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

Email: futureofadvice@treasury.gov.au

Dear Sir/Madam,

Submissions in relation to FoFA Regulations on Grandfathering

We refer to the exposure draft of the *Corporations Amendment Regulation 2012 (No. 8)* (**Draft Regulation**).

We are of the view that the way in which the Draft Regulation is drafted so far as it relates to "Platform Operators" in Regulation 7.7A.16 will result in unintended consequences, and not achieve Treasury's intent as set out in the Explanatory Statement.

Our interpretation of the Draft Regulations and accompanying Explanatory Statement is that the intent is for the grandfathering arrangements to apply to all entities that are caught by the ban on conflicted remuneration. In particular, we note the following paragraph of the Explanatory Statement:

> A person subject to Division 4 of Part 7.7A of the Act (the ban on conflicted remuneration) will be either a platform operator, or a person other than a platform operator. Benefits given by these two types of persons are grandfathered separately, in regulations 7.7A.16 and 7.7A.16A respectively.

That provision is intended to stand with proposed Regulation 7.7A.16A. The intended effect of that provision is summarised below (again from the Explanatory Statement):

> The effect of regulation 7.7A.16A is to limit the grandfathering to conflicted remuneration paid under pre-FOFA arrangements relating to the existing investments of clients at 1 July 2014. Conflicted remuneration from non-platform operators will be subject to the ban for new investments in different products after 1 July 2014 regardless of whether these investments are made through a platform/custodian or directly by the client.

The effect of proposed Regulations 7.7A.16 and 7.7A.16A together is set out in the following passage from the Explanatory Memorandum;

> 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.

Because of the way in which proposed Regulation 7.7A.16 is drafted we do not believe that intended effect is achieved. In our view the key issue is the use of the word 'regulated acquisition' within sub regulation 7.7A.16(c) (our emphasis):

> **7.7A.16 Application of ban on conflicted remuneration—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 does not apply to a benefit.
>
> (2) The circumstance is that the benefit:
>
> (a) is given by a platform operator; and
>
> (b) is given under an arrangement that was entered into before the application day, within the meaning of subsection 1528(4) of the Act; and
>
> *(c) relates to a regulated acquisition, within the meaning of subsection 1012IA(1) of the Act, under a custodial arrangement provided by the platform operator on the instructions of a person who had given an instruction for a regulated acquisition under the custodial arrangement before 1 July 2014.*

As detailed within the Draft Regulation, a 'regulated acquisition' has a defined meaning set out in section 1012IA of the *Corporations Act 2001* (Cth). That definition is set out below:

> ***"regulated acquisition"*** means an acquisition of a financial product pursuant to an instruction by the client under a custodial arrangement, being an acquisition:
>
> (a) by way of issue by the issuer (the ***regulated person***); or
>
> (b) pursuant to a sale by a person (the ***regulated person***) in circumstances described in subsection 1012C(5), (6) or (8).

While this is an issue that is open to argument, there is a real prospect the acquisition of an interest in a Group Master Policy by a Platform Operator on behalf of their client will not be a 'regulated acquisition'. If that view is correct then the Platform Operator would not be entitled to rely on Regulation 7.7A.16 as a precondition to application of the proposed Regulation is that there be a 'regulated acquisition'. Further, such a Platform Operator would not be entitled to rely on proposed Regulation 7.7A.16A as they are a Platform Operator. It is a precondition to application of that proposed Regulation that the entity concerned not be a Platform Operator. To reinforce the point, ASIC have specifically indicated at page 51 of RG184 that section 1012IA of the Corporations Act (and the concept of a regulated acquisition) will not apply to a Group Insurance Policy held by a Trustee. A link to RG 184 is below:

http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ps184.pdf/$file/ps184.pdf

It is important to note that the Group Life Insurance products affected by this provision are not default group products such as those held by Industry Superannuation Funds. By definition the policies affected are those offered by Platform Operators to their clients.

In our submission the wording of proposed Regulation 7.7A.16 needs to be amended to expand the ambit of permitted acquisitions beyond simply 'regulated acquisitions'. A failure to do so would mean the Draft Regulations will fail to achieve their intended purpose as set out in the

Explanatory Statement. Further, clients of Platform Operators will be denied the opportunity to avail themselves of the pricing and service benefits available under a Group Policy.

Should you wish to discuss any aspect of these submissions please do not hesitate to contact me on (03) 9009 4267.

Yours faithfully

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