

Parliamentary Joint Committee on Corporations and Financial Services

Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013

The following questions were taken on notice at the Committee hearing held in Sydney on Monday, 22 April 2013

Question 1

- What terms are considered to be of 'like import'?

Response

- As the Committee is aware, the Bill inserts definitions of the terms 'financial planner' and 'financial adviser' into the *Corporations Act 2001* (Corporations Act), and restricts the use of those terms and terms of similar importance.
- A person is taken to assume or use a word or expression if it is being used as part of another word or expression, or in combination. As noted at the Committee hearing, the terms 'financial planning adviser' and 'financial advising agent' would be considered to be of like import and are specifically identified in the Explanatory Memorandum to the Bill.
- If there was evidence that terms like 'private wealth adviser' were being used by unlicensed individuals in an attempt to convince consumers that they were licensed to provide financial advice then the Government has regulation making powers to restrict usage of such terms. This will provide consumers with certainty that a person using a restricted term is authorised to do so under an Australian Financial Services Licence (AFSL).

Question 2

- Are those people who have an exemption from being required to hold an AFSL under section 911A(2) of the Corporations Act allowed to call themselves a financial planner?

Response

- The exemption from holding an AFSL granted under section 911A(2) of the Corporations Act is only available to individuals in specific situations and many of these situations which section 911A(2) identifies do not warrant the need for an AFSL.

- Whether the person could call themselves a financial planner would also depend on the specific situation, for example:
 - the person is not providing financial product services, such as performing the duties of a receiver or liquidator – unable to call themselves a financial planner under this exemption;
 - the person is providing a service where they are a representative of someone who has an AFSL – able to call themselves a financial planner if they were meeting the relevant licensing conditions (see response to question 3);
 - the person providing advice is doing so in a general nature to a broad audience, for example providing general advice in the media – unable to call themselves a financial planner under this exemption;
 - the person is not providing advice to retail clients – able to call themselves a financial planner if licensed to provide advice to wholesale clients. The Bill does not restrict licensees providing advice to wholesale clients from using the restricted term.
- Several other exemptions from holding an AFSL exist in the corporations law. For example, under Corporations Regulation 7.1.29A, a recognised accountant i.e. a member of the CPA Australia, the Institute of Chartered Accountants in Australia or the Institute of Public Accountants is able to provide advice on the acquisition or disposal of a self-managed superannuation fund without an AFSL. The Government has announced that it will replace this exemption with a new limited AFSL requirement from 1 July 2013 which allows accountants (and others) to provide advice on matters related to self-managed superannuation fund and general product advice – a person holding a new limited licence will also be able to call themselves a financial planner.

Question 3

- What are the obligations on licensees and authorised representatives?

Response

- Any person advising on financial products must be licensed to do so by ASIC or operate under the licence of a licensee i.e. an authorised representative.
- Under the licensing regime, the licensee is responsible for ensuring their authorised representatives are adequately trained and competent to provide the services covered by the AFSL's licence. Under the Corporations Act, licensees must adequately train and supervise their representatives, and must themselves be competent.
- The knowledge, skill and educational level requirements vary depending on the representative's advice activities. That is, they vary depending on whether the adviser gives general or personal advice and what products the adviser gives advice on. Where the adviser provides advice on products that are more complex and not generally understood, a higher standard of knowledge, skill and educational level is required.

- ASIC's Regulatory Guide 146 *Licensing: Training of financial product advisers* sets out the training requirements for licensees and authorised representatives. Also relevant is Regulatory Guide 104 *Licensing: Meeting the general obligations* which describes what ASIC looks for when it assesses compliance with most of the general obligations under the Corporations Act.