19 February 2014

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

Email: futureofadvice@treasury.gov.au

Dear Ms Sim,

AFA Response to the Exposure Draft on FoFA Amendments

The Association of Financial Advisers Limited ("**AFA**") has been serving the financial advising profession for over 65 years. Its aim is to provide members with a robust united voice, continually improve practices and focus on achieving *Great Advice for More Australians*. The AFA also holds the client to be at the centre of the advice relationship and thus supports policies that are good for consumers and their wealth outcomes.

With over six and a half decades of success behind it, the organisation's strategic plan is based around creating relevance and bringing value to all stakeholders including advisers, licensees, consumers, government, regulators, and product and service providers.

Thank you for the opportunity to provide feedback on the proposals with respect to the FoFA Amendments.

The AFA strongly supports this package of reforms to the Future of Financial Advice legislation and regulations. We believe that they deliver significant enhancements and reductions in red tape, and deliver a high level of consumer protection. These amendments will make financial advice more accessible and more affordable.

We have been extremely disappointed to see a significant volume of commentary that has incorrectly stated that there will be negative implications for consumers from these changes. In our opinion these comments are misinformed and more than likely reflect vested interests in retaining the existing legislation. Unfortunately it is too easy for some elements of the industry and the media in this country to attribute these amendments to unreasonable self-interest by financial advisers. It is time for Australia, as a whole, to recognise that financial advice is good for Australians and that we should actually be striving for more Australians to receive financial advice and not less. The financial advice profession has embraced much of what the original FoFA legislation implemented. There have been no calls to repeal the ban on conflicted remuneration for investments and superannuation, nor to remove the best interests duty. This package is about improving the legislation and making it more consumer friendly, effective and practical.

The AFA believes that the client is central to the role of financial advisers. We therefore consider consumer protection to be critically important. In contrast to much of the public commentary on the amendments, advisers and clients sit on the same side of the fence and as such the AFA will not advocate for something that is detrimental to consumers. We believe that these amendments have a net positive impact upon consumers in that any measures that have been removed have very minimal consumer benefits and that the amendments will have a positive impact upon the cost of running a financial advice practice, as well as improve the cost and access to consumers that wish to receive advice. We therefore believe that these amendments are positive for both consumers and financial advisers.

This package of reforms, to a very large extent, reflects the Coalition's dissenting report to the Parliamentary Joint Committee on Corporations and Financial Service Inquiry into FoFA in February 2012. These amendments reflect the outcome of the work of the Coalition members of that Committee, which subsequently became the policy of the Coalition. These recommendations have been on the public record for nearly two years and there has been a significant period of time for key stakeholders to consider and comment upon them.

We are appreciative of the fact that the FoFA reforms impact a number of areas beyond the boundaries within which financial advisers typically operate. These reforms impact banks, superannuation funds, stock brokers and many more sectors. We are also however very conscious that some stakeholders including some in the media attribute all of these changes to financial advisers, and focus upon the impact that they may have on financial advisers. They also seek to link these amendments to financial collapses over the last five or so years, implying that any change will impact the likelihood of a future collapse. In addition, they seek to imply that the blame for all of these collapses rests with financial advisers, which is incorrect. In our view these changes do not increase the risk of a future collapse, but neither do we think that any legislation or regulation can fully remove this risk from the financial landscape, particularly with reference to product failures and fraudulent activity.

The AFA warmly welcomes most of these changes and accepts others. In particular, we have made our views clear on the general advice exemption. This is not something that we see as being relevant for financial advisers.

In the following section we will address each of the amendments proposed by the Government.

1. Repeal of the Opt-in Obligation

The AFA supports the repeal of the Opt-in obligation. An obligation of this nature is not reflected in any other industry in Australia. The financial advice profession is not the only business that puts in place ongoing arrangements for client payments. There are many service provision industries where clients continue to pay, whether they utilise the service to a large extent or a lesser extent. We do not believe that the cost and complexity that came with this requirement was warranted.

