

Hawking prohibitions

Recommendation

These proposed reforms will also apply to insurance and other financial products.

Recommendation 3.4 – No hawking

The unsolicited offer or sale of superannuation should be prohibited except to those who are not retail clients and except for offers made under an eligible employee share scheme. The law should be amended to make clear that contact with a person during which one kind of product is offered is unsolicited unless the person attended the meeting, made or received the telephone call, or initiated the contact for the express purpose of inquiring about, discussing or entering into negotiations in relation to the offer of that kind of product.

Recommendation 4.1 – No hawking of insurance

Consistently with Recommendation 3.4, which prohibits the hawking of superannuation products, hawking of insurance products should be prohibited.

Existing law

- A person must not offer financial products for issue or sale in the course of, or because of, an unsolicited meeting or telephone call with another person.
- An exception to the prohibition applies in instances where specified disclosure requirements are met. By legislative instrument introduced by ASIC in January 2020, this exception does not extend to the offer of consumer credit insurance or life insurance products.

Summary of proposed reform

- The hawking prohibition is no longer divided into separate prohibitions in respect of “meetings” and “telephone calls”. Instead, there is a single unified prohibition for “unsolicited contact”.
- The scope of the prohibition is expanded to include:
 - making an offer to “transfer” a financial product; and
 - requesting or inviting another person to ask or apply for a financial product or to purchase a financial product.
- “Unsolicited contact” is specifically defined. Contact will not be unsolicited if it was requested by the customer through a request that was:
 - either:
 - a request for a person to offer for issue, transfer or sale to the other person that financial product OR
 - a request that a reasonable person would consider that the offer would be within the scope of the request; and
 - a positive act, clear, and understood by the customer;
 - in the form of contact requested by the customer, if a form of contact was indicated by the customer; and
 - made within 6 weeks of the contact occurring, and was not withdrawn before the contact occurs.
- Contact will not be unsolicited if it is not in the form of a telephone call, face to face meeting or any other form that “a reasonable person would consider creates an expectation of an immediate response from the other person”.
- Customers will have a right to a return and refund for financial products that are sold on an unsolicited basis.
- Product-specific exceptions to the prohibition have been proposed, for example in relation to listed securities, managed investment schemes, medical indemnity cover and add-on insurance.

Comments

- There are several unexpected additions to the hawking prohibition, including:
 - the extension to requests;
 - the exception for types of contact that do not give rise to an expectation of an immediate response;
 - a deadline for solicited contact to occur within 6 weeks of any request; and
 - limiting the form of contact to the form requested by the customer.
- The regime will mean that the distribution of many superannuation and insurance products will need to significantly change, with cross-selling becoming considerably less viable.
- Distribution channels are likely to be pushed further towards digital environments, with increased reliance on email, text message and self-directed website portals.
- The changes also mean that if there is solicited contact and during the course of this solicited contact, an unrelated financial product is discussed, the latter portion of the discussion will be unsolicited. In other words, the contact must be limited to the products that the customers original request related to. Any discussion about unrelated products will transform that portion of the conversation into unsolicited contact.