



18 March 2013

The General Manager
Retail Investor Division
The Treasury
Langton Crescent
Parkes ACT 2600

(sent by post and via email to: futureofadvice@treasury.gov.au)

To whom it may concern,

IG Markets Limited (AFSL No 220440) - Response to Exposure Draft: FOFA Regulations on Grandfathering ("Exposure Draft")

IG Markets Limited is grateful for the opportunity to respond to the Exposure Draft.

1. Reg 7.7A.16A: Impact of the Grandfathering Provisions on "new clients"

We would appreciate further guidance regarding whether, during the transitional (grandfathering) period of 1 July 2013 to 30 June 2014, the grandfathering provisions mean that any benefits calculated based on the business of "new clients" that come under the auspices of an "existing arrangement" are excluded and therefore are not grandfathered?

Please see a likely scenario from our business below to illustrate what we mean:

IG Markets Limited ("IGM") is a product issuer of contracts for difference ("CFDs") to retail clients. We have a number of introduction agreements in place with AFSL holders who may introduce clients to IG and in turn get paid a volume rebate calculated as specified in the introduction agreement and based on the volume of business transacted by those introduced clients. These arrangements are very clearly impacted by the FOFA legislation and the provisions regarding conflicted remuneration. Please note we are aware of the changes to such arrangements that will be required in order to ensure future compliance and are working through these issues currently.

During the transitional period only, it is our understanding that the grandfathering provisions as set out in the Exposure Draft entitle IGM to continue to comply with the terms of introduction agreements ("arrangements") that are in place prior to 1 July 2013.

We are unsure, however, of the impact of the grandfathering provisions when it comes to the business of new clients who are introduced to IGM during the period from 1 July 2013 to 30 June

2014. Our confusion arises when trying to reconcile the language of draft regulation 7.7A.16A with the Explanatory Statement issued by Treasury.

The Explanatory Statement states:

“Together, regulations 7.7A.16 and 7.7A.16A grandfather benefits given by platform operators and persons other than platform operators according to a consistent approach. In both cases, benefits given in relation to new clients are not grandfathered, even if the benefit is given under a pre-existing arrangement.” (emphasis added)

We cannot see anywhere in the grandfathering provisions that splits off the impact of new client business from the terms of an arrangement that is already in place? While the meaning of Treasury’s statement above seems clear, we can see no legislative provision that sets out this restriction and limits the grandfathering provisions accordingly.

Draft regulation 7.7A.16A states as follows:

7.7A.16A Application of ban on conflicted remuneration—person other than platform operator

(1) This regulation:

(a) is made for the purposes of subsection 1528(2) of the Act; and

(b) prescribes a circumstance in which Division 4 of Part 7.7A of Chapter 7 of the Act applies to a benefit.

(2) The circumstance is that the benefit:

(a) is not given by a platform operator; and

(b) is given under an arrangement entered into before the application day, within the meaning of subsection 1528(4) of the Act; and

(c) is given in relation to the acquisition of a financial product by a retail client who did not have an interest in the financial product immediately before 1 July 2014.

Based on this draft regulation and the recent guidance issued by ASIC in RG 246 we have concluded that payments made by non-platform operators (including us) under arrangements in place prior to 1 July 2013 are grandfathered (and therefore not considered in breach of the provisions on conflicted remuneration) up to the point when they concern the acquisition of a financial product in which the retail client did not have an interest before 1 July 2014 (“post-grandfathering products”). In other words, the date in which the retail client becomes a client is immaterial, they simply have to fall under the auspices of an existing arrangement.

Therefore, if a client is introduced to IGM in August 2013 by an introducing broker with whom we have an existing arrangement that falls within the grandfathering provisions, we understand that payments made by us to the introducer pursuant to the arrangement should include payments based on the volume of business transacted by that new client UNTIL the business of that client consists of (excluded) post-grandfathering products.

We acknowledge however that our understanding does not appear to conform with the statement by Treasury (emphasised above) in the Explanatory Statement.

2. Clarification sought

IGM is well aware that the FOFA legislation will require a significant overhaul to its introduction relationships and business recruitment processes. We are working hard to ensure full and timely compliance with the considerable changes required. We are determined to ensure that we properly understand the full impact of the changes, that we are fully compliant and that we do not inadvertently breach any of the FOFA reforms.

As such, we would be extremely grateful for your clarification of the scope of the grandfathering provisions (especially as they relate to new clients under the auspices of existing arrangements during the transitional period) and for any ambiguities within the Exposure Draft to be explained.

If you have any questions about this letter or any of the matters stated within, please do not hesitate to contact me personally on the details set out below

Yours faithfully
IG Markets Limited

A handwritten signature in black ink, appearing to read 'Tamas Szabo', is written over the typed name. The signature is fluid and cursive.

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