We remain concerned that with the limited timeframe of 30 days to obtain the clients agreement to continue, that in many circumstances the client would unintentionally not respond in time. This might include situations where the client is on holiday, is in ill health, or has other significant commitments. Industry experience suggests that the rate of response to any mail based request would be low, despite the level of value demonstrated in the financial advice relationship. The consequences of not responding within the 30 day deadline are significant, including the full and irreversible termination of the financial advice arrangement.

We recognised that the completion of Opt-in was likely to be most effective in a face to face situation, however this is not always possible, particularly for rural and regional clients, or situations where client contact is predominantly by video, online or phone based. This would have placed rural and regional advisers and clients at a significant disadvantage.

We however fully respect the client's right to terminate an ongoing fee arrangement at any point should they either not be receiving the agreed service or not obtaining the necessary value to justify the continuation of the arrangement. This is a fundamental right that we fully support.

2. Repeal of Fee Disclosure Statements for Existing Clients

The AFA supports the repeal of the obligation to provide Fee Disclosure Statements (FDSs) to existing clients (i.e. pre 1 July 2013). Not only was this obligation applied retrospectively to existing client arrangements, but also exposed some important issues with respect to the complexity of extracting information from legacy systems and products.

It appears that there is a lack of understanding with respect to existing disclosure obligations and the implications for fees and commissions. Therefore there is a misunderstanding of what existing clients get and what the implications of the removal of the FDS for existing clients will involve. Relevant to this consideration are the following points:

- Adviser service fees and trail commissions need to be disclosed in Statements of Advice provided to clients.
- Adviser service fees are disclosed in periodical product statements.
- Advisers typically provide information about fees in client reviews.
- Due to the Product Fee exemption in the FoFA Regulations (Regulation 7.7A.10), trail commission does not need to be included in an FDS.
- Where a client chooses to terminate a trail commission payment to their financial adviser, the payment is retained by the product provider, rather than passed back to the client.

Importantly, existing clients will already be getting the information through product statements that they would otherwise have received via an FDS.

The production of FDSs has been the biggest driver of both project and ongoing cost that have arisen from the FoFA obligations. The removal of the requirement to provide an FDS for existing clients will have a significant positive impact upon the cost of running financial service businesses and financial advice practices, and the cost of getting advice.

Recommendation 5 within the Coalition's original FoFA recommendations stated that the annual fee disclosure statement requirement be amended from "detailed" prescriptive information and inflexible issue rules to "summary" information only "given" at least annually to the client.

With respect to the inflexible issue rules, we would like to see the maximum timeframe for the issue of FDSs for new clients extended from 30 days to 60 days. The requirement to issue within 30 days places significant pressure upon financial advice practices which from time to time could negatively impact the provision of advice to clients of the practice. There is often a significant delay in the provision of information from product providers to licensees, which places huge pressure on the whole process. For advisers who would prefer to deliver an FDS in a face to face manner, it may not be suitable for clients to attend an appointment in the limited window of opportunity that exists at the end of this 30 day period. Extending this deadline by 30 days will not have any impact upon consumer protection, will be more convenient for clients and will enable businesses to operate the FDS process more efficiently. In fact a delay is likely to mean greater accuracy in the statements.

3. Repeal of the "Other Steps" Obligation in the Best Interests Duty

The AFA has remained opposed to the "Other Steps" obligation under section 961B(2)(g) from the point that the draft original FoFA legislation was initially released in 2012. From our perspective, there was a lack of clarity with respect to what was required to comply with this obligation. We therefore support the repeal of this obligation.

In our view, the first 6 steps adequately set out the obligations when providing financial advice. Section 961B(2) is a safe harbour requirement. We did not consider it appropriate to have a safe harbour that included an open ended requirement where no one could clearly explain what was required in order to comply.

We also need to make the point that financial advisers remain bound by the obligations that the advice is appropriate to the client (Section 961G) and that they prioritise the interests of the client where there is conflict with their own interests or those of a related party (Section 961J).

