forde Statement (Ex. 2.194) at KMF-31 (ANZ.800.401.0860 at 1024-1029). Although the Declaration of Trust is dated 10 July 2011, it seems doubtful that the document was executed on that date as it names (in clause 1.8) all of the investors in the unit trust, including at least one who did not commit to investing in the property investment until about 28 July 2011: First Forde Statement (Ex. 2.194) at KMF-12 (ANZ.800.401.0436 at 0513).

2014, after which it closed the matter in its incident management system in the absence of further complaints.[22]

16. By about December 2013, M3 had information to the effect that it was likely that four other clients of Mr A had invested in the same property investment (as their names appeared on a copy of a unit trust deed provided to M3 as part of the September 2013 complaint). There was no evidence in the systems of M3 or the systems of M3's parent company Australia and New Zealand Banking Group Limited (**ANZBGL**) that Mr A had advised any of the clients to invest in the property investment.[23] M3 did not take steps to contact those four clients. The four clients subsequently made complaints to M3 in late 2016 and mid-2017.[24]

17. In mid-2017, two other clients of Mr A made complaints to M3. On receipt of the first of those complaints in May 2017, M3 promptly engaged ANZBGL Group Investigations to conduct an investigation into Mr A's conduct and established a working group to consider the matter. On 1 August 2017, a forensic accounting firm, McGrathNicol, was engaged to conduct an investigation into Mr A's conduct.[25]

18. McGrathNicol delivered its final report in December 2017.[26] In February 2018, M3 notified the WA Police of allegations that had been made by former clients of Mr A, including allegations concerning the property investment.[27]

19. ANZBGL's Advice Review Team (**ART**) is in the process of conducting a review of files of Mr A's clients to assess whether those clients were affected and may require financial remediation.[28] As a first priority, ART is reviewing the position of clients who have lodged complaints with M3. It will then review the files of the balance of the 103 customers who have been selected to be reviewed by ART because they were associated with an SMSF, corporate entity, corporate trustee or family trust, these being the clients thought to be at higher risk of being affected by conduct of Mr A of the nature examined in the case study. ART's review will then extend to a wider group of clients to consider and assess whether those customers were affected and require financial remediation.

Proposed findings in relation to Mr A

20. Counsel Assisting submitted that it is open to the Commission to find that Mr A's conduct, in connection with the advice that he gave to clients to invest in the unit trust to fund the property investment, may have amounted to misconduct in that:[29]

    (a) Mr A may have breached his statutory obligation under section 961B of the *Corporations Act 2001* (Cth) (**Corporations Act**) to act in the best interests of those clients;

    (b) Mr A may have breached his obligation under section 1041G of the Corporations Act not to engage in dishonest conduct in relation to a financial product or financial service;[30]

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[22] Supplementary Statement of Kieran Forde dated 23 April 2018 (**Second Forde Statement**) (Ex. 2.195) (ANZ.999.009.0001) at KMF-12A (ANZ.800.267.5125); T1720:24.

[23] First Forde Statement (Ex. 2.194) at [21]-[23] (ANZ.999.006.0001 at 0012-0013).

[24] First Forde Statement (Ex. 2.194) at [26]-[30] (ANZ.999.006.0001 at 0013-0014).

[25] First Forde Statement (Ex. 2.194) at [27]-[33] (ANZ.999.006.0001 at 0013-0014).

[26] First Forde Statement (Ex. 2.194) at KMF-49 (ANZ.800.346.0828).

[27] First Forde Statement (Ex. 2.194) at KMF-53 (ANZ.800.313.0536).

[28] First Forde Statement (Ex. 2.194) at [41]-[42] and [132] (ANZ.999.006.0001 at 0015, 0027).

[29] T1965:20-34.

(c) Mr A may have breached his obligation under section 1041H(1) of the Corporations Act not to engage in conduct in relation to a financial product or financial service that is misleading or deceptive or likely to mislead or deceive; and

(d) Mr A may also have breached his statutory obligation under section 12DA of the *Australian Securities and Investments Act 2001* (Cth) (**ASIC Act**) not to engage in conduct in relation to financial services that is misleading or deceptive or likely to mislead or deceive.

21. M3 submits that no such findings should be made concerning Mr A and the corporate authorised representative of which he was the sole director[31] unless they have each been afforded procedural fairness by the Commission and, in particular, been put on notice of the proposed findings and offered the opportunity to adduce evidence and make submissions in respect of them.[32] M3 further submits that, in any event, it would not be open to the Commission to find that Mr A may have breached s 961B of the Corporations Act because that section was not in force at the time Mr A gave advice in relation to the property investment in 2011.

Proposed findings in relation to M3

22. Counsel Assisting submitted that it is open to the Commission to find that the conduct of M3 during the period in which Mr A provided the advice that was the subject of the case study might amount to misconduct in the following ways:[33]

(a) M3 may have breached its statutory obligation under section 912A(1)(a) of the Corporations Act to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly;

(b) M3 may have breached its statutory obligation under section 912A(1)(ca) to take reasonable steps to ensure that its representatives complied with the financial services laws;

(c) M3 may have breached its statutory obligation under section 912A(1)(d) of the Corporations Act to have available adequate resources to carry out supervisory arrangements;

(d) M3 may have breached its statutory obligation under section 912A(1)(h) of the Corporations Act to have adequate risk management systems; and

(e) in respect of the period after October 2016, M3 may have breached its statutory obligation under section 912G of the Corporations Act set out in ASIC class order CO 14/923 to ensure that it kept client records in such a way that they were accessible to M3 at all times in a way that enabled M3 to produce the records.

