



7 May 2013

General Manager
Retail Investor Division
The Treasury
Langton Crescent
PARKES, ACT, 2600

Email: futureofadvice@treasury.gov.au

Dear Ms Sim,

AFA Response to the Exposure Draft – Exempt Intra-fund Advice From the Adviser Charging Regime

The Association Of Financial Advisers Limited (“**AFA**”) has been serving the financial advising industry for over 65 years. Its aim is to provide members with a robust united voice, continually improve practices and focus firmly on the exciting, dynamic future of the financial advising industry. The AFA also holds the client to be at the centre of the advice relationship and thus support policies that are good for consumers and their wealth outcomes.

With over six and half decades of success behind it, the AFA’s ongoing relevance is due to its philosophy of being an association of advisers run by advisers. This means advisers set the agenda, decide which issues to tackle and shape the organisation’s strategic plan.

Thank you for the opportunity to provide feedback on the draft FoFA Regulation on exempting Intra-Fund Advice from the adviser charging regime.

We were somewhat surprised by this draft regulation as we had not anticipated that there was a risk that the provision of Intra-Fund Advice would be interpreted as an ongoing fee arrangement. The Explanatory Statement does not explain why this regulation is considered necessary.

Whilst the AFA is supportive of initiatives to enable the cost effective delivery of advice to consumers, we have for some time had some major concerns about the MySuper proposal with respect to Intra-Fund Advice. Our key concerns are as follows:

- Members who do not use the intra-fund advice service, will be unfairly subsidizing those who do. The removal of charges for services that are not being used was one of the key drivers of FoFA.

- The provision of what appears to be free Intra-Fund Advice will serve to under-value financial advice. Where a service can be obtained in a manner where the cost is less than transparent, then it can create a misunderstanding of the true price/cost of the service and also a reduction in the perceived value of the service. In the context of the cost of providing personal financial advice, this situation is likely to be contrary to the longer term objective of having more Australians accessing financial advice.
- Whilst it has been stated that Intra-Fund Advice will exclude complex advice, we do not accept that this is the outcome, particularly as it involves advice with respect to a related pension fund or insurance product. Whilst it might be possible to argue that some forms of insurance advice are non-complex, it is likely that in most cases where it is done properly, it will involve complex advice. Where advice is provided in relation to a pension fund, it is inevitable that this will involve complex advice.
- Advice with respect to a pension fund is retirement advice and in all cases retirement advice is complex. This is a point in a client's life where their source of income fundamentally changes and they need to take stock of their existing debts and assets, their expected expenses in retirement, their access to Centrelink benefits and their timeframe for funding their lifestyle. This is very comprehensive in terms of the information that needs to be collected and the factors that need to be considered.
- We are concerned that Intra-Fund Advice on a pension product could exclude consideration of a range of external factors such as a client's existing debt.

We also seek to make the point that there appears to be a significant issue with conflicted remuneration as it relates to the provision of Intra-Fund Advice, that we would have assumed would be addressed as part of the introduction of a Regulation on Intra-Fund Advice. The specific issue is that third parties providing Intra-Fund Advice on behalf of a superannuation fund trustee are in breach of the conflicted remuneration provisions where they are making recommendations to either retain the investment in the fund or to increase the investment in the fund. In this context they are making a recommendation that will result in the retention or increase in fees payable to the fund trustee. ASIC have provided a no-action position as it relates to the provision of this type of advice directly by the fund trustee or a responsible entity, but this does not cover third parties. A number of financial advice licensees are currently providing Intra-Fund Advice on behalf of fund trustees, so we consider it important to resolve this matter.

7.7A.10(2) and (3) – Product Fees Not an Ongoing Fee Arrangement

With respect to 7.7A.10(3)(a), we remain uncertain as to the exact meaning of the words “management and operation”. We also believe that it would be preferable that the example referred to a product that is typically the subject of financial advice such as a superannuation fund or managed investment scheme.

With respect to the new section in 7.7A.10(3)(b), we make the following points:

- If this is to be tightly limited to Intra-Fund Advice then 7.7A.10(3)(b)(i) should specifically state “intra-fund advice”, rather than the broader “personal advice” that is in the draft regulation.
- The wording in 7.7A.10(3)(b)(ii) with respect to costs that may be passed on, is likely to be confusing to financial advisers where there is a separate issue about passing on client benefits to advisers. Whilst we recognize the use of the words “pass the cost” in Section 99F of the SIS Act, we believe that this could be more clearly stated to ensure that it is well understood that this applies only to Intra-Fund Advice scenarios and the coverage of Intra-Fund Advice costs through the administration fee that is charged to all members of the fund.
- We also have concern that there is a lack of clarity as to what costs are addressed by 7.7A.10(3)(b)(ii) and to whom the costs are being passed on to.

Conclusion

We remain uncertain of the need for this regulation, however provided the issues raised above are addressed, we have no major concerns with this regulation being finalized and issued.

Should you have any questions, please do not hesitate to contact me on (02) 9267 4003.

Yours sincerely,

Philip Anderson
Chief Operating Officer