

October 11, 2011

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

Via email: [futureofadvice@treasury.gov.au](mailto:futureofadvice@treasury.gov.au)

ACI would like to thank Treasury for providing an opportunity to comment upon the latest round of reforms to Australia's financial planning industry, known as FOFA.

ACI is the peak industry body for the practice of compliance, risk and governance in the Asia Pacific region. Our members are compliance, risk and governance professionals who are actively engaged in the private, professional services and Government sectors.

The comments contained within this submission will be limited to one specific section of the draft legislation. ACI has had the opportunity to make a number of other comments during the FOFA meetings and feels that by more specifically addressing this one area, we can make the most practical contribution to improving the proposals and achieving the objectives of the changes Treasury has been working toward.

Our specific comments relate to **Section 963E of Subdivision B – Ban on conflicted remuneration**, which states:

*“A financial services licensee must take reasonable steps to ensure that representatives of the licensee do not accept conflicted remuneration.”*

Although we understand that both Treasury and ASIC wish to avoid being overly prescriptive in any legislation and regulation, the use of “reasonable” in the context of such a complex issue to manage as conflicts is, offers far too much latitude for organisations to avoid adequately addressing this in practical terms and which will impact on its ability to achieve the objectives of the changes proposed.

## Principal Members





It would be disappointing for all concerned parties that if the months of consultation resulted in inadequate guidance for the market and over reliance on ASIC to detect, prosecute and obtain a ruling from the courts to establish clearer parameters to this section, when at least some basic standards could be established up front in the legislation or supporting guidance.

Again, we would not be requesting overly complicated measures or a degree of prescriptiveness that was onerous for industry and the regulator, however, Treasury and ASIC should have some idea in advance of their expectations of how such conflicts will be managed.

ACI members are well educated and work in complex; sophisticated and heavily regulated environments and even they can struggle with the management of conflicts in organisations, both in convincing those at the top to take the requirements seriously; and to justify compliance measures they put in place, where the legislation or regulation does not support them. We would urge Treasury to give greater clarity and thought to its expectations of the management of these conflicts; what kind of demonstration of the management they would expect; what arrangements would be viewed as completely unacceptable; and to think of ways the legislation can better support those organisations who will actually be trying to do the right thing – which will ultimately benefit consumers and investors and help achieve the objectives of the legislation.

Secondly, ACI has found from past experience that when the compliance responsibilities are attached to a specific role within the organisation (in this case AFSL holder), then the compliance outcomes of the organisation have been shown to be more effective. In this instance we would recommend that the Responsible Executive (RE) of the AFSL should be assigned this responsibility. In fact, in amending this section within this context brings it into line with the provisions of RG104.49.

On that basis we would recommend that Section 963E be re-written as follows (and with additional guidance as to how this should be managed and be demonstrated to be managed):

*“The Responsible Executive of a financial services licensee must ensure that representatives of the licensee do not accept conflicted remuneration.”*

ACI would then recommend that reference is made in the accompanying regulations or by way of ASIC Regulatory Guidance that the provisions of RG104.50 and RG 104.51 are also drawn to the attention of AFSL holders who will be captured by these proposed reforms to the Act. See below:

RG 104.50 You need to ensure that the area responsible for compliance:

- (a) is independent enough to do its job properly;
- (b) has adequate staff, resources and systems; and
- (c) has access to relevant records.



RG 104.51 It may be appropriate for you to have a separate compliance function (which might be outsourced to a third party). This is likely to be the case for larger, more complex businesses (including a corporate group), but not for licensees whose business is small or whose main business is not the provision of financial services.

Once again ACI would like to thank Treasury for providing an opportunity for ACI to make a submission on Corporations Amendment (Further Future of Financial Advice Measures) Act 2011. Should you require any additional information or seek clarification on the comments that appear in this submission please do not hesitate to contact ACI on +612 9290 1788.

Yours sincerely,

**Martin Tolar**  
**Chief Executive Officer**

*Please note that the views expressed in this submission represent those of the collective ACI membership. Consequently, individual members and organisations may hold a different perspective on some of the points raised and therefore reserve the right to make comment in their own right.*