23. M3 submits that no such findings are open on the evidence before the Commission.

24. The relevant period is mid-2011, when Mr A gave the advice the subject of the case study.

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[30] M3 notes that this and the proposed finding in relation to s 1041H(1) raise an interesting question as to whether the property investment was not a "financial product" by reason of s 765A(1)(s) of the Corporations Act and, if that be the case, whether Mr A's conduct was "in relation to a financial product or a financial service" within the meaning of s 1041G and/or s 1041H(1).

[31] However, M3 understands that the corporate authorised representative has been deregistered.

[32] See paragraph 4 above.

[33] T1966:19-34.

25. The fact that Mr A may have engaged in dishonest or misleading conduct does not, without more, justify a conclusion that M3 may have failed to do all things necessary to ensure that financial services were provided efficiently, honestly and fairly.

26. The standard in s 912A(1)(a) – "efficiently, honestly and fairly" – is recognised as a single, composite concept, rather than three discrete behavioural norms.[34] Accordingly, the question is whether M3 did all things necessary to ensure that the financial services covered by its licence were provided efficiently having regard to the dictates of honesty and fairness, honestly having regard to the dictates of efficiency and fairness, and fairly having regard to the dictates of efficiency and honesty.[35]

27. There is no evidence to suggest that M3 had any knowledge, or ought to have had any knowledge, of the substance of the advice given to Mr A's clients in relation to the property investment in mid-2011 or the matters that may have made that advice dishonest or misleading. As noted in paragraph 16 above, there was no record of the advice in M3's or ANZBGL's systems. This is unsurprising, given that the investment was outside the scope of Mr A's authorisation, as referred to in paragraph 10 above.

28. For all of these reasons, it is submitted that the evidence does not establish that there were any steps, beyond the steps that M3 took in response to Mr A's poor audit results as referred to in paragraph 8 above, that could be characterised as "necessary to ensure that the financial services covered by [M3's] licence were provided efficiently, honestly and fairly" within the meaning of s 912A. The proposed finding in relation to s 912A(1)(a) should not be made.

29. M3 further submits that the Commission should not make the proposed finding that M3 may have breached its statutory obligations under ss 912A(1)(ca), 912A(1)(d) or 912A(1)(h). The particular respects in which it is submitted by Counsel Assisting that M3 may have breached those provisions during the relevant period were not identified in Counsel Assisting's closing submissions. The evidence before the Commission does not support the proposed findings. There is no evidence that M3 lacked available and adequate resources to carry out supervisory arrangements in mid-2011, either in relation to Mr A or otherwise. It was not put to Ms Rixon that the ratio of supervisors to M3 authorised representatives in 2011 was inadequate,[36] and there is no other evidence that it was inadequate. In any event, Mr Forde's evidence demonstrated that Mr A was subjected to supervision during the relevant period:

    (a) Mr A had been the subject of three advice assurance audits within an 18 month period; and

    (b) extensive remediation and training was carried out after the first two audits and Mr A was placed on pre-vetting for SMSFs and Business Risk Insurance.[37] The third audit identified that Mr A had again failed to comply with the pre-vetting requirement, and this resulted in M3 taking prompt action to suspend and terminate Mr A's status as an authorised representative of M3.

30. Nor does the evidence before the Commission support a finding that M3's risk management systems were inadequate in mid-2011. It is submitted that any such finding

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[34] *Australian Securities and Investments Commission v Avestra Asset Management Limited (in liq)* [2017] FCA 497 at [191] per Beach J.

[35] *Story v National Companies and Securities Commission* (1988) 13 NSWLR 661 at 672; *Australian Securities and Investments Commission v Camelot Derivatives Pty Ltd (in liq)* (2012) 88 ACSR 206; [2012] FCA 414 at [69]-[70] per Foster J.

[36] T1569:24-1570:34.

[37] First Forde Statement (Ex. 2.194) at KMF-10 (ANZ.800.308.5037 at 5040).

would require evidence of alternative or additional systems that could and should have been implemented by M3 at that time. No such evidence was adduced.

31. In relation to the proposed finding concerning s 912G, ASIC class order CO 14/923 did not apply during the relevant period or at the time that Mr A's authorisation was suspended and terminated in 2012.

32. Counsel Assisting also submitted that it is open to the Commission to make findings that M3 engaged in conduct that fell below community standards and expectations (**CSEs**) in that:[38]

    (a) having terminated Mr A in circumstances where he had received extremely poor audit results, M3 took no steps to investigate whether any of his clients had suffered detriment as a result of his advice; and

    (b) after identifying specific clients of Mr A who may have suffered loss because of Mr A's conduct, M3 took no steps to contact those clients or investigate whether they had suffered detriment as a result of Mr A's advice.

33. As a result of reviewing the whole of the evidence referred to in paragraphs 6 to 19 above for the purpose of the Royal Commission hearings, M3 accepts that the first proposed finding referred to immediately above is open in respect of the period up to May 2017 and the second proposed finding is open concerning clients who invested in the property investment in respect of the period from December 2013[39] until May 2017. In May 2017, M3 engaged Group Investigations and established a working group, which led to McGrathNicol being engaged in August 2017 and clients of Mr A being referred to ART.[40]

CASE STUDY: MR HARRIS

Summary of evidence

34. The case study concerned advice given by Mr Harris to two clients. Mr Harris gave the advice to one of those clients during the period May to June 2015.[41] In relation to the other client, the principal advice was given during the period from April to June 2015, although some follow up advice was given in October 2016.[42]

35. Mr Whereat, who produced a witness statement and gave evidence pursuant to a summons issued by the Commission, set out the history of events concerning Mr Harris. In summary, in respect of the period up to the end of June 2015:[43]

    (a) Mr Harris had received scores of "5" in an Advice Quality Review (**AQR**) conducted in July 2013 and a targeted review conducted in November 2013, following which

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[38] T1967:6-7; T1967:14-19; T1968:46-T1969:1; T1969:15-20.

