



21st December 2012

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

By email: futureofadvice@treasury.gov.au

Dear Ms Sim

Exposure Draft – Legislative amendments relating to the use of the expressions ‘financial planner’ and ‘financial adviser’

Thank you for the opportunity to make submissions on the exposure draft of legislative amendments relating to the use of the expressions ‘financial planner’ and ‘financial adviser’, released by the Hon Bill Shorten MP on 28th November 2012.

At this time, AFMA’s submission relates to one specific issue which is the apparent unintentional exclusion of advisers who advise wholesale clients from the ability to use the terms ‘financial planner’ or ‘financial adviser’ (the restricted expressions).

The exposure draft states at subsection 923C(2) that:

It is not a contravention of subsection (1) for the first person to assume or use a restricted word or expression if:

(a) both:

- (i) The first person holds an Australian financial services licence; and*
- (ii) The first person can, under the licence, provide personal advice to retail clients in relation to designated financial products; or*

(b) both:

- (i) The first person provides personal advice to retail clients, in relation to designated financial products, on behalf of another person who holds an Australian financial services licence; and*

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- (ii) *The other person can, under the licence, provide personal advice to retail clients in relation to designated financial products.*

On one reading, unless the above elements apply, a person in any other circumstance cannot use the restricted expressions.

Many AFMA members hold an Australian financial services licence that enables them to provide personal advice to retail clients. In that circumstance, both the licensee and its representatives will be covered by subsection 923C(2).

However, in circumstances where either:

1. A licensee holds an Australian financial services licence that enables it to provide personal advice to retail clients, but (for example) some representatives are not authorised to provide personal advice to retail clients but are authorised to provide advice to wholesale clients; or
2. A licensee holds an Australian financial services licence that only relates to wholesale business,

then the representatives of the licensee in the first case, and both the licensee and its representatives in the second case, will not be able to use the restricted expressions.

We understand that the purpose of the reforms is to give comfort to retail investors who deal with financial planners and advisers that the person with whom they are dealing is appropriately licensed or authorised under the Corporations Act to give personal advice to retail clients.

Bearing that policy objective in mind, there is no logical reason that we can see to prevent a person who gives advice to wholesale customers from using the restricted expressions.

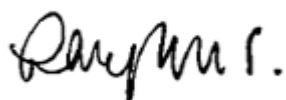
We assume that this is an error or oversight in the drafting of the provisions.

AFMA recommends that the drafting is amended to make it clear that the restriction applies only in the context of persons who are giving personal advice to retail clients, or hold themselves out as being able to do so.

In the alternative, persons who are licensed or authorised to give advice to wholesale customers should be expressly carved out of the restriction.

Please contact me on 02 9776 7997 or tlyons@afma.com.au if you have any queries about this submission.

Yours sincerely



Tracey Lyons
Director, Market Operations & Retail