



Abacus
Australian Mutuals

Association of Building Societies and Credit Unions

13 September 2011

Ms Sue Vroombout
General Manager
Retail Investor Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: futureofadvice@treasury.gov.au

Dear Ms Vroombout

Exposure Draft Corporations Amendment (Future of Financial Advice) Bill 2011

Abacus – Australian Mutuals appreciates the opportunity to comment on this draft bill and the opportunity to contribute to debate on this area of policy as a member of the FOFA Peak Consultation Group.

Abacus represents the customer-owned banking sector: credit unions, building societies and mutual banks. The mutual banking sector has 4.5 million customers and provides important competition and choice in retail banking. (For more information go to www.abacus.org.au)

As demonstrated by our sector's market-leading customer satisfaction ratings, mutuals focus on value, convenience and excellent customer service. Mutuals support a reasonable and flexible regulatory regime governing the provision of financial product advice to facilitate the continuing provision of advice about simple products within well-understood business models.

The exposure draft bill, if implemented, would likely have the effect of reducing the availability of advice about basic banking products. It is our view that the legislation would become an obstacle to the Government's policy objective of promoting the wider availability of advice by facilitating the expansion of "scaled advice." (See attached comments on ASIC's consultation paper on scaled advice.)

There are already significant regulatory disincentives to the provision of personal financial product advice about simple financial products in limited circumstances. The draft legislation would require ADI staff talking to a customer about basic banking products to identify:

- the objectives, financial situation and needs of the client that are disclosed to the provider by the client through instructions;
- the subject matter of the advice that has been requested by client; and
- where the client's instructions may be incomplete or inaccurate.

These are new and excessive requirements. They create unjustified regulatory risk for ADI staff providing advice about basic banking products, such as savings accounts, term deposits and debit cards.

The draft bill does not appear to meet the Government's policy objective to provide a limited carve-out from the best interests duty where employees of an ADI are advising on and selling their employer ADI's basic banking products.

As noted in the Government's April 2011 policy announcement, "basic banking products are often sold by frontline staff [and] the carve-out is largely intended to address the more routine activities of frontline staff, such as tellers and specialists."

"While these employees may provide either general or limited personal advice in relation to these basic banking products, these products are generally easier for consumers to understand, and consumers more readily understand that the frontline employee of the ADI is in the business of selling the employer's product," the policy statement said.

"As part of the consultation process, the Government was not made aware of any evidence of severe consumer detriment as a result of inappropriate selling of products of this nature and these products are less complex in nature relative to managed investments or life insurance."

The draft bill's explanatory memorandum says that basic banking products are recognised as simple and widely understood by consumers.

However, rather than using the term "carve-out", the explanatory memorandum describes a "modified" best interests obligation.

Abacus takes the view that the draft bill does not provide a carve-out from the best interests duty for ADI staff.

The proposed new section 961C(1), which sets out the best interests duty, applies generally to all providers as defined without limitation. Consistently with this, s961(3) assumes the best interests duty applies to staff and agents of ADIs when giving personal advice in relation to basic banking products. The ADI merely satisfies the duty – rather than being exempted from it – if its staff take certain steps that are more limited than the steps required of other providers.

Read with s961C(3), s961C(2) requires providers of advice about basic banking products to, in summary, obtain reasonably complete and accurate information about the client's objectives, financial situation and needs. It is unclear from the drafting what the advice provider – the ADI employee – is supposed to do with that information, however it is reasonable to assume that the legislative intention is that the adviser should use the information obtained "to act in the best interests of the client", as per s961C(1). No other alternative is suggested – for instance, it is not suggested that the provider should use the information merely to ensure that their advice is "appropriate", as under the current s945A.

This, in turn, raises the question of how an ADI provider can act in the best interests of their customer unless the provider directs the customer to the basic banking product that best meets their objectives, financial situation and needs – on the basis of information obtained from the customer – having exercised reasonable due diligence to identify the basic banking product in question. The basic banking product in question may be – but also may not be – a product offered by the ADI employing the adviser.

As discussed in FOFA consultation meetings, is an ADI employee with a 'best interests duty' bound to recommend another ADI's term deposit if it has a higher return? This scenario is clearly at odds with current practice in the ADI sector and with general consumer expectations about what staff of ADIs do when they are advising on the ADI's basic banking products.

This problem is yet another illustration of the impracticality of imposing the same set of 'financial planner' obligations across all persons who provide "financial product advice", and particularly those who provide limited advice about simple products issued by the institutions that employ them.

Abacus recommends that the legislation should be redrafted to more effectively balance the objectives of improving standards in the financial planning industry and expanding the availability of advice about simple products by ADI staff. This outcome is unlikely to be achieved in the absence of a genuine carve out from the 'best interests' duty for basic banking product advice providers.

Given that the existing regulatory obligations around "personal advice" have created an incentive for ADIs and other AFS licensees to adopt a "no advice" business model, it is highly likely that complex new obligations will make advice about simple products even less accessible.

Please don't hesitate to contact me on 02 6232 6666 to discuss any aspect of this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L. Lawler', written in a cursive style.

LUKE LAWLER
Senior Manager, Public Affairs



Abacus
Australian Mutuals

Association of Building Societies and Credit Unions

9 September 2011

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By email: policy.submissions@asic.gov.au

Dear Ms Waller

Consultation Paper 164

Abacus appreciates the opportunity to comment on ASIC's proposals to provide additional guidance on how to scale advice. Thank you for meeting with Abacus, Heritage Building Society, People's Choice Credit Union, Teachers Credit Union and Gateway Credit Union to discuss the consultation paper.

We believe that additional guidance from ASIC about scaled advice, including further specific examples about products distributed in the retail banking business model, would be useful for AFS licensees. Such products include term deposits, savings accounts, transaction accounts, debit cards, general insurance and consumer credit insurance. The examples could give some guidance as to how the adviser, speaking over the counter or from a call centre, might meet their obligations to determine the relevant personal circumstances, make reasonable inquiries and give reasonable advice.

Basic deposit products are subject to lighter touch regulation under the Corporations Act than other financial products and these regulatory distinctions (eg. SOA & PDS requirements) should be recognised in any guidance material.

Care should be taken to minimise the risk that the provision of guidance by ASIC could be interpreted as regulatory prescription. One option for responding to this risk is to make clear in the guidance that ASIC does not see its examples as 'scripts' for licensees.

Given that the point of the exercise is to promote the availability of advice by providing confidence to licensees about interpreting the legislative regime, it will be important to clearly explain the legal concept of 'financial product advice' and how 'personal advice' is distinguished from factual information and 'general advice'. However, the focus should be on 'personal advice' and the guidance should not be overloaded with examples of factual information and general advice.

The problem that has been identified is the perception that the regulatory regime creates too much regulatory risk for licensees to provide personal advice.

I note that ASIC is targeting November 2011 to release the new regulatory guide but this timetable may have to be reconsidered pending proposed legislative changes to the definition of personal advice and the introduction of the proposed new 'best interests duty'. Abacus is concerned that the proposed new best interests duty, if implemented as currently drafted, could significantly further hinder the expansion of 'scaled advice'.

In an over-the-counter discussion about basic banking products, elaborate and complex obligations such as "identifying the financial situation and needs of the client" and "identifying the subject matter of the advice" will deter licensees from providing advice.

Please do not hesitate to contact me on 02 6232 6666 to discuss this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L Lawler', written in a cursive style.

LUKE LAWLER
Senior Manager, Public Affairs