[39] First Forde Statement (Ex. 2.194) at [21] and [101(c)] (ANZ.999.006.0001 at 0012, 0023) and KMF-14 (ANZ.800.401.0225) indicates that M3 representatives checked records in ANZBGL's systems in December 2013 and January 2014 and concluded that ANZBGL / M3 did not have any record of investments relating to the property investment for the other customers listed on the copy of the unit trust deed that was provided with the September 2013 complaint. M3 took no further steps before 2017 to investigate whether those other customers suffered detriment as a result of Mr A's advice.

[40] First Forde Statement (Ex. 2.194) at [28]-[43] (ANZ.999.006.0001 at 0013-0015).

[41] Statement of Darren Whereat dated 5 April 2018 (**Whereat Statement**) (Ex. 2.129) at [5.89]-[5.97] (ANZ.999.002.0001 at 0037-0038).

[42] Whereat Statement (Ex. 2.129) at [5.99]-[5.109] (ANZ.999.002.0001 at 0038-0040); see also T1962:24-34.

[43] Whereat Statement (Ex. 2.129) at [5.7]-[5.14] (ANZ.999.002.0001 at 0022-0024) and DJW-42 (ANZ.800.382.0336).

he had been placed on pre-vetting and Practice Manager coaching and a risk-based review was undertaken;

(b) as at December 2013, a consultant was assisting Mr Harris to put new processes in place and M3's State Manager planner was to visit him fortnightly;

(c) Mr Harris passed pre-vetting in April 2014. He was cleared from further pre-vetting at that time on the basis that a further review would be undertaken in July 2014;

(d) Mr Harris received an AQR rating of "2" in July 2014;

(e) Mr Harris received an AQR rating of "4" in June 2015, following which he was again required to submit all advice to pre-vetting until he was notified that he had been cleared from that requirement. A further compliance review was to be scheduled within three months of Mr Harris being cleared from pre-vetting. (Whilst the pre-vetting control was *capable* of being circumvented at that time, there is no evidence that Mr Harris was known to have circumvented it or suspected of having done so at that time.[44]); and

(f) concerns raised by Ms Nolan, the State Manager of M3 responsible for supervising Mr Harris were being considered and discussed by M3's National Manager, Chief Executive Officer and Chief Operating Officer.[45]

36. The events that occurred in relation to Mr Harris after he provided advice to the two clients the subject of the case study are addressed in detail in Mr Whereat's statement.[46] Ultimately, on 15 November 2016, M3's Risk and Event Forum endorsed a recommendation from the ADG Event Working Group that a Targeted Review be undertaken of 50 of Mr Harris' files to assess quality of advice and process issues.[47] The conduct of the Targeted Review was delayed by difficulties experienced by M3 in obtaining from Mr Harris the material required for that review.[48]

37. Mr Harris was terminated following the circulation of the draft Targeted Review report in early April 2017.[49] At the time the draft report was issued, the Targeted Review had assessed files from 28 clients of Mr Harris and determined that (amongst other things) a small number of clients had suffered actual detriment and a number of other clients whose files had been reviewed had potentially suffered detriment.[50]

38. During June and July 2017, the totality of Mr Harris' client files were sent to ART so that financial remediation for those clients could be assessed.[51]

Proposed findings in relation to Mr Harris

39. Counsel Assisting submitted that it is open to the Commission to find that Mr Harris' conduct in connection with the advice he gave to the clients in the statements of advice

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[44] Whereat Statement (Ex. 2.129) at DJW-48 (ANZ.800.225.1484 at 1500).

[45] Whereat Statement (Ex. 2.129) at [5.13] (ANZ.999.002.0001 at 0024) and DJW-41 (ANZ.800.382.0918).

[46] Whereat Statement (Ex. 2.129) at [5.14]-[5.86] (ANZ.999.002.0001 at 0024-0037).

[47] Whereat Statement (Ex. 2.129) at [5.55]-[5.56] (ANZ.999.002.0001 at 0031).

[48] Whereat Statement (Ex. 2.129) at [5.58] and [5.61] (ANZ.999.002.0001 at 0031-0032).

[49] Whereat Statement (Ex. 2.129) at [5.64]-[5.68] (ANZ.999.002.0001 at 0033-0034).

[50] Whereat Statement (Ex. 2.129) at DJW-86 (ANZ.800.382.0765).

[51] Whereat Statement (Ex. 2.129) at [5.80] and [5.82] (ANZ.999.002.0001 at 0036).

that are exhibits DJW-115[52] and DJW-120[53] to Mr Whereat's statement may have amounted to misconduct in that:[54]

(a) in giving that advice to those clients, Mr Harris may have breached his statutory obligation under section 961B of the Corporations Act to act in the best interests of those clients; and

(b) Mr Harris may also have breached his statutory obligation under 961G to only provide advice to those clients if it would be reasonable to conclude that the advice was appropriate to them.

