



ASIC

Australian Securities & Investments Commission

REPORT 584

Improved protections for deposit accounts with third-party access

August 2018

About this report

This report follows a review by ASIC of deposit accounts that can be operated by a third-party, usually a financial adviser, stockbroker or accountant, on a customer's behalf.

In particular, the report analyses the compliance measures and controls that banks should have in place to address the risk of fraud and other risks associated with third party access to customers' money in these accounts.

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- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

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Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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Executive summary

1 Deposit accounts with third-party access are promoted by banks to advisers so they can view and transact on the account on behalf of the customer. These accounts are commonly called ‘cash management accounts’ and can allow advisers to monitor customers’ money and make investments or other payments on their behalf.

2 ASIC conducted a review of these accounts to ensure that banks have adequate compliance measures and controls in place to protect customers from the risk of fraud carried out by advisers on customers’ accounts.

3 We identified six banks that design and promote deposit accounts to financial advisers, stockbrokers and accountants to allow them to transact on a customer’s behalf, including on self-managed superannuation funds (SMSFs).

Note: In this report, we refer to these accounts as ‘adviser-operated deposit accounts’. For the definition of adviser, see ‘Key terms’.

4 In April 2017, we initiated a review involving five of the six banks:

- (a) Bendigo and Adelaide Bank Limited;
- (b) Commonwealth Bank of Australia;
- (c) Macquarie Bank Limited;
- (d) National Australia Bank Limited; and
- (e) Westpac Banking Corporation.

Note: Bank of Queensland Limited (Bank of Queensland) was not part of this review as it was the subject of a separate investigation: see paragraphs 33–38.

5 Our review examined eight adviser-operated deposit account products issued by these five banks.

ASIC’s review of adviser-operated deposit accounts

Purpose and scope of our review

6 In reviewing the adviser-operated deposit accounts offered by the banks, we looked at how the banks monitored use of the accounts to ensure customers’ money was not being placed at risk. In particular, we reviewed whether the banks offering these accounts had sufficiently robust compliance measures and controls in place to address the risk of fraud and other risks where an adviser has authority to withdraw the customer’s money.

7 Our review was prompted by concerns raised about the use of adviser-operated deposit accounts by Sherwin Financial Planners Pty Ltd (in liquidation) (SFP), part of the Sherwin Financial Group (Sherwin Group). By the time it collapsed in January 2013, the Sherwin Group owed nearly

\$60 million to approximately 400 clients. Two people have been convicted of fraud and dishonesty offences based on their involvement with SFP.

Note: For details of ASIC's actions relating to the Sherwin Group, including relevant media releases, see paragraphs 33–38.

8 Banks have obligations to provide their financial services efficiently, honestly and fairly. Banks also have duties to their customers to exercise reasonable care and skill and ensure that transactions processed are consistent with the customer's wishes.

9 We reviewed the banks' policies and procedures, as well as relevant complaints. We also considered the implications of the findings of our review for the advisers that operate these accounts on behalf of customers.

How these accounts are used

10 As at February 2017, across the five banks, there were approximately 530,000 customers holding 455,679 adviser-operated deposit accounts between them with balances of these accounts totalling \$28.675 billion.

11 A large proportion (around 73%) of individuals linked to the accounts that we identified (including through company accounts or corporate trust accounts) were at least 50 years of age. These customers held around 82% of the total cash balances.

12 Cash management accounts are the most common type of adviser-operated deposit account, although not all cash management accounts can give access to an adviser.

13 Advisers will often help a customer to select and open an account to begin making investment decisions. When this occurs, the customer may initially have limited direct contact with the bank offering the account, as the account opening procedures are often handled by the adviser. However, the bank issuing the account still has obligations to the customer as the deposit account owner. Customers can also choose the level of access given to the adviser.

Summary of findings and actions for banks

14 While ASIC did not find widespread misconduct in relation to adviser-operated deposit accounts offered by the banks, we consider that the banks could do more to manage the risks to customers associated with third party access to money in customers' accounts. Even though the instances of fraud are not widespread, the potential impact of fraud on individual customers is significant.

15 We identified existing practices among some banks which could mitigate the risk of potential fraud. We found that the bank which had issued the most accounts (in number), Macquarie Bank Limited, also appeared to have a number of these measures and controls already in place.

