# Parliamentary Joint Committee on Corporations and Financial Services

## Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011.

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## 1. Executive Summary

Further to our 25th of November 2011 Parliamentary Joint Committee on Financial Services (PJC) Corporations Amendment Bill 2011 submission, addressing the first Corporations Amendment Bill, we reconfirm our support of the key principles of the Future of Financial Advice ('FoFA') reforms and measures designed to improve both the quality and integrity of the financial advice industry.

We also reiterate our concerns that the reforms must be delivered in a sensible and feasible way in order to ensure that the government's objectives, of expanding the availability of low-cost 'simple advice' and improving the trust and confidence of the financial planning industry[1], are actually achieved.

We are concerned that a number of the reforms will have the impact of decreasing competition, which will further centralise the provision of advice through institutional groups (which commonly have product development and distribution rather than advice at their core) to the detriment of consumer choice, create industry-wide uninsurable obligations which will naturally decrease consumer protection, and will not be in line with FoFA's objectives.

This submission outlines the key areas of concern with the Corporations Amendment (Further Future of Financial Advice Measures) Bill.

For a consideration of the first Bill, or a complete consideration of the FoFA package, this submission should be read together with Professional Investment Services' PJC Corporations Amendment (Future of Financial Advice) Bill submission.

### 1.1 Specific Measures

Key areas of concern with the Corporations Amendment (**Further** Future of Financial Advice Measures) Bill (the Bill) are summarised as follows:

1. The new codified "Best Interest" duty does not support the government's objectives of making advice more affordable through the delivery of simple or scalable advice. In order to satisfy the best interest duty an adviser cannot simply agree the specific subject matter of the advice (with scaled advice being advice tailored to the needs of the client) and be considered to have satisfied the best interest duty. Narrowing the subject matter must itself be in the best interest of the client. This requirement is inconsistent with the client's ability to self determine the subject matter of the advice and seek advice solely on the subject matter requested. In practice it is difficult to foresee how advisers or licensees can provide scalable advice under the best interest duty when agreeing the subject matter of the advice will in itself be insufficient to satisfy the best interest duty.

2. The 'reasonable investigation' requirement of the best interest duty is inconsistent with professional indemnity insurance. The 'reasonable investigation' requirement obliges an adviser to

[1] http://futureofadvice.treasury.gov.au/content/Content.aspx?doc=home.htm

consider a product, even if not on the approved product list, if the client requests it. The key concern with this requirement is that provision of advice on non approved product list products are not covered by Professional Indemnity insurance which thereby means the client is not covered by P.I for any advice related to the non-APL product. Consideration of non-APL products represents a significant risk to the client (know your product breaches are likely to increase under such a requirement) and significant risk to advisers and licensees from a claims/non P.I cover perspective. If consideration of non-APL products, in satisfaction of the best interest duty, is not removed there is the real risk that advice will not be offered where client's request consideration of non-APL products (as the risks associated with providing advice on un-researched products, particularly without P.I cover, will be too great), or alternatively as advisers and licensees self insure for this uninsurable high risk obligation, a significant risk premium will need to be factored into the provision of advice which will significantly drive up the cost of advice. This may result in the cost of advice being beyond the reach of many Australian consumers.

3. The Bill has some significant anti-competitive issues particularly around volume rebates from platform providers and their proposed ban, as part of conflicted remuneration, with no corresponding prohibition for vertically integrated models. This will significantly affect non-vertically integrated businesses and reduce competition in this sector to the detriment of consumer choice.

4. Grandfathering of existing arrangements are allowed for commissions arrangements already in place (prior to commencement of legislation) without express statutory protection of existing platform provider payments and arrangements. This is inconsistent with the transitional arrangements and grandfathering of existing commission payments provided for in s1528 of the Bill and is also at material risk of constitutional validity challenge with s51(xxxi) of the Constitution.

5. Professional Development and conflicted remuneration. It is intended that the regulations will provide for Australian and New Zealand conferences only and any subsidisation by third party providers will not be allowed for international conferences, being caught under conflicted remuneration. A domestic requirement restriction will seriously undermine professional development. International and cross-jurisdictional exposure is critical to the professional development of Australian financial services professionals and the industry as a whole. We recommend the government reconsider the domestic requirement of the professional development basis exemption and remove it altogether

6. Anti-avoidance. The legislation is not clear that anti-avoidance provisions will only apply for schemes entered into at the commencement of the legislation, or at the very least from the announcement of FoFA. The concern is that existing legitimate arrangements could be caught up by the anti-avoidance provision due to the lack of clarity around the effective date which the provision applies to. We note the legislative handbook setting out the importance of providing for retrospective legislation in exceptional circumstances. For the avoidance of doubt the application of this provision must be clarified and commencement should be for schemes entered into at commencement of legislation or at the very least the announcement of FoFA.