40. M3 submits that no findings should be made in relation to the conduct of Mr Harris or Moneyworks Pty Limited unless they have each been afforded procedural fairness by the Commission and, in particular, been put on notice of the proposed findings and offered the opportunity to adduce evidence and make submissions in respect of them.[55]

Findings in relation to M3

41. Counsel Assisting submitted that it is open to the Commission to find that the conduct of M3 during the period in which Mr Harris provided the advice that was the subject of the case study (being the period from April to June 2015)[56] might amount to misconduct in the following ways:[57]

(a) M3 may have breached its statutory obligation under section 912A(1)(a) of the Corporations Act to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly;

(b) M3 may have breached its statutory obligation under section 912A(1)(ca) to take reasonable steps to ensure its representatives complied with the financial services laws;

(c) M3 may have breached its statutory obligation under section 912A(1)(d) of the Corporations Act to have available adequate resources to carry out supervisory arrangements;

(d) M3 may have breached its statutory obligation under section 912A(1)(h) of the Corporations Act to have adequate risk management systems; and

(e) in respect of the period after October 2016, M3 may have breached its statutory obligation under section 912G of the Corporations Act set out in ASIC class order CO 14/923 to ensure that it kept client records in such a way that they were accessible to M3 at all times in a way that enabled M3 to produce the records.

42. M3 submits that these proposed findings are not open on the evidence.

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[52] Whereat Statement (Ex. 2.129) at DJW-115 (ANZ.800.370.4828).

[53] Whereat Statement (Ex. 2.129) at DJW-120 (ANZ.800.366.0458), being the Financial Needs Analysis form and DJW-122 (ANZ.800.366.0427), being the Statement of Advice dated 27 April 2015.

[54] T1965:10-20.

[55] See paragraph 4 above.

[56] M3 understands that Counsel Assisting was referring to the same advice referred to in the formulation of the proposed findings against Mr Harris and in closing submissions at T1962:24-34, namely Whereat Statement (Ex. 2.129) at DJW-115 (ANZ.800.370.4828) and DJW-122 (ANZ.800.366.0427), so that the relevant period is April to June 2015 with the exception of the proposed finding in paragraph 41(e) above which specifically identifies the period after October 2016.

[57] T1966:19-34.

43. In relation to s 912A(1)(a) and s 912A(1)(ca), it is submitted that there is no evidence that any steps beyond those summarised in paragraph 35 above were necessary during the period April to June 2015 to ensure that financial services provided under M3's licence were provided efficiently, honestly and fairly[58] or that M3's representatives complied with financial services laws. The fact that different decisions could have been made with the benefit of hindsight[59] does not mean that the steps taken by M3 at the time involved a breach of s 912A(1)(a) or s 912A(1)(ca).

44. In relation to s 912A(1)(d), there is no evidence that M3 lacked available and adequate resources to carry out supervisory arrangements during the period from April to June 2015, either in relation to Mr Harris or otherwise. It was not put to Ms Rixon that the ratio of supervisors to M3 authorised representatives in 2015 was inadequate,[60] and there is no other evidence that it was inadequate. On the contrary, it is clear from the detailed account of events concerning Mr Harris set out in Mr Whereat's statement and summarised in paragraph 35 above that Mr Harris was closely supervised by the State Development Manager and others during the relevant period (April to June 2015) and indeed at other times.

45. Nor does the evidence before the Commission support a finding that M3's risk management systems (including risk treatment plans accepted by the Business Risk and Compliance Committee) were inadequate during the period April to June 2015 or that M3 may have breached s 912A(1)(h). It is submitted that any such finding would require evidence of alternative or additional systems that could and should have been implemented by M3 at that time. No such evidence was adduced. In relation to the "underinvestment by ANZ in systems and processes" referred to by Counsel Assisting in closing submissions,[61] Ms Rixon rejected the proposition that a quantum shift in investment was required by the aligned dealer groups. Ms Rixon did acknowledge that the aligned dealer groups could have commenced the process of incentivising authorised representatives to use XPlan earlier than 2016 and could have started the Adviser Hub project earlier.[62] However, it does not follow that M3's risk management systems, as a whole, were inadequate and there is no evidence that Mr Harris' conduct was caused or contributed to by the fact that all authorised representatives were not using XPlan and Adviser Hub had not yet been implemented. On the contrary, it is clear from the detailed account in Mr Whereat's statement that M3 was aware of Mr Harris' conduct even though these two projects had not yet been implemented.

46. In addition, Mr Whereat's evidence that the conduct of Mr Harris was not representative or symptomatic of a continuing or systemic issue affecting M3 was not challenged.[63] It follows that the conduct of Mr Harris throws no light on the question of the adequacy of M3's risk management systems.

47. It is submitted that the Commission should not make the proposed finding in relation to s 912G. CO 14/923 expressly contemplates that the records may be held by the authorised representative rather than the licensee and at all times (including after October 2016), M3 had a right to access Mr Harris' records pursuant to clauses 2.1 and 4.2 of the Authorised Representative Deed.[64]

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[58] See paragraph 26 above.

[59] Whereat Statement (Ex. 2.129) at [5.111] (ANZ.999.002.0001 at 0040).

[60] T1569:24-1570:34.

[61] T1967:32-33.

[62] Statement of Kylie Rixon dated 9 April 2018 (**First Rixon Statement**) (Ex. 2.152) at [57], [94]-[97], [140], (ANZ.999.003.0001 at 0054, 0059-0061, 0064-0065); T1585:40, T1587:36.

[63] Whereat Statement (Ex. 2.129) at [5.112] (ANZ.999.002.0001 at 0040).