16 Table 1 summarises the key findings and actions from our review.

Table 1: Key findings and actions for banks

Findings	Actions for banks
<p>Set-up and access to the account: Application forms and subsequent communications to customers play an important role in explaining the access given to advisers and the risks involved in using adviser-operated deposit accounts, including the risk of unauthorised transactions: see Findings 1–3.</p>	<ul style="list-style-type: none"> • Application forms for adviser-operated deposit accounts should more clearly state the level of access so that customers understand the extent of any authority given to the adviser to transact on the account. • Follow-up communications should be sent directly to the customer after an account is opened with details of any authority given to the adviser. • Customers should be able to easily change the level of adviser access on the account.
<p>Statements and transactions: Banks should ensure all customers can receive account statements or online access to their accounts. In some cases, customers were not notified of transactions on adviser-operated deposit accounts that were initiated by their adviser: see Findings 4–6.</p>	<ul style="list-style-type: none"> • Customer contact details should be recorded accurately and separately from the adviser’s contact details. • Customers should receive account statements directly or have online access to their accounts. • Customers should be notified whenever an adviser initiates a transaction request on the account.
<p>Monitoring and liability: Compliance measures and controls for protecting customers’ adviser-operated deposit accounts could be strengthened to reduce the risk of fraud: see Findings 7–10.</p>	<ul style="list-style-type: none"> • Banks should undertake initial checks and ongoing monitoring of advisers using adviser-operated deposit accounts and their transaction requests. • Monitoring systems should include specific triggers to detect suspicious transactions for assessment. • Banks should notify ASIC of suspected misconduct. • Where appropriate, remediation should be provided to customers who have lost money due to unauthorised transactions by their adviser. <p>Note: These actions are consistent with the <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>, which requires banks to conduct ongoing customer due diligence and transaction monitoring and to report suspicious matters.</p>

17 Banks should also undertake testing of their risk management procedures at regular intervals to critically review, align and improve existing practices where necessary. The results of monitoring and reviews should be recorded and internally reported as appropriate and used as an input to the review of the control framework more generally.

Note: For the international standard which provides a framework for risk management, see [ISO 31000:2018](#) *Risk management—Principles and guidelines*.

What we expect of advisers and advice licensees

- 18 We expect advisers who are using adviser-operated deposit accounts and their relevant Australian financial services (AFS) licensee (advice licensees) to do the following:
- (a) *Set-up and access to the account*—Advisers should explain to customers the nature of adviser-operated deposit accounts, what each level of access means for the customer and the adviser, and when and how the bank will contact the customer.
 - (b) *Statements and transactions*—Advisers should record the customer’s decision on what the adviser’s level of access will be for the account and ensure that the customer receives statements or has online access.
 - (c) *Monitoring and liability*—Advice licensees must have adequate available resources to provide the financial services covered by the licence and to carry out supervision and monitoring of advisers (see s912A(d) of the *Corporations Act 2001* (Corporations Act)). These arrangements will vary according to the nature, scale and complexity of the licensee’s financial services business and could include developing key risk indicators to identify high-risk advisers.

Further action

- 19 As part of our review, we met with the banks involved to discuss our findings and recommended actions to improve protections for customers using adviser-operated deposit accounts. We also discussed our expectations of advisers with industry bodies for financial advisers and stockbrokers.
- 20 Some of our recommendations are good practice guidance for banks and are not legal requirements. Banks should consider what is appropriate to protect their customers from the risk of fraud and act accordingly.
- 21 We do not consider that any of the 10 individual recommended actions alone will completely eliminate the risk of fraud. A range of measures and controls are needed to respond effectively to the risk of fraud. All banks involved in our review have considered the recommended actions and agreed to make improvements to their current practices.
- 22 If individual instances of fraudulent conduct involving adviser-operated deposit accounts arise in the future, ASIC will investigate both the individual matter and the bank’s broader compliance with the recommended actions set out in this report.

A ASIC's review of adviser-operated deposit accounts

Key points

Adviser-operated deposit accounts are deposit accounts that can be accessed by a third party (e.g. a financial adviser, stockbroker or accountant) on a customer's behalf.

Banks have obligations to provide their financial services efficiently, honestly and fairly and to ensure that transactions processed are consistent with a customer's wishes.

