# FIDUCIAN

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15 September 2011

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

Dear Sir / Madam

**CORPORATIONS AMENDMENT (FUTURE OF FINANCIAL ADVICE) BILL 2011**

Thank you for the opportunity to provide comments on the abovementioned Bill.

Fiducian supports initiatives that will result in improving the regulatory framework that assist in the provision of quality of Financial Advice provided by industry participants. As Australians strive to better provide for themselves financially, particularly in retirement, they require proper assistance and financial advice. Australians, therefore, have a right to expect a legislative framework that provides clear rules and changes based on thorough cost benefit analyses.

While we support the Future of Financial Advice (**FOFA**) objectives, we have concerns that the draft legislation will not assist in improving the quality of advice and will not reduce the costs to clients for best interests financial advice. How the Best Interest Definition and Scaled Advice will work in practice is a key concern. If it results in "single-issue trained" persons providing limited advice because "they don't know what they don't know", then the overall need for, and quality of, the advice received by a client in a scaled advice scenario may result in the provision of inappropriate advice that is certainly not in the best interests of the client.

## 1. Best Interest Obligations

Many of the Best Interest Principles set out in the draft legislation formalise the underlying principles that many financial planning firms currently adopt as part of membership with a professional organisation. We support the "Best Interest Obligation". However, the following matters must be addressed:

Best Interests/Scaled Advice

It is unclear how an Adviser can provide Scaled Advice at the request of a client and still discharge their obligations under the Best Interest Definition unless an adviser is aware of the personal circumstances and needs of the client. Under the proposed rules, a client can request advice limited to a specific issue that in the absence of a fuller knowledge of the client's circumstances and needs may not be in the Best Interests of the client.

A relevant example provided in the ASIC Consultation Paper 164. Scaled advice would not be appropriate in a transition to retirement advice scenario without taking into account the client's other personal circumstances, non superannuation income and assets and other factors such as Centrelink

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payments and tax considerations. Yet under the proposals and client could telephone their superannuation fund and be provided with limited advice simply disclaiming best interests obligations. Clients could be unwittingly but nevertheless seriously disadvantaged by inexperienced or incomplete advice.

In cases where a super fund Trustee provides scaled advice there may be situations where the outcome is limited to either the retention or the purchase of their superannuation product. For example, consider the case where a client with no financial dependents requests advice on how they can use their superannuation to help fund their income needs in retirement. Under a scaled advice approach the Trustee recommendation may be to either keep the money in super or use the benefits to start an Account Based Pension when using investments outside of superannuation may provide a more suitable outcome for the client, in terms of maximising cash flow and estate planning.

While the Best Interest requirements impose an obligation on the adviser to look at the client's objective and to determine if they can be better achieved through means other than by acquisition of a financial product, the current definition of Advice requires a financial product to be recommended – section 766B of the *Corporations Act 2001*.

Fiducian believes that Financial Advice is not solely about recommending a suitable financial product. Best interests financial advice encompasses providing the client with specific advice on their non-product needs. That is, providing Advice on cash flow management and budgeting, Centrelink and social security, helping them to better understand the types of risk they are exposed to and help them make better financial decisions in order to improve the level of certainty they have on achieving their goals (short, medium and longer-term).

If the Government wants to avoid 'financial product flogging' under the guise of scaled advice it must recognise a distinction between providing financial information and best interests financial advice. The latter is conditional on the Adviser being aware of the financial circumstances and needs of the client. If the client is unwilling to provide such information then the client must accept responsibility for acting on financial information provided by the Adviser. The proposed structure does not deliver that certainty.

Simply informing a superannuation fund member about the nature of superannuation and what can be done within it, can be offered by a person who is technically qualified and it does not have to be a financial planner. This is not 'advice' and differentiates important and useful information from advice. 'Advice' given in limited and selective doses will be difficult to defend under the Client's Best Interest obligations. It is akin to the risks of a medical professional dispensing important prescription medication without a proper personal examination to understand the patient's physical and mental condition.

**OUR RECOMMENDATION: The law should clearly distinguish between "Advice which falls within the ambit of Client Best Interest "and "Important Information" provided by call centres and where limited information is provided.**

## 2. Opt –in and Ongoing fees

While the underlying purpose of a regular opt-in requirement clearly has merit, in practice clients have the most to lose from this requirement. Additional administrative adviser costs will be passed on to the client and if the client forgets or neglects to renew their opt-in, their advised financial affairs may be at risk and they may lose recourse to their adviser until it is too late.

In cases where the client and Adviser meet regularly opt-in may not necessarily create a significant issue. However, there will be cases where the client will inevitably be worse off. This may occur in situations where the advice offering has been tailored for a client. For instance, in situation where under the current regime the initial strategy fee is staggered over a three-year period rather than up front to help with any client affordability issues. Under the current provisions this type of flexibility will become rare given, the cost may not be able to be recovered if the client doesn't opt-in.

There may also be issues where the client is un-contactable, have more pressing issues or the inertia of clients stops them from completing the opt-in form. The proposed rules give a client a minimum of 60 days to return the renewal notice. Where the renewal is not returned, the law provides protection for the Adviser and although the Adviser loses remuneration the client will no longer have access to advice. This may cause the client to suffer should the investments no longer be appropriate for their needs due to product changes, economic conditions, or personal changes.

In similar fashion to what has been proposed for insurance commissions, an Opt-In requirement should exist only where there is no personalised advice provided or where a retail client has not agreed to an Opt-Out clause. This will ensure that fees cannot be charged where advice has not been provided and proper signoff obtained from a client.

It will also prevent the practice of an agent or adviser receiving a commission from an employer sponsored fund member or retail client who has had no interaction with the adviser. For employer and corporate superannuation members and retail clients who are seeking ongoing advice, a fee should be paid to their financial planner as an asset based fee or dollar amount provided the member has agreed to it in writing and has the right to terminate it at any time.

In summary, we feel that with the effective abolition of commissions and the introduction of a statutory Best Interest Requirement there seems little need for an Opt-In requirement which, as indicated above, involves real risks of significantly disadvantaging clients.

**OUR RECOMMENDATION: If no personalised advice is provided and there is no signed agreement between the client and their adviser specifying the nature of financial services provided and fees charged, there should be no on going fee. Further, if there is no explicit Opt-out in such an agreement, there should be no ongoing fee. That is, it is made clear to the client that they can opt out at any time.**

We would be pleased to discuss our concerns further.

Yours sincerely

**Indy Singh**
Managing Director
Fiducian Portfolio Services Limited