[64] Authorised Representative Deed between M3 and Mr Harris (Ex. 2.142) (ANZ.800.451.1826).

48. Counsel Assisting also submitted that it is open to the Commission to make findings that M3 engaged in conduct that fell below CSEs in that:[65]

    (a) M3 failed to take adequate steps to protect customers of Mr Harris from receiving inappropriate advice after it had repeatedly identified issues with his advice; and

    (b) M3 delayed in implementing a review and remediation program with no client of Mr Harris yet being compensated for losses caused as a result of Mr Harris' advice.

49. M3 submits that the proposed finding referred to in paragraph 48(a) above is not open on the evidence for all of the reasons outlined in paragraphs 35 to 46 above.

50. In relation to the remediation of Mr Harris' clients, the evidence before the Commission was that the time taken to remediate has been caused by factors which include the difficulty experienced by ANZBGL in finding appropriately qualified staff to review client files in order to identify and calculate any detriment for the purpose of remediation[66] and the need for the ART to prioritise a number of remediation matters.[67] These matters have meant that M3 was not able to quickly work through the client files of Mr Harris and provide compensation[68] in a timely manner. In these circumstances, M3 accepts that the proposed finding referred to in paragraph 48(b) above is open on the evidence.

51. Counsel Assisting also submitted that it is open to the Commission to find that M3's conduct in relation to provision of inappropriate advice by Mr Harris was partly attributable to inadequacy of M3's risk management systems[69] and inadequacy of M3's internal systems.[70] For all of the reasons addressed in paragraphs 35 to 46 above, M3 submits that no such finding should be made.

CASE STUDY: MR DOYLE

Summary of evidence

52. Mr Doyle and Carrington Financial Services Pty Limited (**Carrington**) became authorised representatives of RI on 8 May 2013.[71] They had previously been authorised representatives of Australian Financial Services Limited (**AFS**). It was public knowledge, and RI was aware, that ASIC had imposed licence conditions on AFS in November 2011 after identifying certain concerns.[72] RI held discussions with ASIC about these matters before recruiting Mr Doyle and Carrington. During those discussions, RI asked ASIC whether it had concerns about any specific advisers. ASIC did not share any information with RI about specific advisers. ASIC informed RI that AFS had agreed to a restriction on its financial services licence that required AFS to conduct a program of work to address

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65 T1967:6-12, 1968:46-1969:1, 1969:8-14.

66 T1546:19-23.

67 Whereat Statement (Ex. 2.129) at DJW-14 (ANZ.800.221.4305 at 4308) shows the ART workload immediately before Mr Harris' clients were referred to ART in late June 2017; Whereat Statement (Ex. 2.129) at [5.80] and [5.82] (ANZ.999.002.0001 at 0036).

68 The remediation payments, when made at the conclusion of the remediation process, take into account the time value of money and the reasonable return which affected clients would have generated over the period since they received the inappropriate advice that is being remediated: Whereat Statement (Ex. 2.129) at [4.63] (ANZ.999.002.0001 at 0020); T1549:15-46; T1527:8-12.

69 T1967:20-43.

70 T1968:26-45.

71 RI Advice Group Principal Authorised Representative Agreement with Carrington Corporation Pty Ltd (Ex. 2.130) (ANZ.800.447.0172); RI Advice Group Individual Representative Deed with Mr Doyle (Ex. 2.140) (ANZ.800.447.0157); Commitment Deed (Ex. 2.136) (ANZ.800.447.0150); T1487:44-1488:17.

72 ASIC media release concerning Australian Financial Services Limited, 11-243 MR (Ex. 2.131) (RCD.0021.0001.0398); T1489:33-1490:30.

ASIC's concerns, that the program of work had been overseen and reported on by an independent expert, and that AFS had been meeting its obligations under the licence conditions.[73]

53. Before appointing Mr Doyle and Carrington as authorised representatives, RI confirmed that Mr Doyle satisfied the education requirements of ASIC Regulatory Guide 146[74] and 5 of Mr Doyle's files at AFS were the subject of an audit by Stephen Blood (ANZ Wealth's Head of Compliance).[75] On 15 July 2013, Mr Doyle completed an online financial planning knowledge test and received a "competent" score in three modules and a "not yet competent" score in four modules.[76] However, on commencing as an authorised representative of RI, Mr Doyle was subjected to RI's normal supervision practices, which included pre-vetting of Mr Doyle's advice. This meant that proposed Statements of Advice and supporting documentation were required to be submitted to Advice Assurance for review. Advice Assurance was required to assess the proposed advice and report any issues back to the adviser to be corrected before the advice was presented to the adviser's client.[77]

54. Mr Doyle was on pre-vetting from 8 May 2013 until he gained clearance on 25 August 2014.[78] RI conducted an AQR in respect of Mr Doyle and Carrington on 3 February 2015. This was the first AQR conducted since Mr Doyle had been cleared from the pre-vetting requirement applied to him when he joined RI.[79] Mr Whereat acknowledged that RI should have undertaken an AQR in respect of Mr Doyle earlier than February 2015 (the policy required an AQR within 3 months).[80] RI applied enhanced supervision and monitoring to Mr Doyle as a result of his very poor result on his first AQR. Mr Doyle was required to review certain requirements with his supervisor (including RI's Best Interests Standard and sections of the RI Advice Process) and to provide written confirmation that he had reviewed and understood those requirements, he was required to submit all of his advice documents for pre-vetting, he was required to undertake one on one coaching, and he was subjected to closer supervision.[81]

55. RI conducted a targeted review of Mr Doyle's files in May and June 2015, and the results of that review were also very poor.[82] Further remedial action was required and, on 22 June 2015, RI served a notice on Carrington terminating its appointment as RI's authorised representative with effect from 21 December 2015.[83] Mr Whereat acknowledged with the benefit of hindsight that RI should have suspended Mr Doyle, preventing him from providing further advice to clients, at this time.[84]

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[73] Advice and Distribution Risk and Compliance Board Committee Paper dated 29 May 2013 (Ex. 2.133) (ANZ.800.038.2780 at 2801).

