

TREASURY EXECUTIVE MINUTE

Minute No. 10/2689

22 October 2010

Assistant Treasurer and Minister for Financial Services and Superannuation cc: Deputy Prime Minister and Treasurer

CONSULTATION ON THE FUTURE OF FINANCIAL ADVICE REFORMS

Timing: No deadline – briefing requested by the Office.

Recommendation:

- That you note this briefing regarding consultation on the *Future of Financial Advice* reforms.

Noted

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NOTED BY THE OFFICE AI 12/11

KEY POINTS

- Treasury is consulting with stakeholders on key aspects of the Future of Financial Advice (FOFA) reforms. We have established a peak consultation group, comprising key industry and consumer bodies as well as ASIC (see Executive Minute 2010/2235). On 12 October 2010, the group met and identified key issues that stakeholders consider should be addressed as part of the implementation process (see Attachment A for the current list). Overall, the meeting was positive, with participants approaching the process in a constructive manner.
- Key issues raised at the meeting included the need for certainty around the scope of the statutory fiduciary duty and who it would apply to.

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Contact Officer:

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ADDITIONAL INFORMATION

Statutory Fiduciary Duty

- A discussion on the introduction of a fiduciary duty on financial advisers took place at the peak consultation group meeting on 12 October. The discussion focused on issues relating to the scope of the duty (that is, what kind of behaviour is the duty intended to capture) and also who the duty should apply to (that is, whether it should only apply to the licensee or also to any representatives or authorised representatives).
 - Treasury is now engaging in targeted consultation with key stakeholders on the duty. It is envisaged that we will update the consultation group on our work on this issue at the next meeting on 19 November.

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Annual Renewal Notice (Opt-in)

- A discussion on opt-in took place at the peak consultation group meeting on 12 October. The discussion was focused on gathering information about how frequently, as a matter of best practice, an adviser should be in contact with clients in order to be providing ongoing services.

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Volume Payments

Prospective ban on volume payments

- A discussion was held on the Government's announcement of a prospective ban on volume-based payments in relation to the provision of financial advice or financial services at the peak consultation group meeting on 12 October. The discussion focused on how this blanket ban might apply to current volume-based rebates paid from platform providers to financial advisory dealer groups.

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Specific Advice

- A discussion on simple advice was held at the peak consultation group meeting on 12 October. The discussion focussed on what type of simple or 'specific' advice is needed, why this advice is not currently available, and whether providing further clarity around regulatory requirements could be an effective solution to the problem, or whether other measures are necessary.

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- In future discussions, Treasury will focus on fleshing out the reasons why 'specific' or 'non-product' advice cannot be provided under the current regime. The issues around a multi-tiered advice regime may also be explored in more detail, with a view to determining whether this should be considered as a mechanism to improve access to, and availability of advice.

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OTHER ISSUES

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What do corporate super advisory firms do?

- Corporate super advisory firms provide consulting or advisory services to employers and their employees in relation to corporate super. They typically provide services to:
 - Employers;
 - A representative body or ‘policy committee’ (a body that represents the collective interests of employees that are members or the corporate super fund); and

- Members of the corporate super fund (individual employees).
- Among other things, services include:
 - Providing advice to assist employers and the ‘policy committee’ (a body that represents the collective interests of employees) to ensure employees are receiving optimal features and benefits in their corporate super fund;
 - Negotiating with superannuation product providers and insurers to obtain more favourable terms for all members;
 - Working with employers and their human resources divisions to ensure that information and contributions are remitted correctly and members receive the benefits they are entitled to;
 - Attending ‘policy committee’ meetings and working with the committees to agree a servicing program for the members of their plan;
 - Visiting workplaces and delivering group workshops and consultations to corporate super members designed to assist them to make better decisions around contribution levels, insurance levels, and beneficiary nominations, among other things. Advisers also assist members to implement their decisions.
- According to the Corporate Superannuation Specialist Alliance (CSSA), the industry body for corporate super advisors, many of the services provided by corporate super advisors are of a collective nature and benefit all members.

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Statutory Compensation Scheme

- Richard St John will report to you on the need for, and costs and benefits of, a statutory compensation scheme for financial services. This review is being undertaken in response to a recommendation by the PJC that a last resort compensation scheme was attractive, but that there were a number of significant issues to be overcome in the scheme's design, and that more work should be done.
- In assessing whether the current arrangements are adequate, the review will explore:
 - the operation of current dispute resolution and professional indemnity insurance arrangements, with a comparison against other compensation arrangements in the financial sector;
 - possible gaps in the compensation arrangements for financial services and an attempt to estimate the size of the problem;
 - whether there is a case to change the compensation arrangements;
 - design issues for possible compensation arrangements; and
 - possible alternative or complementary arrangements.
- Mr St John held information gathering discussions with industry in June and September, but is not expected to undertake further consultations in 2010 s22
 - Consultations were held in June with ASIC, The Insurance Council of Australia, Choice, The Insurance Practice Group and The Financial Ombudsman Service;
 - Consultations were held in October with The Association of Financial Advisers, Professional Financial Solutions and The Financial Planning Association.

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- Some stakeholders have expressed concern about the effectiveness of professional indemnity insurance as a compensation mechanism because:
 - It does not protect the consumer directly as the policy is between the insurer and licensee;
 - The policy may not cover certain circumstances (for example due to policy exclusions) and significantly for claims lodged once the licensee becomes insolvent;

- Limitations in the type of cover provided and the expense of policies. In particular, the professional indemnity insurance market does not provide features that had been expected (for example, run-off cover, which takes effect once a firm has been wound up), has tightened to only five domestic providers, and premiums have been escalating.

Wholesale – Retail Investor Review

- The reforms include a review of the appropriateness of the distinction between wholesale and retail clients.
- The review is being conducted separately to consultations on the implementation of the broader reforms.

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- The paper will consider the rationale behind the current distinction between wholesale and retail clients, or sophisticated and unsophisticated investors, for all relevant provisions in the *Corporations Act 2001*. It will then examine problems with the distinction that emerged during the global financial crisis, and consider options for reform.

Changes to ASIC's Licensing and Banning Powers

- The reforms package will strengthen the powers of ASIC in relation to the licensing and banning of individuals in the financial services industry. This will involve changes to the legislation that provides ASIC's licensing and banning powers.

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