7. Future of Financial Advice Commencement date is currently 1 July 2012. With the final terms and legislative requirements still unknown (there has not been any finalisation or legal assent of the legislation) there is inadequate time to make the necessary changes and ensure compliance by the commencement date. We have requested commencement by no earlier than 1 July 2013 to provide the necessary time to ensure compliance.

This issues are discussed in further detail below.

**Best Interest Obligation**

The Bill amends the Corporations Act and introduces a Best Interest duty when providing advice to retail clients. This requires the individual providing the advice to 1. act in the best interest of the client *"in relation to the advice"* and 2. give **priority** to the client's interests if there is a conflict between the client's interests and the interests of the adviser, a licensee, an authorised representative or any of their associates, where the adviser knows, or reasonably ought to know, about the conflict.

1. **Best Interest Duty is inconsistent with Scalable Advice**

The Best interest duty seems to be inconsistent with the government's objectives of making low cost advice more available and supporting the provision of scalable advice.

Scalable advice is advice which is tailored and narrowed according to what the client wants. This is in contrast to comprehensive or holistic advice, the predominant type of advice provided, which takes into account the client's complete circumstances. This type of advice, which covers a range of topics and issues (eg ranging from short term to long term goals and objectives, a client's investments, superannuation, life insurance, income protection and trauma insurance needs), involves greater complexity, time and professional expertise and is therefore more expensive than the delivery of limited or scaled advice.

The government has stated the FoFA reforms are designed to expand 'the availability of low-cost 'simple advice' to improve access to and affordability of financial advice.'[2] We believe that this is a very important component of the FoFA reforms which has the capacity to significantly increase the affordability of advice. Providing scalable 'simple advice' will enable clients to receive the specific advice which they are seeking. Essential to the delivery of scalable advice is a regulatory framework which supports the delivery of such advice.

We are extremely concerned that the current drafting of the best interest duty is unworkable with the provision of scaled advice. According to the best interest duty, an adviser is not taken to have met the best interest obligation simply by seeking formal agreement from the client that;

- what was provided is what has been requested; and
- Is therefore in the best interest of the client.

This means that an adviser cannot simply agree the subject matter of the advice with the client and be considered to have met the best interest duty within the scope of that advice if it expressly or implicitly is in the client's interest to broaden the subject matter of the advice.

Without a capacity to limit the duty to the subject matter of the advice provided, and be deemed to have met the best interest duty (acting in the client's best interests), then it is difficult to foresee how scalable

[2] http://www.fsc.org.au/downloads/file/SpeechesFile/2011_0218_FutureofFinancialAdviceSpeech.pdf

advice can be widely offered. The best interest duty as currently written suggests that the starting point for advice is still likely to be comprehensive advice, rather than simple or limited advice that the client is seeking.

This will not support the increased availability of simple and low cost advice.

We believe that the best interest's duty and scalable advice need not be inconsistent. Simple and scalable advice can be provided by formally agreeing with the client that the advice relates solely to subject matter requested, confirming the basis and the limited scope of the advice, what the advice does and doesn't cover, what has and hasn't been considered, and accompanied with the opportunity to receive more holistic advice should the client wish to receive it. This would be supported by formal advice documentation that includes explicit warnings, disclosure and client consent.

**Recommendation: Amend the best interest duty which supports the agreement of simple scaled advice between an adviser and client.**

## 2. s961B(2)(e) & s961D of the Best Interest Duty widens the insurance gap and risks to clients, advisers and licensees of lack of P.I. cover

s961B(2)(e) of the best interest duty in the Bill requires the adviser to 'conduct a *reasonable investigation* into the financial products that might achieve the objectives and… needs of the client.' s961D goes on to say that if a client requests a specific product be considered that a **reasonable investigation** includes an investigation into that financial product. This may involve going beyond an approved product list ('APL').

A requirement of going beyond products included on an APL introduces two significant risks which will adversely impact clients.

Firstly, from a research perspective, which is an essential component of the risk management process, products not on the APL will not be supported by the necessary layers of research which commonly consists of a three layer research process, external research by a third party research provider (such as a research house), research at the licensee level satisfying internal research requirements and research at the adviser level.