[74] Emails between Warner and McKinnon re Doyle dated 22 April 2013 and 23 April 2013 (Ex. 2.159) (ANZ.800.511.1854).

[75] T:1497.36-46.

[76] Doyle exam results (Ex. 2.137) (ANZ.800.511.1849).

[77] Advice Vetting Standard dated May 2013 (Ex. 2.139) (ANZ.800.165.3273 at 3276); T1499:21-36.

[78] Whereat Statement (Ex. 2.129) at DJW-1 (ANZ.100.008.09335 at 0022).

[79] T1499:5-39.

[80] T1525:33-35.

[81] Whereat Statement (Ex. 2.129) at [4.1] (ANZ.999.002.0001 at 0013) and DJW-1 (ANZ.100.008.0935 at 0022); T1501:1-1504:25, 1505:1-1505:25.

[82] Whereat Statement (Ex. 2.129) at [4.6] (ANZ.999.002.0001 at 0013) and DJW-6 (ANZ.100.008.0927 at 0001); T1505:25-1506:5.

[83] Whereat Statement (Ex. 2.129) at [4.7] (ANZ.999.002.0001 at 0014) and DJW-7 (ANZ.800.382.0232).

[84] T1525:40-43.

56. In June 2015, Mr Doyle provided advice to the three clients referred to in paragraphs [4.24] to [4.31] of Mr Whereat's statement. In each case, Mr Doyle advised the client to invest in a Macquarie Flexi 100 structured investment product and the transaction proceeded on 30 June 2015. During the investigation and remediation activities undertaken after Mr Doyle was suspended, as referred to below, RI identified that this advice had been given by Mr Doyle and that it was inappropriate for those three clients.[85]

57. As a result of a further AQR in late July 2015 (which Mr Doyle failed), RI suspended Mr Doyle's appointment on 25 August 2015 on terms that prohibited him from providing advice, other than to existing clients who approached him for advice and subject to the condition that any advice which was to be provided was subjected to pre-vetting by RI's advice assurance team.[86] In addition, RI appointed, and paid for, an external para-planning service to undertake and prepare advice documents for the clients of Carrington, and their work was supported by staff of RI, including a Regional Practice Development Manager, Practice Development Coach, and Compliance Officer. The Regional Practice Manager was responsible for overseeing the back office functions of Mr Doyle's practice and the Practice Development Coach was responsible for supervising the entry of data into the advice system (XPlan) by the practice administration team. The Compliance Officer provided compliance support to the para-planners. RI disclosed these arrangements to ASIC.[87]

58. At the time that RI suspended Mr Doyle subject to those conditions, it was evident from the July 2015 AQR that Mr Doyle had not been submitting all advice to pre-vetting.[88] The steps that RI took in relation to Mr Doyle in August 2015 went further than pre-vetting, as described in paragraph 57 above. However, Mr Whereat acknowledged with the benefit of hindsight that, instead of imposing a suspension coupled with those steps, RI should have suspended Mr Doyle and prevented him from providing any further advice to clients at that time.[89]

59. After the termination of Carrington and suspension of Mr Doyle, RI commenced an investigation into the affairs of Mr Doyle (including undertaking a Targeted Review).[90]

60. Following the sale of Carrington to Frontier Financial Group Pty Limited (**Frontier**) in July 2016, RI commenced a remediation plan for those clients of Mr Doyle who had invested in four specific product categories or products.[91]

61. In June 2017, RI's remediation plan identified, amongst other things, that 29 clients who had invested in structured products known as 'Instreet' and 'Macquarie Flexi 100' (which Mr Doyle was not authorised to recommend) needed to be compensated as well as, possibly, 142 clients who had paid fees for administering salary sacrifice arrangements,[92] which fees had not been disclosed. During 2017, a total amount of $415,000 was paid to

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[85] Whereat Statement (Ex. 2.129) at [4.48]-[4.50] (ANZ.999.002.0001 at 0018-0019) and DJW-16 (ANZ.800.163.3285), DJW-17 (ANZ.800.163.3325) and DJW-18 (ANZ.800.163.3336); T1523:10-24.

[86] Whereat Statement (Ex. 2.129) at [4.9] (ANZ.999.002.0001 at 0014).

[87] Whereat Statement (Ex. 2.129) at [4.10] (ANZ.999.002.0001 at 0014) and see also [4.38] (ANZ.999.002.0001 at 0017) and DJW-28 (ANZ.100.008.0933 at 0005); T1509:15-1510:15, 1510:41-46.

[88] T1511:19-20.

[89] T1525:40-46.

[90] Whereat Statement (Ex. 2.129) at [4.11] to [4.16] (ANZ.999.002.0001 at 0014-0015).

[91] Whereat Statement (Ex. 2.129) at [4.18] and [4.19] (ANZ.999.002.0001 at 0015).

[92] Whereat Statement (Ex. 2.129) at [4.20] (ANZ.999.002.0001 at 0015).

