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Email transmission

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

**Email [futureofadvice@treasury.gov.au](mailto:futureofadvice@treasury.gov.au)**

Dear Sir or Madam

## **Corporations Amendment (Future of Financial Advice) Bill 2011 – submission on Exposure Draft**

Thank you for the opportunity to provide our feedback on the exposure draft. Our comments relate to three aspects of the Bill.

### **Advising the client to obtain advice on another subject matter**

- 1 The draft Bill will require advisers, in discharging their 'best interest' obligation, to:
  - (a) recommend clients obtain advice on another 'subject matter', where it is reasonably apparent that a client's objectives or needs could be better satisfied by doing so; and
  - (b) assess whether the client's objectives or needs could be satisfied through means other than the acquisition of financial products.
- 2 We are concerned these requirements are unduly onerous and may require advisers to consider products or strategies both beyond those they are authorised to advise on and in areas in which they have no expertise.
- 3 This appears contrary to the general premise of the financial services regime which requires advisers to only advise on products they are competent to do so. Generally, advisers can only

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advise on financial products covered by **their, or their employer's, AFSL or, if an authorised representative, covered by their authorisation.** Further, to provide advice on financial products to retail clients, advisers must meet the competency standards set by ASIC as contained in Regulatory Guide 146.

- 4 The draft Bill potentially requires advisers to consider financial products beyond those the adviser is authorised and competent to advise on and also consider alternatives which are not financial products. For example, if a client was seeking an investment which provides income returns and the potential for capital growth over the medium to long-term, an adviser may need to recommend, in addition to equities, that a client consider direct property investment even though the adviser may not understand the property market, lending requirements for property or the taxation issues associated with property investment.
- 5 We believe a legislative framework which encourages advisers to consider and, potentially, make recommendations about products they are not competent or experienced to provide advice on will simply result in advisers including a generic list of other potential products or strategies in a statement of advice which will be of limited benefit and assistance to clients.
- 6 We submit the Bill should be revised to remove any obligation on advisers to consider financial or other products beyond those on which they are authorised to advise. Instead, the Bill should require advisers to inform clients of the classes of financial products on which they can advise and alert the client they may need to consider other financial products and matters.

### **Recommending products from the approved product list**

- 7 The draft Bill deals with the circumstance where the adviser has an approved product list and there **are no suitable products on the list. However, the draft Bill fails to deal with an adviser's obligations** where there is an approved product list that includes one product (or a small number of products) which meets **the client's objectives and needs.** In particular, this is relevant for a responsible **entity's or other product issuer whose advisers only provide personal advice on the responsible entity's or product issuer's products.**
- 8 The draft explanatory memorandum indicates an adviser may be able to comply with the reasonable investigation obligation even though they limit their investigation to products on the list. However, this is likely to depend on the number and type of products on the list (in particular, the number of potentially suitable products).
- 9 We believe it is unreasonable to require an adviser to consider products beyond those listed on an approved product list. Licensees use approved product lists as a quality control and risk management tool. Licensees provide training to advisers on all products on the approved product list as a means of ensuring their advisers understand, and are competent to advise on, the products. Licensees prohibit advisers from recommending products not on the approved product list to remove the risk of advisers recommending products they do not understand or that are not **covered by the licensee's AFSL.**
- 10 In our view, where an adviser has an approved product list and there is one product (or a small number of products) **which meets the client's needs or objectives, the adviser should simply** be required to disclose to the client that they only consider and recommend products, as applicable, offered by a single product issuer or products on an approved product list and there may be other **products not considered by the adviser which may be as, or more, suitable for the client's** objectives and needs. We submit the Bill should be amended in this regard. Alternatively, the **explanatory memorandum or ASIC could clarify an adviser is only 'aware' of products contained on** their approved product list, provided appropriate disclosure is made to the client.

## Ongoing fee arrangements

- 11 An ongoing fee arrangement is an arrangement which occurs when:
- (a) a retail client to whom a financial services licensee or their representative provides financial product advice agrees to pay a fee (however described or structured); and
  - (b) the fee cannot reasonably be characterised as relating to advice that, at the time the arrangement is entered into, has already been given.
- 12 The drafting and scope of the definition is alarming, particularly in relation to its application to managed investment schemes. For example, if an employee of a responsible entity recommends a **retail client acquire interests in the responsible entity's scheme the definition of 'ongoing fee arrangement' could potentially catch contribution and management fees charged by the responsible entity** (being ongoing fees not related to the provision of the advice).
- 13 In our view, the draft Bill should specifically acknowledge that the ongoing fee arrangement provisions do not apply to fees charged by a responsible entity pursuant to a scheme constitution.

Please contact me if you wish to discuss our submission further.

Yours sincerely



**Tim Wiedman**  
Partner