At the time of our review, a substantial amount of money was held in these accounts across the five banks reviewed (\$28.675 billion by approximately 530,000 customers across 455,679 accounts).

Around 73% of the accounts were linked to individuals who were aged 50 years or older with these accounts holding around 82% of total cash balances.

What are adviser-operated deposit accounts?

- 23 Adviser-operated deposit accounts can be accessed by financial advisers, stockbrokers, or accountants on a customer's behalf. These accounts, commonly called 'cash management accounts', are marketed by banks to advisers so they can view and transact on the account on behalf of the customer.

Note: While some deposit accounts use the description 'cash management account', not all of these accounts will have the features of an adviser-operated deposit account. These accounts are different to 'cash management trusts', which can be used by advice licensees to hold customers' money.

- 24 Where customers have engaged the services of an adviser, the accounts are commonly used to hold surplus cash or to actively manage investments. The accounts can be used for both passive and active investment activities.
- 25 The adviser-operated deposit accounts currently available from the banks in our review have a diverse range of features, including different levels of access and control for the adviser, access to term deposits and broker services, and the ability to operate the account on the bank's primary electronic banking platform and other payment systems.
- 26 These accounts are used by all types of customers but are sometimes specifically marketed by advisers for use with SMSFs.

What obligations do banks have?

- 27 Under their AFS licence, banks have an obligation to provide their financial services efficiently, honestly and fairly. This means that banks should:
- (a) have controls in place to protect customers' money; and
 - (b) remediate any customers for fraudulent transactions which occurred due to an error by the bank.

28 Advisers often act as authorised signatories on adviser-operated deposit accounts, and the terms and conditions for these accounts allow an adviser to transfer customers' money.

29 However, this authorisation does not excuse the bank from the requirement to check transaction requests made by the adviser. As part of a bank's contract with its customer, it must exercise reasonable care and skill to ensure that transactions processed are consistent with the customer's wishes. This common law obligation in the contract between the bank and the customer is called the 'duty to question a valid mandate'.

Note: See *Barnes v Addy* (1874) LR 9 Ch App 244, *Selangor United Rubber Estates v Cradock* (No 3) [1968] 2 All ER 1073, *Ryan v Bank of New South Wales* [1978] VR 555 and *Territory Sheet Metal Pty Ltd and Others v Australia and New Zealand Banking Group Ltd* [2009] NTSC 31.

30 The duty to question a valid mandate does not mean that the bank is liable for every transaction the customer did not specifically authorise. For the bank to be liable, there must be some element that would make a reasonable bank aware the transaction is not consistent with the customer's wishes.

31 The following examples indicate some circumstances in which we consider a reasonable bank ought to be aware that transactions made by an adviser may not be consistent with the customer's wishes.

Note: These are not intended to be comprehensive or definitive examples of where a bank may need to question a valid mandate and could be liable for loss if it fails to do so.

Example 1: Customer complaint

A bank has received complaints from a customer about transactions they did not approve. The bank discovers that the adviser requested these transactions. The customer complaint has put the bank on notice that the adviser may not be making transactions consistent with the customer's wishes, and that it may not be appropriate to rely on the general authority given by the customer to the adviser.

The bank could be liable for any further unauthorised transactions on this customer's account. The bank should take steps to limit the risk of further unauthorised transactions by removing the adviser's access on this account and contacting the customer to update them about the changes that have been made to the adviser's access.

Although the bank has not received complaints from other customers who have given account access to this adviser, the bank has been put on notice that there may be a risk the adviser is acting in a similar way with other customers.

Example 2: Banned adviser

A bank has identified that an adviser with access to customers' accounts has been banned by ASIC from providing financial services. The bank is on notice that the adviser has previously engaged in misconduct and should not have access to customers' money.

The bank could be liable for any unauthorised transactions by the adviser on customers' accounts since it became aware of the banning action (or potentially since the notice of the banning action was published).

The bank should:

- immediately revoke the adviser's access to customers' accounts and notify customers of this action;
- investigate what transactions the adviser has carried out on customers' accounts;
- report the matter to ASIC (and notify the relevant advice licensee so it can also consider its own obligations); and
- remediate customers where appropriate.