Whilst there have been many objections raised with respect to the removal of this clause, we challenge those opposing this to come forward with an additional step that is not already addressed in the first six steps in Section 961B(2).

One of the critical places to seek guidance on the requirements of Section 961B(2)(g) is in ASIC's guidance in RG 175 – Financial Product Advisers – Conduct and Disclosure. In the section below we have included an extract of what ASIC stated about Section 961B(2)(g). In our view much of what they have suggested is already covered by financial advisers.

RG 175.336 What advice providers need to do to show that they have satisfied s961B(2)(g) varies depending on the surrounding circumstances. Advice providers may need to undertake the following steps, if they have not already done so, to satisfy s961B(2)(g):

(a) explain clearly to the client the advice service that *is* and *is not* being provided;

(b) if the advice includes a product recommendation, provide related strategic recommendations that benefit the client;

(c) depending on the subject matter of the advice, specify in the advice that the client should review any decision made about financial products on the basis of the advice provided:

(i) once after a period of time;

(ii) regularly (e.g. every one or two years); or

(iii) if the client's circumstances change.

The review period will depend on the circumstances, including the recommendation that the advice provider is making, the volatility of any investment returns and the likelihood of a change in the client's circumstances; and

(d) offer to provide advice (or refer the client to someone who can provide advice) on any other key issues identified by the advice provider within the subject matter of the advice sought by the client. For example, if the advice provider has identified that it is important for the client to consider whether to consolidate their superannuation accounts, and this is within the subject matter of the advice sought by the client, they may need to offer to assist them (or refer the client to someone who can assist them) in providing advice on that topic.

RG 175.337 There is no absolute requirement to take the steps in RG 175.336. As mentioned above, whether they are required will vary depending on the surrounding circumstances.

Whilst much of what is stated above is already done by financial advisers, we also do not consider the items raised above to represent genuine steps or in their absence to be likely to have any material impact upon the overall quality of the financial advice.

The uncertainty that is generated by Section 961B(2)(g) is a negative factor for the financial advice profession, particularly because it would be some years before a level of clarity emerges as this obligation is tested by the External Dispute Resolution service providers and the courts. This is problematic because it is likely to have a negative impact upon professional indemnity insurance premiums in the meantime. It is also of great concern that the EDR findings do not provide for any right of appeal and as such, in the absence of court decisions, may result in inconsistent outcomes.

There are parties in the broader financial services industry who have continued to argue for the retention of Section 961B(2)(g), however it would appear that they are motivated by a desire to increase the level of uncertainty, complexity and costs for clients seeking personal financial advice. The reduced cost and increased clarity from the removal of the “other step” obligation far exceeds any potential but unquantified loss of protection to consumers. In short, its removal will create clarity and understanding for both the client and the financial adviser of what is required by a financial adviser.

4. Increased Certainty with Scaled Advice

We support the changes that have been developed to make it clearer with respect to the ability to provide scaled advice. Unlike other stakeholders, we do not believe that these changes will have any negative impact upon consumer protections. We would however like to see the current note below Section 961B(2)(g) retained, but moved in as part of the legislation, rather than just as a note where it has no legislative effect. This note specifically refers to scaled advice and makes the point that it is permitted. The new section 961B(4A) does not specifically refer to scaled advice, and whilst it talks to the ability to agree the subject matter of the advice, it does not refer to the ability to tailor the inquiries made to the scope of the advice.

5. Commissions on Insurance Inside Superannuation

Currently commissions can be paid on insurance inside superannuation, if the insurance is facilitated by an individual policy as opposed to a group life policy. This is a distortion of the market place and might pose the risk that it would inappropriately influence a financial adviser to recommend one product over another. Insurance via a group life policy should in many cases deliver lower premiums and other benefits, including automatic acceptance limits. Thus we saw no reason to allow commission for one form of insurance product, but prevent it in another form that is fundamentally similar.

