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The Treasury  
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Dear Irene,

**AFA Response to the Exposure Draft – Legislative Amendments relating to the use of the expressions ‘Financial Planner and ‘Financial Adviser’**

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Thank you for the opportunity to provide feedback on the draft legislative amendments relating to the use of the expressions ‘Financial Planner’ and ‘Financial Adviser’.

The AFA is strongly supportive of the proposed legislation to enshrine the terms ‘financial adviser’ and ‘financial planner’ in the Corporations Act. We believe that this legislation is good for financial advisers and also for the consumers who rely upon financial advice. Consumers deserve to have clarity with respect to who they are seeking advice from.

We consider the approach taken to be the most appropriate means to address this issue. We appreciate that there was some consideration given to the use of other criteria, however in our view, if someone is licensed or authorised to provide personal financial advice, then they should be entitled to use the terms ‘financial adviser’ or ‘financial planner’.

We understand that there were other options, such as linking the use of these terms to education levels, membership of certain associations or commitment to certain codes of conduct. We are very supportive of measures to enhance education, promote membership of professional associations and increased coverage of codes of conduct. All of these issues are important in enhancing the level of professionalism across the financial advice industry. However, we did not consider that the usage of the terms ‘Financial Adviser’ and ‘Financial Planner’ was an appropriate vehicle for pursuing these objectives.

We support the restriction of the use of the terms ‘Financial Planner’ and ‘Financial Adviser’ to appropriate people providing personal advice and thus the exclusion of people who only provide general advice. We also support the limitation of the use of these terms to advisers who are authorised to advise on ‘designated financial products’.

We have no major concerns with this draft legislation, however we do have a few comments that we would like to raise.

## **Implications of Using Restricted Expressions**

We note paragraph 1.10 of the Explanatory Memorandum, and the examples provided with respect to the use of the expressions in advertising material, business listings and communications. We seek further guidance as to the breadth of the coverage (what is prohibited) and the implications at the time an adviser ceases to be licensed/authorised or is in a brief transition period between licensees. For example there will be delays in terms of getting certain listings changed, that are out of the control of the former adviser. With a hardcopy Yellow Pages, it can take up to a year to remove the listing. There may also be some delay in getting on-line listings changed, or having regular advertising removed. There may also be some delays in getting building signage changed.

Where an adviser is moving from one licensee to another, there may, on occasion, be a delay in finalizing the authorization process with the new licensee, that results in their being a gap between when they finish with the old licensee and when they start with the new licensee. Obviously during this period they cannot provide any financial advice, however this gap might open up an unexpected exposure to a breach of Section 923C.

We note the penalties involved commence from day one, and therefore pose the question as to whether there should be some lead-time allowed for changes that involve passive usage (signage and on-line listings) as opposed to proactive usage (face to face, email communication etc.) to provide sensible protection for an adviser who has either just become unlicensed/unauthorised and for those who are briefly in-between licensees.

## **Other Comments**

Paragraph 1.13 of the Explanatory Memorandum incorrectly states what a designated financial product includes. The listed products are not designated financial products.

## **Conclusion**

We believe that this legislation is a very good outcome for financial advisers and for consumers. We thank you for the opportunity to provide feedback on the draft legislation.

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

Yours sincerely,

**Philip Anderson**  
**Chief Operating Officer**