Purpose and scope of our review

- 32 In April 2017, we began our review of adviser-operated deposit accounts offered by five banks. The purpose of our review was to check whether the banks offering these accounts had sufficiently robust measures and controls in place to protect customers from the risk of adviser fraud.
- 33 This review was prompted by the investigation of the conduct of those involved in the Sherwin Financial Group (Sherwin Group).
- 34 The Bank of Queensland issues a deposit account called the 'Money Market Deposit Account' that was marketed to financial advisers for use with their clients and was administered by its agent, DDH Graham Limited (DDH). One of the financial adviser groups using these accounts was the Sherwin Group, which included Sherwin Financial Planners Pty Ltd (in liquidation) (SFP) and DIY Superannuation Services Pty Ltd. By the time it collapsed in January 2013, the Sherwin Group owed nearly \$60 million to approximately 400 clients.
- 35 SFP conducted transactions on client accounts and was related to a number of companies in which SFP would invest their clients' funds, including a debenture company, Wickham Securities Pty Ltd (in liquidation) (Wickham). When investigating the collapse, ASIC identified a number of transaction requests sent to DDH by Sherwin Group staff. ASIC was concerned that the requests should have given rise to a suspicion by the Bank of Queensland and/or DDH that the transactions made were not consistent with the wishes of the client and were processed when they should not have been.

36 ASIC commenced an investigation into whether the Bank of Queensland and DDH had met their obligation to provide financial services efficiently, honestly and fairly under s912A of the Corporations Act.

37 Garth Robertson (director of Wickham) and Bradley Sherwin (chairman of Wickham and director of SFP) both pleaded guilty to dishonesty and fraud offences and were sentenced to substantial periods of imprisonment.

38 ASIC's investigation of the Bank of Queensland and DDH has concluded. The class action brought by a number of Sherwin Group clients against the Bank of Queensland and DDH seeking compensation for their losses has been settled.

Note: For more details on these actions, see [ASIC media releases on Sherwin Group](#).

39 The review involved gathering information on:

- (a) how many accounts were in operation across the banks and what types of customers were using them;
- (b) how the accounts were being used, what level of access the advisers had been granted and how much money was in the accounts;
- (c) how the banks treated customer complaints and reviewed unusual transactions; and
- (d) what procedures banks had in place to monitor and if necessary remove advisers from their adviser networks for suspected misconduct.

How these accounts are used

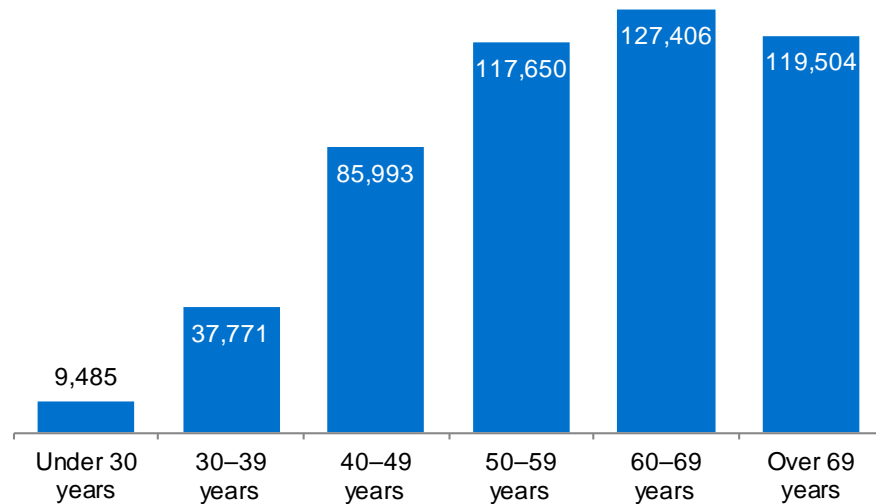
Market and customer demographics

40 Our review identified a significant number of adviser-operated deposit accounts. As at February 2017, across the five banks reviewed there were approximately 530,000 customers holding 455,679 accounts between them with balances of these accounts totalling \$28.675 billion. One bank had issued more than half of the identified accounts.

Note: These figures represent money held at call and not the total amount of investments that customers have made through the assistance of their adviser.

41 We looked at the different age groups of customers using these accounts. Where possible, we collected data about groups of individuals linked to the accounts (including through company accounts or corporate trust accounts) where a date of birth could be determined: see Figure 1.