Under the proposed requirements of the Best Interest Duty, advisers are required to disregard external and internal research requirements and consider products which are not supported by the necessary research. This represents **significant research and compliance risks** to clients, advisers and licensees.

It is difficult to forsee how an adviser can properly review each product the client may request it to consider particularly where the product is at risk of not having any research, transparency issues (eg investment selection within some industry funds where visibility through to investment selection can be extremely difficult[3]), and may have no third party research or APL approval (which then means that the product is also not supported by internal review and research process). This requirement in itself makes it hard to satisfy the best interest duty and undertake reasonable investigation when there is no knowledge, in depth research and review of the product.

The second significant issue, is that a product that is required to be reviewed which is not on the APL will not be supported by professional indemnity insurance and any review or consideration of such a product will mean that the advice covering that product is not covered. This also means the client is not covered by P.I. in the event of any loss or claim relating to non-APL products.

This presents significant risks to the client, the adviser and the licensee.

With the absence of insurance, and a high product and claims risk, what does the Government propose the industry should do to address this?

[3] http://www.smh.com.au/money/super-and-funds/portfolio-details-must-be-disclosed-20110819-1j1zt.html. See also a very good report by Louise Staley, April (2010) *Keeping Super Safe: a call for greater transparency from superannuation funds*, which discusses transparency issues around investment selection and asset allocation.

If the best interest duty mandates the consideration of products which are not on the APL, not researched and for which there is no P.I cover, this may result in the following unintended consequences;

- **the cost of advice significantly increasing,** as the requirement to self-insure for the significant risks associated with un-researched products are likely to result in significant claims increases. This may result in advice becoming completely unaffordable for the average person.

  We note that this is a completely unreasonable outcome which will adversely impact clients and consumers.

- **Advice may be refused where consideration of non-APL products is required**, in order to manage the lack of insurance and significant product/claims risks associated with a non-APL products, clients seeking consideration of non-approved APL products may be refused the provision of advice altogether. The basis for this is that non-APL products represents an unmanageable risk and the best interest duty cannot be satisfied without consideration of non-APL products where consideration is requested by the client.

Both these unintended consequences adversely affect the client, either through significant increases to the cost of advice or the risk of refusal to receive advice altogether.

It is important to note that even if insurance was available, say for example through a statutory compensation scheme, then the likely impact would still result in the cost of advice significantly increasing as an extraordinarily high levy or premium would be required of industry participants to meet the significant costs associated with product failure or poor advice arising from unresearched products.

**Recommendation: remove the requirement to consider non-APL products in satisfaction of the Best Interest Duty.**

### 3. Anti-competitive policies - volume rebates from platform operators banned, as part of conflicted remuneration, with no corresponding prohibition for vertically integrated models

The prohibition of volume rebates from platform operators will directly affect non-vertically integrated models on the basis that such revenue is considered to be conflicted remuneration. This is in contrast to vertically integrated models where there is no equivalent ban for in-house or proprietary products. Whilst the margin may not directly pass to the licensee/advice business, the margin/revenue is still retained within the broader group of associated companies and therefore, regardless of whether the profits sit with the product provider or a subsidiary company rather than being shared with the licensee business, the capacity to conflict advice exists.

We note that it is inherently anti-competitive to prohibit payment structures for non-vertically integrated structures (through the banning of platform provider payments) which instead of generating the revenue at the product level, non-vertically integrated models may generate, and receive, revenue at the Licensee level as a direct return for their distribution power.

The revenue, and source of profits, may sit in different entities however the capacity to influence financial product advice is arguably far greater in a vertically integrated model.

A non-vertically integrated model may have a much broader range of products and platforms to choose from, than vertically integrated models. In such an environment, where there is broad product choice, and the adviser receives no benefit from recommending one product over another, where does the conflict arise? In an environment where there is a narrow APL filled with proprietary product, which is associated with the Licensee or the Licensee's parent company, and the adviser has an extremely limited product choice to recommend from, how great is the capacity to conflict advice?

And yet, the government is proposing to only ban platform provider payments on the basis that these are reasonably expected to influence product advice?

