Associated Advisory Practices

Thursday 13 October 2011

Submission to Treasury | FoFA Announcement Tranche 2

Firstly, we would like to thank you for the opportunity to raise some questions in regards to the recent announcement of the second tranche of the FoFA reforms.

Associated Advisory Practices Ltd (AAP) represents over 170 AFSL boutique licensees including a broad range of self-licensed small business owners, ranging from sole operators to small dealer groups.

On behalf of the AAP group, we ask that Treasury address the following six key areas of concern that have been highlighted by our members following the announcement:

1. CONSULTATION PERIOD

It is our view that two weeks for public consultation and to provide submissions on the second tranche of the FoFA Bill was insufficient time for the industry to properly examine and address all of its concerns especially given that there are a number of 'unknowns' which we will discuss further in this submission.

The government's ambition to amend the Corporations Act and implement the changes by 1 July 2012 is very ambitious and does not afford an opportunity for both houses of parliament to review and debate the proposed reforms given the closing date for submissions on the second tranche is mid October 2011.

It is our respectful submission that the government should consider pushing back the 1 July 2012 date to implement the reforms to allow for proper consultation and a reasonable opportunity to provide submissions.

2. LETTER TO WAYNE SWAN

AAP is in possession of a letter from the office of the Hon Wayne Swan dated 21 July 2011.

I draw your attention to the fourth paragraph which states:

> "*The Government has decided not to go as far as proposing a law against product issuers 'cross-subsidising the advice aspect of their businesses. The only way such a law could be effectively implemented would be by forcing either the operational or structural separation of many financial institutions in Australia. Such a requirement would be extremely costly and disruptive for industry and may require the Government to pay compensation to companies affected in order for the law to be constitutionally valid.In recognition of possible conflicts of interest that could arise in situations where the licensee is also a product issuer, the proposed best interest duty will require licensees to have in place adequate arrangements in order to ensure that their representatives can comply with their obligations with the best interest duty.*"

It is our view that this will create an uneven playing field for independently-owned financial planning practices as:

a) this is already an admission that the proposed banning of conflicted remuneration will not be applicable to the large institutions;

b) the Government has admitted that it would be required to "*pay compensation to companies affected in order to be constitutionally valid*", would this mean that for the proposed law to be constitutionally valid, the Government will have to pay compensation to similar companies that will also be affected and who will have to change their business models (such as independently-owned licensees)?

c) platforms are not investment products but technology platforms that provide administration and reporting on investment products. This is something that we spent a great deal of time explaining to Dr Sandlant during our meeting with him in October 2010 in Melbourne.

3. BANNING OF SOFT DOLLAR BENEFITS

Has the Government considered the potential flow-on effects the banning of non-financial benefits over $300 will have on large-scale events due to the withdrawal of corporate sponsorship?

We would like to highlight that many of the people who are employed at these events work in the hospitality industry, often on a casual basis and one of the lowest paid industries in Australia.

a) Does the government believe that it is fair to legislate that that the financial services industry will be unable to hold professional development conferences outside of Australia and New Zealand when no restrictions apply to other industries?

b) By introducing these reforms the government is effectively stating that advisers will be unable to attend professional development conferences in overseas venues despite content of those events being applicable to the Australian industry.

c) Imposing a domestic requirement on professional development will mean limiting access to international expertise, and the opportunities to learn and share information with peers on a global scale. As a consequence, this will hinder the growth of the Australian industry and may have an adverse effect on our reputation of being one of the world leaders in financial services.

d) In most instances advisers and licensees pay to attend professional development conferences, it is wrong to assume that product providers cover an attendee's cost even if the professional development was held in Australia or New Zealand.

4. GRANDFATHERING OF VOLUME REBATES BY PLATFORM PROVIDERS

Bill Shorten's previous media release dated 29 August 2011 which accompanied the first tranche indicated that:

> *"Following legal advice from the Australian Government Solicitor, the Government has determined that the ban on conflicted remuneration (including the ban on commissions) will not apply to existing contractual rights of an adviser to receive ongoing product commissions."*

It goes on to say that:

> *"The reforms will prohibit future payments to licensees (or their representatives) in respect of new investments through a platform, but will grandfather future payments to licensees (or*

their representatives) in respect of investments in a platform accumulated prior to 1 July 2012. ***In short, this means that the level of volume payments from platform providers to dealer groups will 'crystallise', and should not increase in size after the commencement of the reforms on 1 July 2012.****" (our emphasis).*

Can the government provide more detail about the grandfathering arrangements that will apply for volume based payments by platform providers after 1 July 2012?

For example:

- the types of arrangements to which they would apply for example, would they apply in a white label scenario;
- would they continue if an adviser sold a book of business;
- would they continue if a licensee sold their AFSL to another AFSL; and
- would the grandfathering be calculated on a contractual basis or by client funds under management (FUM) as at 30 June 2012.

5. GRANDFATHERING OF TRAIL COMMISSIONS FOR EXISTING CLIENTS

Clarification is required on the grandfathering of trail commissions for existing clients after 1 July 2012 in the instance that there is a:

a) change of AFSL, for example an adviser is looking to retire from the industry and decides to sell their book of clients to another AFSL. Does the change in AFSL mean the grandfathering of trail commissions will cease?

b) change of adviser within an AFSL, for example an authorized representative of an AFSL leaves and another adviser is tasked with servicing those clients. Does the change in advisers mean that the grandfathering of trail commissions will cease?

c) change in adviser because an AFSL buys another AFSL which includes the list of clients, would the sale of the AFSL cause the grandfathering of trail commissions to cease?

6. WHITE LABELS/PRIVATE LABELS

There is no mention of white labels or private labels. Are these included in 'volume-based payments' in the Bill? And if so:

a) would both white labels and private labels be banned after 30 June 2012?; and

b) what if contracts are in place for both of these products prior to the draft legislation being passed into law, would volume rebates be banned after 1 July 2012?

Once again, we thank you for the opportunity to voice our concerns, and look forward to your timely response.

Yours sincerely

Associated Advisory Practices Ltd