



19 April 2013

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
CANBERRA, ACT, 2600
Email: corporations.joint@aph.gov.au

Dear Dr Grant,

AFA Submission on the Inquiry into the Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013

Thank you for the opportunity to make a submission with respect to the proposed legislative amendments relating to the use of the expressions ‘Financial Planner’ and ‘Financial Adviser’.

The Association Of Financial Advisers Limited (“AFA”) has served the financial advising industry for over 65 years. Its aim is to provide members with a robust united voice, continually improve practices and focus firmly on the exciting, dynamic future of the financial advising industry. 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 AFA’s ongoing relevance is due to its philosophy of being an association of advisers run by advisers. This means advisers set the agenda, decide which issues to tackle and shape the organisation’s strategic plan.

This submission relates only to Schedule 2 and the use of the expressions “Financial Adviser” and “Financial Planner”.

The AFA is supportive of the proposed legislation to enshrine the terms ‘financial adviser’ and ‘financial planner’ in the Corporations Act. We believe that this legislation is good for financial advisers and also for the consumers who rely upon financial advice. Consumers deserve to have clarity with respect to whom they seek and receive advice from.

We are also supportive of the terms being treated equally and interchangeably. There is no difference between the advice processes or capabilities of different advisers that have a preference to use either term. It is simply that; a preference for a particular term.

We consider the approach taken to be the most appropriate means to address this issue. We appreciate that there was some consideration given to the use of other criteria, however in our view, if someone is licensed or authorised to provide personal financial advice, then they should be entitled to use the terms ‘financial adviser’ or ‘financial planner’.

We understand that there were other options, such as linking the use of these terms to education

levels, membership of certain associations or commitment to certain codes of conduct. We are very supportive of measures to enhance education, promote membership of professional associations and increased coverage of codes of conduct. All of these issues are important in enhancing the level of professionalism across the financial advice industry. However, we did not consider that the usage of the terms 'Financial Adviser' and 'Financial Planner' as an appropriate vehicle for pursuing these objectives.

Further, we would like to strongly express the view that we do not believe that the use of the terms "financial adviser" and "financial planner" should be the vehicle for driving increased professionalism. There are many other means available to the industry and the Government in order to achieve this. Therefore we make the point that we would not support any subsequent moves to restrict the use of these terms to a subset of advisers who are otherwise licensed or authorised. The creation of subsets of service providers has the potential to cause confusion for consumers.

We support the restriction of the use of the terms 'Financial Planner' and 'Financial Adviser' to appropriate people providing personal advice and thus the exclusion of people who only provide general advice. We also support the limitation of the use of these terms to advisers who are authorised to advise on 'designated financial products'.

Incorrect Reporting of Inappropriate Activity

Too often, the media or other industry stakeholders refer to an individual involved in illegal financial activity as a financial adviser, when they are not actually licensed or authorised to give advice. This media coverage is damaging to the reputation of the industry, and we anticipate that this legislation will result in this mis-labeling being reduced as a result of this measure.

We have no major concerns with the legislation, however we believe that there are issues with respect to implementation that need to be considered to ensure that unintended or excessive consequences are avoided.

Implications of Using Restricted Expressions

We note paragraph 2.13 of the Explanatory Memorandum, and the examples provided with respect to the use of the expressions in advertising material, business listings and communications. We believe that further guidance is required as to the breadth of the coverage (what is prohibited) and the implications at the time an adviser ceases to be licensed/authorised or is in a brief transition period between licensees. For example there will be delays in terms of getting certain listings changed, that are out of the control of the former adviser. With a hardcopy Yellow Pages, it can take up to a year to remove the listing. There may also be some delay in getting on-line listings changed, or having regular advertising removed. There may also be some delays in getting building signage changed.

Where an adviser is moving from one licensee to another, there may, on occasion, be a delay in finalizing the authorization process with the new licensee, that results in their being a gap between when they finish with the old licensee and when they start with the new licensee. Obviously during this period they cannot provide any financial advice, however this gap might open up an unexpected exposure to a breach of Section 923C.

We note the penalties involved commence from day one, and therefore we recommend that there should be some lead-time allowed for changes that involve passive usage (signage and on-line listings) as opposed to proactive usage (face to face, email communication etc.) to provide sensible protection for an adviser who has either just become unlicensed/unauthorised and for those who are briefly in-between licensees.

It would also be appropriate to give guidance in regard to those unlicensed individuals and businesses that currently use the proposed restricted terms in passive ways as to an appropriate time frame for them to remove the offending references (eg sign writing, advertising, telephone directories etc.). We would suggest 12 months is appropriate. Active use of the terms by unlicensed individuals and businesses would be expected to stop immediately the legislation receives royal ascent.

Conclusion

We believe that this legislation is a very good outcome for financial advisers and for consumers in the form that it has been prepared. Importantly we believe that it is important at this time to provide clarity that there is no intention of utilising this legislative measure for other purposes, where there could be a subsequent limitation on who is entitled to use the terms financial adviser or financial planner. We thank you for the opportunity to provide feedback on the draft legislation.

Should you have any questions, please do not hesitate to contact me on

Yours sincerely,

Brad Fox

Chief Executive Officer