It is important to note however that just because capacity for conflict exists, a position of **conflict does not exist until it is actualised, or acted upon**, i.e. by placing the interests of the licensee or associated company (e.g product provider) ahead of the clients. It is also equally important to note that conflicts can be easily managed (we note that there is no equivalent prohibition against proprietary product from being recommended to a client which we assume to be on the basis that such conflicts can be managed). This is reflected in the provision s963L and paragraph 2.16-2.18 of the Explanatory Memorandum which recognises that there will be volume based benefit structures which are not inherently conflicted, and it is therefore appropriate to allow parties the opportunity to demonstrate that the benefits are not conflicted. This is a very important provision which we firmly support, as it recognises that it is the factual matrix, and the unique set of circumstances which apply to the remuneration arrangements, that will indicate whether or not the remuneration structure is conflicted and has the reasonable capacity to influence advice.

We ask the government and the PJC to seriously reconsider the prohibition against volume rebate payments from platform operators on the basis that conflicts associated with such payments can in fact be managed and in fact represent a much lower capacity to conflict advice than vertical integrated models with a proprietary product focus.

**Recommendation: reconsider the prohibition against volume rebates from platform providers to licensees on the basis that such a prohibition is anti-competitive and in recognition that potential conflicts can be effectively managed.**

## 4. Grandfathering of existing arrangements

**Existing arrangements grandfathered, such as commissions, with the exception of Platform Provider Payments**

Transitional arrangements permit grandfathering of arrangements entered into before the day of commencement, with the exception of platform provide payments. This allows commission payments to be grandfathered where they are provided under existing arrangements. There is no corresponding protection, allowing grandfathering, of existing platform provider payments. These are intended to be covered by the regulation.

As the regulations, and the criteria under which such payments will be allowed or disallowed, are not yet known there is no mechanism in place for ensuring existing arrangements related to platform provider payments are grandfathered.

Failure to grandfather existing platform provider arrangements within the Bill is inconsistent with the government's commitment under the FoFA package reforms to introduce '**a prospective ban on conflicted remuneration structures** including commissions and volume payments'.[4]

We note that the government has grandfathered existing commission arrangements recognising that the ban will 'have substantial impact on the industry' and that it is fair for the changes to apply on a prospective basis and not on a retrospective basis.[5] The government proposes to allow grandfathering of existing contracts (regarding commissions) to ensure that changes apply on a more gradual basis.[6] Recognising that prohibiting platform provider payments will also have substantial impact on the industry and that it is fair and reasonable for the changes to apply on a prospective basis, it is essential for the existing platform provider payments to also be grandfathered in the Bill, and not in the regulations.

It is noted with interest that the government has provided no basis for why existing commissions should grandfathered in the Bill whereas existing platform provider payments will not. The Explanatory Memorandum analogises platform provider payments as 'commissions in another guise[7]'. If platform payments are characterised as such then it is only consistent for such payments to be grandfathered on a similar basis under the Bill.

**Grandfathering of existing arrangements and s51(31) of the Constitution – Acquisition of Property Must be on Just Terms**

The reforms do not currently protect from the conflicted remuneration ban existing arrangements in relation to payments from platform operators.

[4] http://futureofadvice.treasury.gov.au/content/Content.aspx?doc=reforms.htm
[5] http://futureofadvice.treasury.gov.au/content/Content.aspx?doc=faq.htm#Q3_4
[6] http://futureofadvice.treasury.gov.au/content/Content.aspx?doc=faq.htm#Q3_4
[7] See page 48 of the Explanatory Memorandum

We submit that there is a significant risk that failure to grandfather benefits provided by platform providers under existing arrangements, or arrangements entered into prior to the commencement of the legislation, is contrary to the constitutional power s51(xxxi) which provides Parliament with the power to make laws with respect to the '***acquisition of property on just terms*** *from any State or person for any purpose in respect of which the Parliament has power to make laws.'*

The FoFA reforms proposing to ban existing contractual rights (we note that contractual rights can be property for the purposes of s51(xxxi) of the Constitution[8]), such as prohibiting payments received from platform providers without grandfathering provisions, may fall foul of the requirement to acquire property on 'just terms.' This is on the basis that one party is deprived of the right to receive a payment of money arising under a contract while the platform provider receives the corresponding benefit of no longer having to make such benefits.