We do have one reservation with respect to this amendment, which relates to the definition of a MySuper member and the scenario where a member predominantly has their money in choice options, but also has a small stake in the MySuper option. This would mean that they were classified as a MySuper member under the legislation and commission would not be payable for the advice on their insurance, even if they received personal advice as part of the process.

The amendment that has been proposed, with the exception of the point above, addresses the distortion with respect to insurance inside superannuation and group life policies. We believe that this is good for consumers because it reduces the risk that the advice has been affected by the different remuneration available.

We have been very concerned that various media outlets have incorrectly reported the change that has been proposed in this area. Some have suggested that this is the reintroduction of commissions on insurance (when this was never banned). Others have suggested that this enables commission to be paid on superannuation products (which is incorrect).

Whilst we support this amendment, we also believe that the Government needs to review the case of corporate superannuation advisers providing advice on employer funds and making a recommendation on a group life arrangement where the adviser’s involvement can lead to a reduction in premiums, an increase in automatic acceptance limits and an enhancement in the terms. These services are provided at the plan level and the benefits apply to all members, whether they are in the MySuper investment option or Choice options. Corporate superannuation advisers also play a very important role in assisting members or their families in making insurance claims. Corporate superannuation advisers may also provide services to assist individual members with their insurance arrangements, however this would not typically involve providing personal financial advice to the member. Thus even with the proposed changes it will not be possible for corporate superannuation advisers to be remunerated with respect to the provision of advice and related services for the establishment and ongoing servicing of insurance arrangements for employer superannuation plans. Employers and the members of their employer superannuation plans should have the ability to access advice and ongoing services on insurance and corporate superannuation advisers should be able to be remunerated for providing these services.

6. General Advice Exemption

The AFA does not believe that the General Advice exemption is relevant to financial advisers. Our reasons for this view are as follows:

- Self-employed advisers typically have a range of products to choose from. It is not possible to have a general discussion with a client that results in recommending a specific product, all with no reference to the client's personal circumstances. This is contrary to the central role of a financial adviser providing personal advice.
- For an existing client, where an adviser already knows the client's personal circumstances, it is extremely problematic for the adviser to claim their advice is general advice.
- It is unlikely that commission paying products (with the exception of insurance) will remain available in the financial advice landscape.
- Licensees, who are responsible for the conduct of financial advisers, are most unlikely to support a general advice business model for financial advisers.
- Product providers, who have no visibility over the form of advice provided to the client, simply will not agree to pay commission to financial advisers for general advice. They can have no way of knowing that general advice was given and would be in breach of the conflicted remuneration rules if the advice was personal.

We understand that this exemption is intended for call centres and branch based operations. This is really only practical where product manufacturing and distribution are directly related.

The AFA remains concerned that a solution has not yet been identified for the ongoing remuneration of corporate superannuation advisers. Whilst complications exist, there is some possibility that the general advice exemption may provide some form of solution for corporate superannuation advice. The AFA does not support this approach and would like to see an alternative solution developed to address the remuneration of corporate superannuation advisers, so that they can both recommend a default superannuation fund to an employer and be appropriately paid for providing ongoing services to the employer and the members. This is discussed further below.

We have been most disappointed to see that some sections of the media have suggested that this amendment was driven by the financial advice profession and that it was a mechanism for the reintroduction of commissions. We totally reject this suggestion. While the general advice exemption may have a role to play elsewhere in the financial services industry, it is not relevant for the financial advice profession.

We are unsure as to how this exemption will be used in practice and therefore we have some reservations with respect to this exemption. We believe that the Government should provide further clarity on the application of this exemption including the consumer protection mechanisms.

7. Execution Only Exemption

We are uncertain with respect to how this exemption will work in practice and which products would exist where it might be possible for commissions to be paid. We are hesitant with options like this where there is a risk that it provides an inappropriate incentive to facilitate the placement of financial products without advice, as opposed to through the provision of personal advice. We do however understand the rationale that has been provided, in that the causal link should be with the specific provider and not just the licensee.