29 clients of Mr Doyle in compensation for the inappropriate advice which had been provided by him.[93]

62. As part of RI's remediation plan, all of Mr Doyle's client files were to be reviewed by RI in conjunction with Frontier (about 60% of those files have now been reviewed)[94] to ascertain whether there are any other clients of Mr Doyle that need to be compensated (in accordance with compensation methodology agreed with ASIC).[95] RI has entered into arrangements for compensation of each of the three clients of Mr Doyle who are the subject of the case study.[96]

63. Since 10 July 2015,[97] RI and ANZBGL have been in communication with ASIC in relation to the conduct of Mr Doyle and the remediation plan which has been implemented to compensate Mr Doyle's clients.[98]

Proposed findings in relation to Mr Doyle

64. Counsel Assisting submitted that it is open to the Commission to find that Mr Doyle's conduct in connection with the advice he gave to clients to invest in the Macquarie Flexi 100 products might amount to misconduct, in that:[99]

(a) Mr Doyle may have breached his statutory obligation under section 946A(1) of the Corporations Act to give certain clients a statement of advice;

(b) Mr Doyle may have breached his statutory obligation under section 961B of the Corporations Act to act in the best interests of certain clients; and

(c) Mr Doyle may have breached his statutory obligation under 961G of the Corporations Act to only provide advice to certain clients if it would be reasonable to conclude that the advice was appropriate to the client.

65. RI submits that no findings should be made in relation to the conduct of Mr Doyle or Carrington unless they have each been afforded procedural fairness by the Commission and, in particular, been put on notice of the proposed findings and offered the opportunity to adduce evidence and make submissions in respect of them.[100]

Proposed findings in relation to RI

66. Counsel Assisting submitted that it is open to the Commission to find that the conduct of RI during the period in which Mr Doyle provided advice to the clients the subject of the case study (that is, in June 2015)[101] might amount to misconduct in the following ways:[102]

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[93] Whereat Statement (Ex. 2.129) at [4.24] to [4.31], [4.39] to [4.41] (ANZ.999.002.0001 at 0016, 0017-0018) and DJW-30 (ANZ.800.382.0363).

[94] T1524:20-23.

[95] Whereat Statement (Ex. 2.129) at [4.63] (ANZ.999.002.0001 at 0020) and T1549:42-T1550:3.

[96] Whereat Statement (Ex. 2.129) at [4.24]-[4.31] (ANZ.999.002.0001 at 0016).

[97] Following the receipt of a s 912C notice dated 24 June 2015 (Whereat Statement (Ex. 2.129) at DJW-26 (ANZ.800.385.0039, ANZ.800.385.0040, ANZ.800.385.0047, ANZ.800.385.0037, ANZ.800.385.0038)).

[98] Whereat Statement (Ex. 2.129) at [4.32] to [4.41] (ANZ.999.002.0001 at 0017-0018).

[99] T1964:45-1965:10.

[100] See paragraph 4 above.

[101] See paragraph 56 above.

[102] T1965:35-1966:5.

(a) RI may have breached its statutory obligation under section 912A(1)(a) of the Corporations Act to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly;

(b) RI may have breached its statutory obligation under section 912A(1)(ca) of the Corporations Act to take reasonable steps to ensure that representatives such as Mr Doyle complied with the financial services laws;

(c) RI may have breached its statutory obligations under section 961L of the Corporations Act to ensure that representatives such as Mr Doyle complied with sections 961B and 961G of the Corporations Act; and

(d) RI may have breached its statutory obligation under section 952H of the Corporations Act to take reasonable steps to ensure that representatives such as Mr Doyle complied with their obligations under Part 7.7 of the Corporations Act to give clients a statement of advice.

67. RI submits that these findings are not open on the evidence.

68. In relation to s 912A(1)(a), s 912A(1)(ca) and s 961L, it is submitted that there is no evidence that during the relevant period (June 2015) any steps beyond those referred to in paragraphs 52 to 55 above were necessary to ensure that financial services provided under RI's licence were provided efficiently, honestly and fairly,[103] or were reasonably required to ensure that RI's representatives complied with financial services laws and their obligations under ss 961B, 961G, 961H and 961J. The circumstance that additional steps might now, with the benefit of hindsight, be identified as desirable does not warrant a finding that RI might have breached these statutory obligations.

69. In relation to s 952H, the steps taken by RI referred to in paragraphs 52 to 57 above were reasonable steps to ensure that Mr Doyle provided statements of advice to clients. The evidence before the Commission shows that Mr Doyle failed to provide statements of advice to three clients to whom he provided advice to invest in the Macquarie Flexi 100 product.[104] Whilst that is a serious matter, it does not support a finding that RI may have failed to take reasonable steps at the time within the meaning of s 952H.

70. Counsel Assisting also submitted that it is open to the Commission to find that RI's conduct in relation to Mr Doyle fell below CSEs in that:[105]

(a) RI failed to take adequate steps to protect clients of Mr Doyle from receiving inappropriate advice after it had repeatedly identified issues with his advice; and

(b) RI has delayed in implementing a review and remediation program in that the majority of Mr Doyle's clients' files have not yet been reviewed, over two years since RI decided to terminate Mr Doyle's status.

71. RI submits that the first of these proposed findings is not open on the evidence referred to in paragraphs 52 to 56 above for the reasons outlined in paragraph 68 above.

72. ART has now reviewed 60% of Mr Doyle's client files and paid a total amount of $415,000 to 29 clients as referred to in paragraphs 61 and 62 above. However, RI accepts that the second of these proposed findings is open on the evidence. Whilst there are factors which

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[103] See paragraph 26 above.