Section 51(xxxi) provides a 'constitutional guarantee'[9] that laws with respect to the acquisition of property must be on just terms. Dixon J in the Bank Nationalisation case noted the importance of the constitutional guarantee of s51(xxxi) which;

> *'provides the Commonwealth parliament with a legislative power of acquiring property; at the same time* ***as a condition upon the exercise of the power*** *it provides the individual or the State, affected* ***with a protection against governmental interferences with his proprietary rights without just recompense'***[10]*.*

This constitutional guarantee has been given a broad interpretation[11] which is '*appropriate to such a constitutional provision*.'[12] Caselaw in this area has held that where a law amounts to an acquisition other than on just terms, the relevant legislation has been declared invalid. This was the case in *Smith v ANL Ltd* [2000] HCA 58 which found that law reducing the limitation period of an injured merchant seaman's right to commence an action claiming damages was law providing for the acquisition other than on just terms. The legislation was declared invalid.

In the Bank Nationalisation Case, the *Banking Act 1947* (Cth), which sought to nationalise private banks in Australia, was declared invalid on two grounds, one of which was that the law was not on 'just terms' and therefore outside of the Commonwealth's constitutional power to acquire property under s51(xxxi).[13]

Should existing arrangements in relation to payments from platform operators not be grandfathered, in line with other benefits grandfathered in s1528 of the Bill the legislation runs the material risk of being

[8] The concept of 'Property' within s51(xxxi) of the Constitution is a broad one, see *Georgiadis v Australian and Overseas Telecommunications Corporation* (1994) 179 CLR 297 where it was held that a chose in action amounted to 'property' for the purposes of s51(xxxi) of the Constitution.

[9] Gibbs CJ, Mason, Wilson, Brennan, Deane and Dawson JJ in *Clunies-Ross v Commonwealth* [1984] HCA 65

[10] Dixon J in *Bank of New South Wales v The Commonwealth* (1948) 76 CLR 1, also known as the Bank Nationalisation case

[11] Dixon J in *Bank of New South Wales v The Commonwealth* (1948) 76 CLR 1

[12] Gibbs CJ, Mason, Wilson, Brennan, Deane and Dawson JJ in *Clunies-Ross v Commonwealth* [1984] HCA 65

[13] http://en.wikipedia.org/wiki/Bank_of_New_South_Wales_v_Commonwealth

challenged on the grounds of constitutionally validity. To the extent that the legislation, or the regulations for that matter[14] amounts to an acquisition other than on just terms the legislation may be declared to be invalid.

**Recommendation: For the Bill to grandfather benefits provided by platform providers given under existing arrangements in s1528(1)(a) and remove the platform provider exclusion in s1528(1)(b).**

[14] See s1530 of the Bill which provides that the Regulations do not apply where an acquisition of property other than on just terms would result.

5. **Professional development and conflicted remuneration *(which includes non-monetary and soft dollar benefits)***

The Bill includes prohibition of non-monetary, or soft-dollar, benefits and sets out specific exemptions from this ban. Benefits with a genuine education or training purpose will be exempted under the 'professional development exemption' and the regulations will provide the criteria around this exemption. It is intended that professional development will only be allowed (and not form part of non-monetary conflicted remuneration) where it is conducted in Australia or New Zealand, 75% of an 8 hour day is spent on professional development provided that travel costs, accommodation and entertainment outside of the professional development activity is paid for by participants, its employer or licensee.

The government has provided no rationale as to why the professional development requirements can only be provided on an Australian and New Zealand, and not on an international basis. As the professional development component consists of a minimum time requirement, eg 75% of time in a standard 8 hr day to be spent on education, there is no reason why it is necessary to restrict such development

Such a prohibition will considerably restrict Australian financial services professional's cross-jurisdictional education, and development as well as significantly hampering domestic innovation and development. From an educational and content perspective, it is also important to highlight the rationale for holding conferences on an international basis is often driven by increasing exposure to highly regarded international speakers which are not available domestically. Given the geographical distance and separation between Australia and the U.S or Europe, access to international speakers is often not attainable unless conferences are arranged internationally.

Limiting the professional development exemption to domestic basis will significantly undermine Australia's international financial services exposure and is inconsistent with the government's objectives of promoting Australia as a financial services hub.[15]

**Recommendation: International and cross-jurisdictional exposure is critical to the professional development of Australian financial services professionals and the industry as a whole. We recommend the government reconsider the domestic requirement of the professional development basis exemption and remove it altogether. The minimum time requirements and primary purpose of education can still be met regardless of where the professional development is held.**

[15] http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/044.htm&pageID=&min=wms&Year=&DocType=0; http://www.dpm.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/038.htm&pageID=003&min=brs&Year=&DocType=0

## 6. Anti-avoidance

The legislation includes an anti-avoidance provision prohibiting schemes entered into for the ‘sole or non-incidental purpose of’ avoiding the legislation. The legislation, as it currently stands, does not clarify that the anti-avoidance provision only relates to schemes that were entered into at the commencement of the legislation or, at the very least, upon the announcement of FoFA.

