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Minister Bernie Ripoll and the Parliamentary Joint Committee into Financial Services.
Parliament House Canberra, ACT 2600
By email: corporations.joint@aph.gov.au

Dear Minister Ripoll and members of the PJC,

Thank you for your time previously, in considering my comments on behalf of Matrix. I am enclosing further comments to form Matrix's further submissions to you as part of the PJC review of the FoFA draft's Tranches 1 and 2.

I will attempt to keep my comments brief and to the point, so that you can review the views of an independently owned advice licensee.

Transitional Arrangements and Timing

I note the Minister Shorten's comments on FoFA timing, as well as the current timetable for the progression through parliament of these pieces of legislation and strongly request that you allow a minimum of 12 months transition from the effective date of the proposed law of 1 July 2012.

Whilst most of the profession's financial advisers have largely progressed past the commissions vs fees debate, the key issue that is not being properly recognised at all is the abject lack of infrastructure, technology and process support that is necessary to support the workings of FoFA.

Most of this infrastructure does not exist and is a challenge for software providers and large institutions such as the banks as they own most of the administrative solutions and products for the industry. At least 1 large bank has already publicly commented that they are building their IT infrastructure in two tranches because of the uncertainty over FoFA's final form – this cannot be efficient and it can only be passed on as greater cost to clients.

Therefore I reiterate, the PJC should forcefully recommend a delay to the start date of FoFA and that a minimum of transitional arrangements be put in place for a minimum of 12 months.

Best Interest Duty

We acknowledge the move toward a best interest duty (BID) and Matrix continues to be philosophically aligned to the concept as well as the 'reasonable basis test' structure proposed. The detail in drafting will no doubt raise some practical issues, but the principles appear sound.

With that in mind, it does concern us that without 'safe harbour provisions' and the current alignment and approach of FOS (though improved in recent times), that without further clarity and specific structure, BID drafting will open the door to increased litigation and complaints handling.

This situation is likely to arise, from cases where clients have no valid basis for making a claim, through FOS, clients have no downside to make a claim, as it costs them nothing to submit a claim. But both the licensee and adviser will have to bear costs, both direct and indirect to defend that claim.

We therefore request that BID drafting be tightened to allow an adviser to show evidence of process as a defence for a claim on BID.

Opt In and Fee Disclosure

We continue to dispute the necessity of Opt In within the overall landscape that includes Best Interest Duty and a ban on commissions.

If Opt In it was somehow deemed a necessity, we would seek consideration to extend the renewal term to at least 3 years, preferably 5 years (with annual fee statement), in recognition that advice strategies need the fullness of a business/market cycle to evolve and demonstrate long term goal achievement. We feel this would seek to reduce the risk of clients not opting in, due to temporary market disruption as we have seen during and since the GFC.

A lengthening of the term would assist in addressing this issue and be in client's best interest.

We noted the commentary from Minister Shorten around the proposed flexibility of the Opt In process, however the draft legislation is not presented in a flexible way, rather it is quite prescriptive. We would ask that when legislation is presented to the house for vote, and if is not amended to recognise previously stated formats such as recordable and other electronic forms of disclosure and renewal, that it is argued that it do so by the PJC.

As a matter of interest, Matrix has estimated the cost of Opt In (including advice time, administration time, system and process development costs at approximately 40-45 minutes per client or a minimum of $95 per client per year. We thoroughly refute the ridiculous assertion of an $11 Opt In charge, as it in no way properly takes into account any part of the process other than the preparation of the Opt In notice and a brief contact between adviser and client, when there is clearly more to the process and issues management around Opt In than this.

We are deeply disturbed by the last minute and unannounced change to the annual fee disclosure requirement. This piece of proposed legislation, may be on the face of it, intended to come into force prospectively from 1 July 2012, but the requirement is currently proposed to take effect retrospectively, as it applies to all clients.

Aside from the obvious lack of industry systems and processes to support an annual fee disclosure for pre-FoFA clients, and for legacy products (many of which have ceased to have system development or maintenance for years), the annual fee disclosure is again far too prescriptive to be of any use to clients, and creates a structural cost that far outweighs the benefits, (especially since the disclosure of fees is currently available within each product or service report at least annually to clients), if implemented for existing pre-FoFA clients.

We would therefore strongly request that the fee disclosure apply only to post 1 July 2012 clients in a consistent manner to the proposed Opt In rules.

Finally, we find a clear case of double standards that Opt in, transparent Fee Disclosure (and Scaled Advice for that matter) is proposed to prevent cross subsidisation of clients within an individual

adviser's client book, regardless of whether it is in the clients best interest, yet it is seemingly acceptable that cross subsidisation of advice is acceptable within certain financial products and providers.

ASIC Powers

We acknowledge the move to allow ASIC more pre-emptive power as organisations like ourselves would have liked to see pre-emptive action against the small number of poorly run licensees and advice businesses such as Storm prior to them hurting clients, and damaging the financial planning profession's reputation. Naturally, we would expect ASIC to pursue this power with due discretion and would ask that the PJC make recommendation to that effect.

Soft Dollar

We acknowledge the commentary on move to ban soft dollar payments and benefits and interpret this move to dissuade any action that may create a potential conflict via product providing payments to advisers.

I also note the 'carve out' for education support payments and for IT systems used in the support of advice services to client, to advisers/licenses and believe that this is appropriate given increased access to education across the industry and increased cost and utilisation of technology as this is clearly in client's best interest.

Further to the above IT point, I also raise your awareness for allowance for support payments above $300 for licensees/advisers for non-product software that is used in providing advice services and documentation to clients.