8. Training Exemption

The AFA supports the proposed extension to the training exemption because training on conducting a financial services business should be as relevant as training on the provision of financial advice.

We do however recognise that the existing exemption under Regulation 7.7A.14 is impractical when it comes to the provision of support to licensees for education and training as opposed to the direct provision by product providers of education and training to financial advisers.

We understand that the objective of this part of the legislation was to prevent the provision of non-monetary benefits, such as attendance and travel for overseas conferences that were directly linked to the achievement of sales volumes. The actual result of the legislation is the prevention of support for genuine training and education that is delivered in a way that is not linked to volume measures.

Prior to the introduction of FoFA, many Australian Financial Services Licensees operated partnership programs where various entities, including product providers and other suppliers would provide sponsorship funding that was used to support the provision of Professional Development activity. In return for their contribution, via this partnership program, the partners would be recognised on marketing material, have the ability to provide exhibition stands at events and also the potential opportunity to provide speakers at events. In the context of the industry's commitment to professionalism, these speaker opportunities were almost always technical or professional development in nature rather than product focused. The partnership payments were flat dollar payments, rather than being volume based.

Critically from a licensee perspective, this source of funding was particularly important in being able to provide strong training and education opportunities for their advisers. In the case of non-aligned licensees, these programs were a central source of revenue to cover the costs involved in meeting their obligations under s912A(1)(f) for the training and competence of their advisers.

Under the FoFA regime, these partnership payments are now potentially conflicted remuneration. Licensees have the ability to argue that the partner payments are not conflicted under the definition in s963A of the Corporations Act, however this would require very strict rules and both the licensee and the partner would need to agree that they were not conflicted remuneration. This would typically require high level legal sign-off by both parties. Whilst Licensees have the opportunity of leveraging Regulation 7.7A.14, which provides an exemption for soft dollar benefits that are for the purpose of training and education, the complication is that this only applies to non-monetary remuneration. This means that the partner would need to pay directly to a third party (event venue, caterer or speaker), and they can't pay the licensee directly. This makes it very difficult to structure a professional development program as these programs are typically agreed a year in advance, well before any specific program costs can be established.

The outcome of this is that many of these partner programs are in the process of being severely cut back, and there will be a resultant decline in the availability of these important training and development events. This will have a negative impact upon the overall level of training and education available to financial advisers. It is also likely that there will be a resultant decline in the use of venues and related training industry services.

We would like to see a regulation introduced that specifically enabled the continuation of these partner programs. We would expect to see clear rules developed around the structure of these programs and the type of benefits that can be made available to the partners for participation in the program to ensure the avoidance of an inappropriate incentive or conflict of interest.

9. Volume-Based Shelf-Space Fees

The rules around the payment of volume-based shelf-space fees apply between fund managers and platform operators and do not directly impact financial advisers.

The AFA is very conscious of the complexity around the existing volume-based shelf-space fee provisions, so believes that these changes should reduce the unnecessary complexity and confusion.

10. Defining Intra-fund Advice

Whilst the AFA supports the defining of Intra-fund advice in the Corporations Act, we would also like to see changes made so that intra-fund advice that is covered by a superannuation fund's administration fee is modified in one of the following two ways:

- It is limited to general advice, or
- It is subject to separate and specific disclosure so that members who have not received financial advice from the fund during the year truly understand how much they are subsidising the provision of financial advice to other members of the fund.

We consider the non-disclosure of intra-fund advice fees to be a fundamental weakness in the MySuper legislation. If transparency was a central objective of the FoFA legislation then it should also be applicable to MySuper.

11. Grandfathering – Changing Licensee

The AFA supports the proposed changes to the operation of the Grandfathering Regulation (Regulation 7.7A.16F) which currently prevents an adviser from moving from one licensee to another and retaining grandfathered benefits.