[104] The review of those clients' files by ART identified that those clients had not been provided with a formal advice document in relation to those investments that Mr Doyle had advised them to enter into in June 2015: Whereat Statement (Ex. 2.129) at [4.48]-[4.50] (ANZ.999.002.0001 at 0018-0019), DJW-16 (ANZ.800.163.3285), DJW-17 (ANZ.800.163.3325) and DJW-18 (ANZ.800.163.3336).

[105] T1966:45-1967:4, 1968:46-1969:6.

contributed to the time taken to remediate Mr Doyle's clients, including the difficulty of ANZBGL finding appropriately qualified staff to review client files in order to identify and calculate any detriment for the purpose of remediation[106] and that ART has had to prioritise other remediation matters over the remediation of Mr Doyle's clients due to the features of those cases compared to the features of Mr Doyle's clients,[107] community expectations are that the remediation of these clients ought to have occurred sooner. RI is committed to compensating all clients of Mr Doyle who have suffered any loss and damage as soon as it is possible to do so,[108] with payments taking account of the time value of money[109] and the reasonable return which affected clients would have generated over the relevant period.[110]

73. Counsel Assisting submitted that it is open to the Commission to find that RI's conduct in relation to provision of inappropriate advice by Mr Doyle was partly attributable to:

(a) inadequacy of RI's risk management systems;[111]

(b) inadequacy of RI's recruitment processes;[112] and

(c) inadequacy of RI's internal systems.[113]

74. It is further submitted that these findings should not be made for the same reasons that there should be no finding that RI might have engaged in misconduct or failed to meet CSEs and for the additional reasons outlined immediately below.

75. First, in relation to RI's risk management systems, Mr Doyle's advice to clients to invest in the Macquarie Flexi 100 products was given in June 2015.[114] The evidence before the Commission does not support a finding that RI's risk management systems (including risk treatment plans accepted by the Business Risk and Compliance Committee) were inadequate at that time. Any such finding would require evidence of alternative or additional systems that could and should have been implemented by RI at that time. No such evidence was adduced. Ms Rixon rejected the proposition that a quantum shift in investment was required by the aligned dealer groups. Ms Rixon did acknowledge that the aligned dealer groups could have commenced the process of incentivising authorised representatives to use XPlan earlier than 2016 and could have started the Adviser Hub project earlier.[115] However, it does not follow that RI's risk management systems, as a whole, were inadequate. The evidence adduced in the case study relating to Mr Doyle demonstrates that RI was able to monitor the advice given by its representatives. Further, Mr Whereat's evidence that the conduct of Mr Doyle was not representative or symptomatic of a continuing or systemic issue affecting RI was not challenged.[116] It follows that the conduct of Mr Doyle throws no light on the question of the adequacy of RI's risk management systems.

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[106] T1546:19-23.

[107] Whereat Statement (Ex. 2.129) at DJW-14 (ANZ.800.221.4305 at 4308).

[108] T1524:40.

[109] T1527:8-12.

[110] Whereat Statement (Ex. 2.129) at [4.63] (ANZ.999.002.0001 at 0020); T1549:15-46.

[111] T1967:20-43.

[112] T1967:44-1968:25.

[113] T1968:26-45.

[114] Whereat Statement (Ex. 2.129) at DJW-16 (ANZ.800.163.3285), DJW-17 (ANZ.800.163.3325) and DJW-18 (ANZ.800.163.3336).

[115] First Rixon Statement (Ex. 2.152) at [57], [94]-[97], [140], (ANZ.999.003.0001 at 0054, 0059-0060,0064-0065); T1585:40-1587:36.

[116] Whereat Statement (Ex. 2.129) at [5.112] (ANZ.999.002.0001 at 0040).

76. Second, the evidence does not support a finding that RI's process of recruiting Mr Doyle was inadequate. In particular:

(a) no issue was raised with the recruitment of Mr Doyle *per se* by ASIC,[117] and RI had in place an appropriate 'on-boarding' strategy, including due diligence, to ensure that the advisers who were recruited met CSEs;[118]

(b) in any event, there is no evidence that the conditions which had previously been imposed on AFS's licence[119] had anything to do with Mr Doyle (or the other advisers who were recruited by RI at the same time);

(c) Mr Doyle was appropriately qualified to be a financial planner;[120] and

(d) in any event, Mr Doyle was placed on pre-vetting when he first joined RI and he remained on pre-vetting until he was cleared.[121]

77. Third, there is no suggestion that the matters relating to RI's internal systems referred to by Counsel Assisting contributed to Mr Doyle's conduct at the relevant time (June 2015). In any event, pre-vetting was only one of several measures relied upon by RI to supervise and monitor Mr Doyle, as referred to in paragraphs 53 to 57 above.

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[117] Advice and Distribution Risk and Compliance Board Committee Paper dated 29 May 2013 (Ex. 2.133) (ANZ.800.038.2780 at 2801).

[118] Email from Younger to Williams dated 15 April 2013, with attachment (Ex. 2.134) (ANZ.800.508.0104).

[119] ASIC media release concerning Australian Financial Services Limited, 11-243 MR (Ex. 2.131) (RCD.0021.0001.0398) and T1493:13-14.

[120] Authorised Representative Application Form by Mr Doyle dated 13 April 2013 (Ex. 2.135) (ANZ.800.511.1804) and emails between Warner and McKinnon re Doyle dated 22 April 2013 and 23 April 2013 (Ex. 2.159) (ANZ.800.511.1854).

[121] T1499:23.