I am not raising software developed by product providers to promote funds flow to a particular product, but those software packages that allow advisers to choose strategies and make best interest recommendations (an example would be xplan or Midwinter but there are a number of other providers). The use of this software is clearly non-conflicted, in the best interests of clients and is integral and consistent with the aims of access to advice and efficiency by as many Australians as possible.

Platform Payments

As you will be aware, I have advocated repeatedly to you, your office as well as Minister Shorten's office, and Treasury that a true 'platform fee licensee margin' is appropriate, given that an administrative platform is an administrative service not a product.

In addition, a professional license such as Matrix earns a significant proportion of its income, not from rebates, but rather, it selects a range of platforms that it believes can add value to clients, then charges a business to business client costed margin, for the supervision/research/product design/client service work it does as part of the price of the platform.

That work being inherent in the provision of the platform services themselves. The decision to charge a margin and at what level has always been in the hands of the license considering what is appropriate in a competitive market.

Further, it is worth noting much of the administrative front office data entry work was previously done by platform administrators staff, now, with the advent of straight through processing, that

administrative front office work is now being done by the adviser/license with additional staff costs, whilst many platforms have not reduced their fee accordingly.

That is not to say straight through processing is a bad thing, quite the contrary. It is a comment on where some of the work and value has moved since 2004 and where the cost reduction has/has not moved.

The proposed ban on this type of arrangement potentially closes the door to simply recovering revenue for the cost of administrative and other work done for the client by the adviser and license.

The above business to business arrangement contrasts to a volume rebate, which is decided by the platform provider/product provider as a payment to licenses and/or advisers and is related to the volume of business where the license has no involvement in the services provided by the platform or product.

I note to a greater or lesser extent that we have been unable to convince Minister Shorten or Treasury of the former proposition as being acceptable.

This has caused undue pressure on independently owned licenses whilst giving free reign to vertically integrated banks with advice and product and platform offerings. Whilst licensees like Matrix will make necessary changes to our business model to comply with whatever final form FoFA takes, at what cost (and what cost that will be passed to clients?)

Surely this cannot be a conscious aim of the FoFA reforms, as their unintended consequences are clearly not in the community's best interests.

This has then resulted in an unfortunate loss of competition in the financial advice licensee market, and an increase in the risk of more pure product recommendations over advice, which does not appear to be consistent with FoFA's overall aims.

How will Best Interest recognise this apparent conflict of aims?

Therefore, I ask you to consider the opposition's position on this important area and recognise the difference between platform business to business and client margins vs. volume rebates and assist in allow the former to continue.

Grandfathering

I note the grandfathering arrangement which carves out new business/new clients post 1 July 2012 for investments/super and 1 July 2013 for risk insurance respectively, for remuneration as well as Opt In arrangements. I believe this approach allows the financial services industry to make necessary adjustments to a post FoFA world, subject to legislation being clarified by parliamentary vote in the autumn sitting to allow for implementation time (particularly IT system amendment requirements). In any case, as stated previously, a delay in the first implementation date is more appropriate to allow the industry (particularly product and platform providers) to make the necessary changes to comply.

I would like to ask for clarification regarding treatment of platform fees for existing clients payable for services to the licensee for existing services rendered. I noted the government's commentary regarding the handling of platform fees, but would ask you to consider a recommendation of pre-FoFA treatment for client cases where a client arrangement exists prior to 1 July 2012. To do

otherwise seems incredibly complex for advice providers and all platform providers to manage effectively.

There is also a need for clarification and acceptance of where the client's account balance, which is the basis for grandfathered payments, rises and falls based not on flows of client money or any new arrangement, but on the movement of underlying market prices.

If there is not a recognition of the two above mentioned platform fee grandfathering issues, it may well create a breach of a previously executed valid service contract, which would potentially be challenged.

Risk Insurance

We noted Minister Shorten's amended position on risk insurance commissions and acknowledge the move toward allowing individually advised risk commissions in and out of super (as long as it's not via MySuper or Default funds). It's clearly a move toward some common sense and recognition that this is client/public best interests.

We believe this is close to an appropriate balance, except for the recognition where group policies are initiated as a result of advice. In that case, there is little difference to individually advised policies and we believe it most appropriate that risk commissions should remain in those circumstances subject to clear individual member disclosure.

We noted the move toward reviewing risk policy churn. We have not seen evidence of this in my time at Matrix, but understand why the government may want to look at this issue.

It's worth considering that a move of risk policies in a short succession may well be in the client best interests. I believe that allowing level and hybrid commission structures may resolve much of the issue, as would rewarding advisers with low lapse rates with better terms. I would also acknowledge that there are some circumstances when an upfront commission may be appropriate and clients may consciously wish to choose that method of payment for their adviser (for example as an offset of fees for other forms of advice).

Scaled Advice

We acknowledge the attempts by the government to help more Australians access advice via the proposed scaled advice regulations. Whilst the current drafting allows product providers an uneven hand in providing product advice dressed up as simple advice and true financial advice professionals must maintain the same or higher levels of compliance burden, the main aim of this part of the legislation will not be met.

With every person's affairs being more complicated than a single issue such as superannuation, (and very often the case being blissfully unaware to more pressing issues such as cash flow and personal structure), we believe that the current drafting of scaled advice does not allow a reasonable bridge between the provision of piece meal advice and true comprehensive advice which should be the ideal level of service for clients in order to meet their best interests.

We suggest the PJC properly address the double standards in cross subsidisation of fees and disclosure that is apparent between some providers of advice and others, under the proposal and also make comment on the differing levels of proposed education and experience required by the providers, even though the advice does not differ in importance to the clients.

To close, I trust in some small way these comments may be of some use to you in your deliberations particularly regarding the release of FoFA Tranches.

Thank you again for considering my comments. If you would like to discuss further please feel free to contact me

Yours sincerely,

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