Figure 1: Number of customers using adviser-operated deposit accounts by age group, at February 2017



Note: For a description of the data in this figure, see paragraph 42 (accessible version).

42 Figure 1 shows that for approximately 497,000 individuals who could be identified:

- (a) 9,485 customers were under 30 years;
- (b) 37,771 customers were aged 30–39 years;
- (c) 85,993 customers were aged 40–49 years;
- (d) 117,650 customers were aged 50–59 years;
- (e) 127,406 customers were aged 60–69 years; and
- (f) 119,504 customers were aged over 69 years.

43 Based on this data:

- (a) around 73% of customers using adviser-operated deposit accounts were aged 50 years or older; and
- (b) around 82% of the total cash balances were held in accounts linked to individuals aged 50 years or older.

44 These accounts were also used for trusts and corporate entities. For some of the banks we reviewed (a minority), more than half of the accounts were held on trust or by a corporate entity (e.g. an SMSF trustee).

Level of access

45 The level of access offered for advisers across the different accounts we reviewed varied and the banks used several different names for the access. Generally, we found that they fell into the following categories:

- (a) *View access* (sometimes called ‘limited access’)—The adviser can view transactions on the account but cannot transact on behalf of the customer.

- (b) *Withdrawal access* (sometimes called ‘full access’)—The adviser has broad authority to transact on the account on the customer’s behalf.
- (c) *Complete access*—The adviser can do everything the customer can usually do on the account, including withdraw money, change contact information, and close the account. Not all banks reviewed offered this level of access and it appeared to be uncommon. Approximately 4% of accounts across the eight products we reviewed had granted this type of access to an adviser.

46 The level of access given to an adviser will generally depend on the type of assistance the customer wants. For example, some customers give the adviser full access to the account to make investments within a broad level of authority. Other customers manage their own investments directly and use their adviser for advice, but not to directly make transactions on their behalf.

47 We found the level of access customers had given advisers varied significantly:

- (a) For two products issued by two of the banks in our review, almost all deposit account owners (approximately 98%) had given withdrawal access to their adviser.
- (b) Another bank automatically gave withdrawal access to advisers on adviser-operated deposit accounts if no nomination was made by the customer. Following our review, this bank will no longer give advisers withdrawal access by default if no nomination is made.

B Detailed findings and recommended actions

Key points

Customers may be unaware of the nature of and risks involved for them with adviser-operated deposit accounts and the extent of the authority the adviser can have over the account.

Appropriate background checks on advisers and monitoring of transactions can reduce the risk of customers losing money through adviser fraud.

In response to our findings, ASIC's recommended actions for banks include improving processes for set-up and access to accounts, giving notifications and statements to customers more regularly, and strengthening checks and monitoring advisers' transactions.

Set-up and access to the account

Finding 1: Application forms play an important role in explaining access levels to customers

- 48 ASIC's review found that some banks had application forms that set out a clear choice and consequence for each access level which could be granted to an adviser. However, we also found that some banks' application forms could make it clearer that the adviser would have authority to transact on the customer's account.
- 49 We reviewed the banks' forms, account opening procedures and relevant complaints. In many cases, the adviser will help the customer complete the application form. In this situation, a bank may rely on the adviser to explain the product and to provide the customer with the relevant disclosures and terms and conditions. If the adviser does not do this and the application form is unclear, the customer may not understand the level of access that the adviser will have on the account.
- 50 Banks should ensure that customers understand the nature of the account they are opening and the extent of the authority that the adviser can have over the account. We consider that application forms for these accounts should:
- (a) clearly state the consequences of each level of access;
 - (b) alert customers to the importance of choosing the level of access which is appropriate for their circumstances; and
 - (c) require the customer to give express consent to the level of adviser access they are granting.