The key issue with the lack of clarification as to the effective operation of the anti-avoidance provision poses the very real risk that legitimate arrangements entered into prior to the commencement, or even the announcement of FoFA, are inadvertently at risk of being caught by the anti-avoidance provision as currently drafted. If this were to be the case this would effectively amount to retrospective legislation. The Legislation Handbook provides that retrospective legislation should only be utilised in exceptional circumstances.[16]

> *‘RETROSPECTIVE LEGISLATION*
>
> ***6.18*** *Provisions that have a retrospective operation adversely affecting rights or imposing liabilities are to be included only in* ***exceptional circumstances and on explicit policy authority****.’*[17]

We do not believe the government has intended to adversely affect existing rights or impose liabilities for legitimate current arrangements as can be seen by the grandfathering of existing arrangements which will be prohibited on a prospective basis only. For the avoidance of doubt we recommend that the anti-avoidance provision apply to arrangement entered into with a specific start doubt such as the commencement of the legislation or, at the very least, the announcements of FoFA.

**Recommendation: For the avoidance of doubt the application of the anti-avoidance provision must be clarified, confirming that the effective date of the anti-avoidance provision is the commencement of the legislation (or at the very least the announcement of FoFA requirements).**

[16] http://www.dpmc.gov.au/guidelines/docs/legislation_handbook.pdf

[17] Page 29, The Legislation Handbook, Department of the Prime Minister and Cabinet Canberra

## 7. Future of Financial Advice Commencement Date

Recognising the significant impact that the proposed reforms will have on the industry, systems and processes, the government has confirmed the prospective nature of key pieces within the proposed reforms in order to provide confidence and stability to a significantly changing regulatory landscape. For the same reasons it is also essential to ensure that sufficient time is provided to enable the industry to develop and implement the necessary compliance frameworks, business systems and processes to ensure compliance by the operation of the legislation.

We also note with interest various media reports that there may be a 'soft compliance approach' to the legislation[18]. If a soft compliance approach is being endorsed in recognition of insufficient time between the finalisation of the legislation, enabling industry participants to finally undertake the necessary work to ensure compliance with known requirements and obligations, and the operative date of the legislation then it is essential that this be recognised in the legislation, through a later commencement date, rather than a 'soft approach' to compliance. It is important to note that the legal obligations and standards are set by the law and not through 'soft' enforcement. It is therefore appropriate that the appropriate timeframes to allow compliance are reflected in the Corporations Law with an appropriate commencement date.

**Recommendation: We again reiterate the importance of providing the industry with sufficient time to make the necessary changes and highlight that there will be insufficient time between the finalization of the proposed reforms and the 1 July 2012 proposed operative date. We recommend a postponement of the commencement date to no less than 1 July 2013 to enable sufficient time for implementation.**

[18] http://www.investordaily.com.au/13224.htm; and http://investordaily.com.au/13227.htm

## 8. Summary

The proposed start date of the legislation is quickly drawing near and the final form of the legislation, setting out the new regulatory requirements, remains outstanding. We urge the PJC and the government to reconsider moving the commencement date forward to 1 July 2013, to enable industry participant to develop the necessary policies, systems and processes to ensure compliance by the commencement date. Postponing the commencement is the appropriate mechanism for providing further time and not through a soft compliance or enforcement approach.

In considering the issues with the proposed reforms we urge the PJC to fully consider the adverse impact and unintended consequence that some of the reforms will result in. A number of the key components within the proposed reforms are furthering consolidation rather than enhancing competition in an already heavily concentrated industry. This will be to the detriment of innovation, development and consumer choice. It is also a significant threat to the Government's commitment of promoting Australia as an international financial services hub. Due consideration of the adverse consequences is essential to the utility and the effectiveness of the proposed reforms.

It is our view that the reforms have the capacity to significantly benefit consumers, the industry and all its participants. In order to achieve this however the reforms must be balanced, practical and minimise adverse consequences.

When considering the issues for review we encourage the Committee to consider this submission together with our first PJC submission into this inquiry, which is now considering both the *Corporations Amendment (Future of Financial Advice) Bill 2011* and the *Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011*.