The impact of this issue has been that advisers who have anything other than an insignificant amount of grandfathered business were effectively prevented from changing licensees. There are a number of reasons for this. Firstly there would be a huge impact on clients from moving (discussed below). Secondly there would be the likelihood or risk of a significant reduction in business revenue. Thirdly, since businesses are typically valued on the basis of the amount and type of ongoing income, there would also be a significant reduction in the value of the business.

If because of this Regulation, advisers were to be forced to stay with their current licensee then we see a number of negative implications:

- There would be a substantial loss of competition in the market for advisers. New licensees or growing licensees with a strong value proposition would be restricted in their ability to expand. Existing licensees could become complacent, simply because there would be a significant reduction in the risk of losing advisers.
- Licensees who developed concerns about the conduct of their advisers would need to be extremely careful before they terminated an adviser. Since terminating an adviser would

have significant irreversible implications for that adviser, there would be a greater tendency to obtain absolute certain that the adviser had done something to breach their agreement with the licensee, before taking any action. This is likely to mean that licensees are very hesitant to terminate an adviser and problems with conduct and behaviour may not be comprehensively acted upon until there is clear proof.

- An adviser who has lost confidence in their licensee, due to poor or inadequate processes, will not move despite their concerns. This will unfortunately place the adviser in an ethical bind because they need to trade off the issues with staying with a licensee that they are uncomfortable with, against the implications on their business from moving.

We believe that each of these issues is very significant and would have a serious negative impact upon competition and integrity within the financial advice profession.

In the event that an adviser was to decide to change licensee and to face the loss of grandfathering for existing clients, there would be significant implications for advisers including the following:

- The adviser would need to review every client on a trail commission arrangement in order to consider moving them from a commission paying product to a fee paying product. This would take a significant period of time, as a Statement of Advice would need to be provided to each client. As any recommendation to change products would need to comply with the best interests duty, there may be many situations in which the adviser could not recommend a change, which would mean that the adviser would not be remunerated for their ongoing services, where the client retains the original product.
- This would be extremely time consuming and would mean that the adviser's capacity to service existing clients and attract new clients during this period would be significantly curtailed.
- It is also likely that in some situations there will be complex issues that need to be resolved as part of restructuring a client's position (see below), which would further consume the advisers time.
- The net effect of this issue is that the adviser would put their business at risk and be subject to a high level of uncertainty and reduced productivity as well as a net reduction in market capacity to meet the public's personal financial advice needs.

As discussed above, it will be necessary for financial advisers to consider moving clients from a commission paying arrangement to an adviser service fee arrangement. There are likely to be a number of complications for clients in this:

- Changing adviser remuneration arrangements for existing products will be confusing and time consuming for clients. If nothing has happened other than their adviser changing licensee, then it will not be obvious to them why they have to receive new advice and change product and/or remuneration arrangements for products they currently hold. It will also potentially impact upon their trust in their financial adviser. It is difficult to see what benefits are available to the client to offset the disturbance and time involved in this.
- Adviser service fee options will not be available for all products. This would mean that the client would need to be moved to a completely different product. Moving a client to a completely different product could expose the client to exit fees, Capital Gains Tax and also the risk of a loss or reduction in insurance cover and increase in premiums (where insurance is held through a superannuation product). The loss or reduction in insurance would apply in the context of the client's current health condition having deteriorated since the insurance was originally taken out. Being subject to new underwriting may have significant consequences, such as exclusions, limitations on the level of cover and premium loadings. In this context, the adviser would not be able to recommend a movement to a new product and would no longer be able to be remunerated for services for this client.

- The client's existing investment options may not be available in a more modern product. One example of this might be capital guaranteed products.
- Other products may provide for commissions and adviser service fees, however do not allow the commissions to be rebated to the client. In this case the client would be in a disadvantaged position if they were required to pay an adviser service fee, but not get the benefit from the commission being cancelled (because it would be retained by the product manufacturer). Once again, there are potential best interest implications from this situation.
- Further, other products will allow an adviser service fee to be added and for trail commission to be rebated. This will be a complex situation for clients because they will see fees come out of their product, and a separate rebate for the trail commissions. This will be complex and confusing to understand which will be challenging for clients. Further, it is uncertain as to whether receiving and then rebating commissions is an acceptable approach.