Finding 2: The level of adviser access should be confirmed directly with the customer after opening the account

- 51 ASIC's review found that every bank sent the customer a 'welcome' letter or email after opening the account. Some banks set out the level of access that had been given to the adviser in the welcome letter.
- 52 However, other banks sent communications which were general and contained limited information for the customer. We also found that in some cases after a customer opened an account, the welcome letter was sent to the adviser directly, rather than to the customer (i.e. the deposit account owner).
- 53 Banks should notify their customers when an adviser-operated deposit account is opened. The welcome letter should be sent directly to the customer immediately after the account has been opened. A duplicate could be sent to the adviser if desired.
- 54 The welcome letter sent to the customer should clearly set out what level of access has been given to the adviser, if any. Otherwise, the customer may remain unaware of the risks involved in the adviser having authority to transact on the account.
- 55 The welcome letter should also direct the customer to review all account information (including statements) and explain how the customer can change the level of access given to the adviser if necessary.

Case study 1: Customer unaware of adviser's access to account

We identified a complaint against one bank from a customer who only became aware of the adviser's authority to withdraw money from the account after he saw that money had been withdrawn without his knowledge. The bank informed the customer that he had added the adviser as an authorised signatory.

Notifying the customer of the adviser's level of access when the account was opened would have allowed the customer to quickly remove this access if he did not want the adviser transacting on the account.

Finding 3: Customers should be able to easily change the level of adviser access on the account

- 56 ASIC's review found that for some banks the process for customers to change or remove the level of access granted to the adviser could be improved.
- 57 None of the banks gave customers the option to change or remove the adviser's level of access themselves directly through online access.
- 58 Some banks required the customer to complete and sign a form to change or remove the level of access. This could result in a delay before the bank implemented the change of access. We found one complaint where the

customer advised the bank of concerns about withdrawals made without the customer's approval. The bank had placed a hold on the account, in accordance with the customer's request, but would not remove the access without a signed form being provided.

- 59 Customers should be able to easily change or remove the adviser access on these accounts. For example, banks should give customers phone or online access so that they can change or remove their adviser's level of access at any stage if they wish.

Statements and transactions

Finding 4: Customer contact details should be accurate and kept separate from the adviser's contact details

- 60 ASIC's review found that one bank had implemented automated controls to ensure that customers' contact details were accurate and kept separate from the adviser's contact details. However, not all banks did this.
- 61 If a customer's contact details are not kept separate from the adviser's details, communications could be sent directly to the adviser without the customer's knowledge. The customer might not receive updates on the account or know if the adviser is acting in accordance with their wishes.
- 62 Banks should implement automated controls to ensure that all customer contact details are recorded accurately and kept separate from the adviser's details to ensure correspondence is being sent to the customer and not misdirected to the adviser.

Case study 2: Correspondence sent to the adviser instead of directly to the customer

A customer contacted the bank to ask about transactions on their account. The customer was informed that all correspondence for the account had been sent directly to the adviser.

This bank is taking steps to ensure customers receive relevant communications about their accounts.

Finding 5: Banks should ensure that all customers can receive statements or have online access to their account

- 63 ASIC's review found that all banks gave customers the option to receive regular account statements (banks must issue periodic statements to retail clients using these accounts). However, some banks did not ensure that statements were sent to the customer directly instead of the adviser.

- 64 If a customer does not receive account statements, it will be more difficult for them to check if the adviser has withdrawn money in accordance with their wishes.
- 65 Banks should send account statements directly to the customer or give customers online access to their accounts. Some banks required customers to complete additional steps to get online access to their accounts, which could discourage customers from doing so. One of the most common complaints from customers to the banks was about obtaining online access to accounts.

Case study 3: No account statements or online access for customer

A customer contacted the bank to inquire about their adviser-operated deposit account. The bank told the customer that all account statements were being sent directly to the adviser. The adviser had said that the customer was not able to have online access to the account.

This bank is now providing online access to all new customers as a default.

Finding 6: Customers should be notified about adviser-initiated transaction requests by the bank

- 66 ASIC's review found that some banks used real-time alert systems to notify customers of adviser-initiated transactions. However, not all banks did this.
- 67 Banks should ensure customers are kept informed of transactions on their account. For example, banks could notify customers when an adviser initiates a transaction request.
- 68 Real-time alert systems, which involve sending emails or text messages to customers before or immediately after any transaction, can encourage engagement and proactive action. The customer can review the transaction and contact the bank if they have concerns about it.
- 69 Banks could also consider requiring customers to approve any significant (in size or volume) adviser-initiated transaction requests. Some banks have chosen to implement this option.
- 70 In ASIC's view, this recommended action—while not a legal requirement—is important as investigations into fraud by advisers show that it often occurs when the customer is unaware that the adviser is withdrawing money. It can also be difficult to identify a fraudulent transaction by a legitimate third party; these systems help ensure that the customer knows what is happening with their money.

