The General Manager
Retail Investor Division
The Treasury

Dear Sir / Madam,

We would like to comment on one aspect of the Exposure Draft of the above Bill.

Subparagraph 963A(1)(d) excludes from "conflicted remuneration" a monetary benefit where:

> the benefit is given to the licensee or representative by a retail client in relation to:
>
> (i) the issue or sale of a financial product by the licensee or representative to the client; or
>
> (ii) financial product advice given by the licensee or representative to the client.

Paragraph 1.23 of the Explanatory Memorandum explains that:

"Where the monetary benefit is given by the client in relation to the issue or sale of a product or in relation to financial product advice provided to the client, this is not conflicted remuneration. This ensures that 'fee for service' arrangements – where the client is the person paying the adviser –are not conflicted remuneration (even where the client pays a volume-based fee). ***[Schedule 1, item 11, subparagraph 963A(1)(d)]*** "

A number of financial product providers, including netwealth Investments Limited, have introduced member advice fees for their superannuation products as provided for in FSC Standard No. 19. These are fees agreed between the adviser and the client and paid out of the member's account by the trustee of the fund. The client is able to terminate these fees at any time by notice to the trustee. These fees are akin to a "fee for service" as they are agreed to between the client and the adviser, but they are not paid directly by the client to the adviser as in the case of a "fee for service", but are paid by the trustee out of the member's superannuation account.

A non-super product may adopt the same member advice fee structure as described in the preceding paragraph, often called "adviser service fees".

It is not clear that subparagraph 963A(1)(d) permits member advice fees as there are not paid "by a retail client", but by the product provider on the written authorisation of the client.

In the Regulation impact statement (Chapter 3) of the Explanatory Memorandum for the Corporations Amendment (Future Of Financial Advice) Bill 2011, at paragraph 3.75 it states:

"The ban on commissions and asset-based fees (where leverage is used) will still allow investors to be able to pay for advice using flexible payment mechanisms, such as <u>adviser charges being deducted from a client's investments</u> over time24 or through a payment plan.[underlining mine]"

The policy intention is clear. Adviser fees must be agreed to between the adviser and the client, and must not be "bundled" as part of the product in circumstances where the client cannot control them. The fact that they are paid out of the client's investment is not the mischief, but in fact will enable clients to pay for advice out of their investment, rather than in addition to their investment.

We submit that "member advice fees" and "adviser service fees" that are built in to the product and paid by the product provider on instructions from the client (after agreement between the adviser and the client on the amount) should be expressly excluded from "conflicted remuneration". They are after all only paid if agreed to by the client and must be terminated if the client so decides.

Thank you for your consideration of this issue.

Yours faithfully.

Philip

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