Therefore as set out above, we believe that the impact of Regulation 7.7A.16F is to have a significantly negative impact on financial advice practices and consumers by effectively preventing the normal movement of financial advisers between one licensee and another. Thus we are supportive of the changes proposed in the draft revised Regulation, however we would also like these changes to be extended to cover new licensees that were created after 1 July 2013. In our view the ability of new licensees to enter the industry and to attract existing financial advisers is an important element of maintaining a robust financial advice profession. Thus we would like to see the regulation modified to enable financial advisers to be able to retain grandfathering for existing clients when they move to a new licensee (a post 1 July 2013 licensee). If this was done on the basis of grandfathering of the adviser to client relationship then this would also resolve the situation where an existing licensee did not have an arrangement with a product provider that was applicable to an adviser who is transferring from another licensee that already has an arrangement with that product provider.

12. Grandfathering – Other

The AFA supports the other proposed changes to the operation of the Grandfathering Regulation, including the following:

1. Enabling the retention of grandfathering on the sale of a business, however we question the definition of business in this context and why this only refers to the sale of a business and does not also include the sale of a book or register of financial advice clients. We would like to see greater clarity on what is meant by a business. In reality we think that the sale of a book of clients is a more important consideration, as the sale of a corporatised financial advice business should not present any complications with the preservation of grandfathering (the arrangements have not changed). This provision might have greater effect in the application to the sale of a sole trader business where there is no legal entity involved. In practice, a large number of transactions are done by the means of a sale of a book or register of clients, as this avoids exposure to contingent liabilities within a legal entity. We would like to see greater clarity with this provision, including specific inclusion of the sale of a book or register of clients.
2. Enabling grandfathering to continue when a product holding transitions from a growth phase superannuation account to a pension within the same product.
3. Permitting grandfathering to exist where a representative of a financial services licensee becomes an authorised representative of that licensee.

With respect to item three above, we would like to see this extended as follows:

- Rather than limit it to the same licensee, we believe that this could be extended to apply to the same group, rather than just licensee. With some groups, salaried advisers might work within one licensee and self employed advisers work within another licensee. Thus it makes sense to be able to retain grandfathering when moving a book of clients from the salaried licensee to the self-employed licensee and in the setting up of an Authorised Representative business.

- Depending upon the structure of an authorised representative business, it is possible for a salaried employee of the Corporate Authorised Representative business (or someone working in a similar capacity) to seek to move to become an Authorised Representative in their own right and transition a book of clients into this new business. We would like to see this exemption extended to cover this scenario.

13. Conflicted Remuneration Changes

The AFA supports the other changes to conflicted remuneration, particularly the new Regulation 7.7A.12H, where benefits calculated by reference to another benefit that is not conflicted remuneration or is grandfathered can be passed on without complication ('permissible revenue'). This is an issue that we unsuccessfully raised with ASIC in the process of the finalisation of the Regulatory Guidance, so we are pleased to see this reflected in the proposed Regulations.

We would like to bring your attention to the fact that the coverage in the Explanatory Statement on Regulation 7.7.12HA appears to incorrectly refer to Section 1529, when it should be referring to Section 1528.

We are very much aware that the Balanced Scorecard remuneration proposal has received significant criticism. We note that this measure applies to employees and will therefore not impact self-employed advisers. We also note that it may apply to both general and personal advice, although we question whether an exemption in the case of general advice is necessary, since remuneration for general advice is exempt and non conflicted remuneration can be passed on under Regulation 7.7A.12H.

We are aware that there is some concern about whether this provision can be applied multiple times during the year or whether it is to be applied on the basis of an annual performance review and bonus. We believe that this should be more clearly defined as applying only to an annual or half-yearly bonus, and not individual payments throughout the year.