Monitoring and liability

Finding 7: Banks should conduct background checks and ongoing monitoring of advisers who use the accounts

71 ASIC's review found that all banks did some background checks before advisers gained access to an adviser network and began using adviser-operated deposit accounts. However, not all banks carried out ongoing monitoring of advisers using their products in a consistent way.

Note: A bank's adviser network can include both aligned and non-aligned advisers.

72 In March 2017, we reported about the effectiveness of banks' reference checking in their role as AFS licensees: see [Report 515 Financial advice: Review of how large institutions oversee their advisers \(REP 515\)](#). Since that time the Australian Banking Association (ABA) has released a protocol which seeks to set a standard for background checking.

Note: See ABA, [Financial advice: Reference checking and information sharing protocol](#).

73 Banks should carry out background checks on advisers who have access to customers' deposit accounts. This should be the case both for advisers that are a representative of an advice licensee's AFS licence and for advisers that use the bank's AFS licence.

74 These background checks should be conducted before an adviser joins a bank's adviser network and on an ongoing basis at regular intervals. The scope and content of these checks should be informed by data analytics and risk-based monitoring.

75 We consider that banks should undertake the following measures to oversee and monitor their adviser networks:

- (a) *Background checks and initial due diligence*—Banks should continue to check that advisers are legally authorised to provide financial advice and review any publicly available information that would give rise to a concern about an adviser being permitted direct access to customers' money.
- (b) *Ongoing risk-based monitoring*—If a transaction request by an adviser is rejected or a complaint is lodged by a customer about an account, the bank should consider reviewing all of the adviser's transaction requests to check they are consistent with the customer's wishes. Banks should also use data analytics to profile risky or unusual transaction behaviour to guide additional monitoring of advisers.
- (c) *Random audits*—Banks should select a random sample of advisers periodically and review their transaction requests to check they are consistent with the customer's wishes.

Finding 8: Monitoring systems could be improved with specific triggers to identify adviser fraud

- 76 ASIC's review found that the transaction monitoring systems that the banks currently have in place for adviser-operated deposit accounts focus on money laundering and general fraud. That is, the systems do not specifically consider the elements that may indicate an adviser is defrauding a customer using the customer's own account.
- 77 While monitoring systems cannot detect all instances of fraud, banks should add specific triggers to their transaction monitoring systems for possible adviser fraud to identify transactions that warrant further investigation.
- 78 Examples of triggers that could be in place include:
- (a) money being transferred from one customer's account to another customer's account with the same adviser;
 - (b) money being transferred to an adviser's account directly (instead of the advice licensee) for advice fees, unless the adviser holds an AFS licence in their personal capacity;
 - (c) large transfers to an adviser's account that do not appear to be reasonable fees for service; or
 - (d) customers' accounts being overdrawn.
- 79 In these situations, the bank should make inquiries with the customer directly before the transaction proceeds further to ensure that the request is consistent with the customer's wishes.

Case study 4: Unusual transactions not investigated

An adviser sent emails to a bank asking to withdraw money from several customers' accounts. Some transactions involved the transfer of money from one customer's account to an investment company and from the investment company to another customer's account with the same adviser.

These transactions did not make sense in the context of the adviser's business and should have been investigated by the bank.

ASIC took action in this case resulting in an investigation into whether the bank (Bank of Queensland) had met its obligations. A separate class action was commenced to recover compensation for affected customers.

Finding 9: Suspected misconduct by advisers using these accounts should be reported to ASIC

- 80 ASIC's review found that banks notified ASIC in most instances when a concern with an adviser was identified.

- 81 If a bank identifies a concern about misconduct by an adviser, a report of misconduct should be lodged with ASIC so that we can determine whether regulatory action is required.

Finding 10: Banks should ensure all customer complaints are considered fairly

- 82 ASIC's review found that some complaints to banks about adviser fraud on the accounts were not considered fairly. If an adviser has withdrawn money from an adviser-operated account contrary to the customer's wishes, banks must consider their liability for the customer's loss.
- 83 If the adviser is an employee or representative of a bank, the bank must compensate the customer for any loss suffered. If the adviser is a representative of an advice licensee, both the licensee and the bank may be liable to the customer for loss caused by the adviser's conduct: see paragraphs 27–31 for a discussion about the bank's potential liability.

