



18 March 2013

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By e-mail: futureofadvice@treasury.gov.au

Dear Ms Sim

Future of Financial Advice - Regulations

AMP welcomes the opportunity to respond to the Exposure Draft and Draft Explanatory Statement for the proposed Corporations Amendment Regulations 2013 (**Draft Regulations**) which relate to the Future of Financial Advice (**FOFA**) reforms. We refer to the letter submission of the Financial Services Council dated 18 March 2013 and confirm AMP's involvement in that document and endorse its submissions. The purpose of this letter is to make specific submissions which welcome the intent of the Draft Regulations while identifying situations where they can be clarified to best achieve the intended result.

Buying and Selling of financial services businesses and registers

7.7A.12EA Application of ban on conflicted remuneration—purchase of financial advice business

We welcome the intended exemption from the conflicted remuneration provisions in respect of financial services registers or businesses. The draft regulation currently covers the purchase of registers by licensees from their representatives, under buyer of last resort arrangements. The normal practice when a licensee buys client register rights or the financial services business of a representative is for the licensee to then allocate those register rights to one or more other representatives so that the clients can continue to be serviced. The exemption would need to apply to the buying and the selling of registers, register rights and financial services businesses. The same would apply for licensee to licensee sales and sales to licensees where an owner of a business or register rights is not a representative of the purchasing licensee.

Another key point is the equal weighting of products on the register so that products issued by the purchaser or a related party of the purchaser are not given preferential valuations. We accept this limitation but point out that it is appropriate to compare "in house" products with externally issued

products on a like for like basis. In other words, products **of the same type and class** should be given the same weightings, regardless of brand. Not all products are of the same value when making a decision to buy part or all of a register. This is so, regardless of the brand of the product. Therefore, the wording in relation to the weighting of products needs to be adjusted to read: “in which the weighting attributed to the financial products... is the same as the weightings attributed to other financial products **of the same type and class**.”

To simplify the regulation but ensure that there are appropriate exemptions to facilitate the functioning of the market for financial services businesses, we recommend the exemption be worded to include:

- The purchase *and* sale of financial services registers (the registers are not limited to financial planning but any financial services).
- Reference to ‘financial services business’ which has recognition in the Corporations Act, rather than financial advice business, as the business of a representative can include advice and dealing.
- The ability to differentiate products on inherent value-to-type but not according to brand/issuer. Comparison of products by brand of issuer should be for products of the same type and class.
- Licensee to licensee transactions.
- Representative to licensee transactions.
- Licensee to representative transactions.
- That the transaction could be framed as a sale or surrender of rights in a client register, sale of business or sale of an entity that runs a financial services business.
- Partial or full sales, as this is commonplace in the industry.

Rewarding performance based on ‘permissible remuneration’

It is important for financial services businesses to be able to reward high performance based on a number of factors, including revenue earnings.

Parliament has determined that there are some forms of remuneration that are *not* conflicted and therefore permissible under FOFA. For example, fee for service revenue. For ease of expression, we have called this remuneration ‘permissible remuneration’. If Parliament has determined that these forms of remuneration are *not* conflicted, a performance measure based on these forms of revenue should also *not* be conflicted. It is difficult to see how rewards for permissible remuneration could reasonably be expected to influence the content of any advice when the rewards are based on the remuneration in total, regardless of the topic of advice and whether the advice was strategic or involved product recommendations.

Also, the reward cannot influence the giving of advice because the scope of the advice can only be negotiated with a client and the client must agree for the work to be undertaken for an agreed price so the influence over advice is not established. However, ASIC has taken the view in RG246.133 that such benefits could still influence advice and we understand that there would be good reason to be cautious of a reward if it was given on terms that influenced product selection, for example, if revenue

from the sales of a particular product were specifically rewarded. We are not suggesting that such incentives be exempted from conflicted remuneration (other than under grandfathering).

However, we submit that a regulation be made permitting monetary or non-monetary benefits that relate to revenue from all sources and not from specific product sales. While it could be argued that the reward for changes in revenue or revenue levels from any source would not influence advice, the matter is not clear, particularly with RG246.133 in ASIC policy. We therefore request a suitable exemption allowing such rewards to clarify that they are permissible, on the following basis:

- The benefit does not incentivise advice on particular products.
- The benefit is based on revenue from all sources rather than particular sources.
- The revenue is remuneration that is not banned by Part 7.7A.

We appreciate the opportunity to provide these submissions to the Treasury and are happy to discuss with you further the material we have outlined in this document.

Yours sincerely

A handwritten signature in cursive script that reads "Craig Meller".

Craig Meller
Managing Director
AMP Financial Services