We believe that draft Regulation 7.7A.12EB(1)(v) also incorrectly refers to Section 1529, when it should instead refer to Section 1528 of the Corporations Act.

The AFA also supports the changes made to the client pays exemption and the mixed benefits provisions. With respect to the client pays exemption, this is an important change as the original legislation did not reflect the operation of financial products or the effective ownership structure of superannuation products.

14. Stockbroking Amendments

The AFA supports the extension of the Regulation permitting stamping fees to be paid on the initial issue of an investment entity. In our view if there is to be an exemption for stamping fees then there is no reason to permit this for some listed investment vehicles, but not for others.

15. Other General Concerns

We note that the legislation will be effective from the day after Royal Assent and that this will leave a gap in terms of obligations like FDSs for existing clients between 1 July 2013 and either the date of the regulation or the commencement of the legislative changes. We are concerned that advisers will have acted upon the Government's announcement and ASIC's guidance, however will still be exposed for the non-provision of FDSs during this period.

We note the sentence at the top of page 21 of the Explanatory Memorandum that states "… where consumers generally understands that employees selling these products are not financial advisers, therefore reducing the risk of detriment to consumers". No doubt this is unintentional, however it reads in terms of there being a greater risk of detriment to consumers where a financial adviser is involved. We would like to see this part worded differently.

In the second row in the Current law column of the box on page 23 of the Explanatory Memorandum, in the second sentence, "conflicted except", should be "conflicted remuneration, except".

16. Priority Additional Amendments

We would like to take this opportunity to summarise our additional priority amendments that have not been addressed in this package:

- We are seeking a solution for Corporate Superannuation Advisers so that they can be remunerated for the ongoing servicing of the employer and members of the fund if they have also been involved in the recommendation of a superannuation fund for an employer. We would also like to see a measure introduced that enables Corporate Superannuation Advisers to be remunerated for the provision of advice and services related to the group life arrangements for members of an employer superannuation plan.
- At the core of the Corporate Superannuation problem is that advice is provided to the employer, but the fees are typically deducted from the members account. This means that the existing 'client pays' exemption does not apply. Where fees are paid for ongoing services after the recommendation of the fund, it is arguable that this is conflicted remuneration. When considered in the context of the MySuper rules, this presents a fundamental obstacle to corporate superannuation advisers being able to provide services to new clients. We believe that the best option is to provide a further extension to the 'client pays' exemption that would provide for this to cover fees agreed with the employer on behalf of members.
- Also with respect to corporate superannuation we call on the Government to review the mandatory transfer of Accrued Default Amounts, by 1 July 2017, as required under Tranche 3 of MySuper. This is a particularly important issues where members will be moved to investment options that differ from their current option and where there are going to be changes to their insurance cover or premiums.
- We would support the extension of the timeframe for the production of FDSs from 30 days to 60 days in order to improve the efficiency of the production of FDSs and the convenience for clients.
- We would like to see changes to enable advisers to move to new licensees (created after 1 July 2013) and to retain grandfathered benefits for existing clients.
- In order to support the training and education of financial advisers we would like to see provisions made that enable partners to support licensees in the operation of training and education programs for financial advisers.
- There is an exemption under Regulation 7.7A.13, where non monetary benefits are exempt provided they are under $300 and identical or similar benefits are not provided on a frequent or regular basis. This requirement has caused a lot of confusion in the market place due to product providers and licensees taking different views on what identical or similar and frequent or regular mean. It would be beneficial for the financial services industry for greater

clarity to be provided with respect to this obligation through regulation or regulatory guidance.

Conclusion

We thank you for the opportunity to contribute to this consultation process. We support this package of FoFA Amendments and look forward to the finalisation of these changes so that the financial advice profession can return their focus to the provision of great advice for more Australians.

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

Yours sincerely,

Brad Fox

Chief Executive Officer