Note: AFS licensees must have a dispute resolution system for retail clients (see s912A(g) of the Corporations Act).

Case study 5: Bank ordered to remediate customer

An adviser continued to withdraw money from a customer's account at a bank after the Australian Taxation Office applied to wind up his financial planning business and the bank had been notified of this action.

The bank transferred the money from the customer's account. An external dispute resolution scheme found that a reasonable and prudent bank should have been satisfied that an insolvency event had occurred.

This meant that, under the terms and conditions of the account, the adviser's authority was automatically revoked, and the bank should not have permitted the adviser to withdraw the money. The bank was ordered to remediate the customer.

Key terms

Term	Meaning in this document
ABA	Australian Banking Association
access	The authority an adviser has to transact on or change a customer's account
advice	Personal advice given to retail clients
advice licensee	An AFS licensee that provides personal advice to retail clients
adviser	<p>A natural person providing personal advice to retail clients on behalf of an AFS licensee who is either:</p> <ul style="list-style-type: none"> • an authorised representative of an AFS licensee; or • an employee representative of an AFS licensee. <p>This includes financial advisers, stockbrokers and accountants</p> <p>Note: This is the person to whom the obligations in Div 2 of Pt 7.7A of the Corporations Act apply</p>
adviser-operated deposit account	A deposit account that can be accessed on a customer's behalf by an adviser (as defined above)
AFS licence	<p>An Australian financial services licence issued under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services</p> <p>Note: This is a definition contained in s761A of the Corporations Act</p>
AFS licensee	<p>A person who holds an AFS licence issued under s913B of the Corporations Act</p> <p>Note: This is a definition contained in s761A of the Corporations Act</p>
ASIC	Australian Securities and Investments Commission
bank	An authorised deposit-taking institution which has been granted an authority to carry on banking business in Australia under the <i>Banking Act 1959</i>
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
DDH	DDH Graham Limited
deposit account	A deposit-taking facility as defined in s764A(1)(f) Corporations Act

Term	Meaning in this document
deposit account owner	The person or entity who holds the deposit account
fraud	If an adviser withdraws money from an account without the customer's authorisation or having misled the customer about what will be done with the money
personal advice	<p>Financial product advice given or directed to a person (including by electronic means) in circumstances where:</p> <ul style="list-style-type: none"> • the person giving the advice has considered one or more of the client's objectives, financial situation and needs; or • a reasonable person might expect the person giving the advice to have considered one or more of these matters <p>Note: This is a definition contained in s766B(3) of the Corporations Act</p>
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations 2001 (Corporations Regulations)
s912A (for example)	A section of the Corporations Act (in this example numbered 912A) unless otherwise specified
SFP	Sherwin Financial Planners Pty Ltd (in liquidation)
Sherwin Group	Sherwin Financial Group
SMSF	Self-managed superannuation fund
transaction monitoring	The systems a bank has in place to monitor transaction requests on customers' accounts
Wickham	Wickham Securities Pty Ltd (in liquidation)

Related information

Headnotes

Adviser-operated deposit accounts, banks, customers, financial advice, financial advisers, fraud, investments, misconduct, stockbrokers, third party access, transactions

Legislation

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Banking Act 1959

Corporations Act, s761A, 761G, 764A(1)(f), 912A, 913B

Corporations Regulations, Div 2 of Pt 7.1

Cases

Barnes v Addy (1874) LR 9 Ch App 244

Selangor United Rubber Estates v Cradock (No 3) [1968] 2 All ER 1073

Ryan v Bank of New South Wales [1978] VR 555

Territory Sheet Metal Pty Ltd and Others v Australia and New Zealand Banking Group Ltd [2009] NTSC 31

Reports

[REP 515](#) *Financial advice: Review of how large institutions oversee their advisers*

Media and other releases

[ASIC media releases on Sherwin Group](#)

Other references

ABA, [Financial advice: Reference checking and information sharing protocol](#)

[ISO 31000:2018](#) *Risk management—Guidelines*