SUBMISSION

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

This submission concerns the proposal in the above Bill to restrict the use of the terms 'financial planner' and 'financial adviser'.

I am a chartered accountant with some thirty years' experience in public practice including financial planning and superannuation. I was a member of the FOFA Treasury/Financial Services Industry Consultation Group and have written extensively on technical and policy issues in the financial services and superannuation industries.

I acknowledge that many of the people who support the restrictions in this Bill do so because they genuinely believe that consumer protection will be substantially increased. While I agree that there may be some limited consumer protection benefits in this measure, I respectfully suggest that the benefits are outweighed by a substantial risk of detriment to consumers.

In justifying this position, I draw the Committee's attention to the outcomes of the recent FOFA legislation. While I accept that FOFA may lead to some improvements in the way in which the industry operates (time will tell), that legislation contains significant political compromises for which the industry fought hard. These include allowing the continuity of widely-used forms of conflicted remuneration such as commissions paid on individual life insurance policies, trailing commissions on existing arrangements and percentage-based asset fees on investment products. The latter are often misleadingly referred to by the industry as 'professional fees for service', but in reality they are commissions paid by clients (akin to real estate agents' commissions).

My concern is that should the restrictions in this Bill become law, consumers of financial services are likely to incorrectly conclude that by consulting what amounts to a 'government-endorsed' licensed 'financial planner' or 'financial adviser' that they will be dealing with a professional person who can be relied upon to act in their interests without the improper influence of conflicted remuneration.

The Committee may not be aware that a similar restriction to the one proposed in this Bill was floated some years ago (in the 1990s) with considerable encouragement from industry associations. The proposal was to restrict the term 'financial planner' and any similar terms. There followed a lengthy discussion in the industry about which descriptors would be deemed to be 'similar'. Clarification was sought on terms such as 'financial adviser', 'wealth adviser', 'wealth consultant', 'financial consultant', 'financial coach', 'personal financial consultant' and 'financial planning coach'. The potential 'restricted list' eventually reached at least fifty descriptors before the proposal became somewhat farcical and sank without trace.

My point here is that proper consumer protection is not achieved from what a licensed person is called (or not called) in legislation. It is achieved by professional practitioners adopting the highest ethical (conflict-free) standards, developed and enforced through self-regulation (my strong preference) or imposed by law. It is misleading to suggest that consumers should trust the advice of financial planners and financial advisers who use a legislatively restricted descriptor (implying trust and professionalism) while allowing those same planners/advisers to continue to receive commissions, percentage-based asset fees and other forms of conflicted remuneration.

I acknowledge the argument in the Explanatory Memorandum that unlicensed property spruikers should not be able to use the term 'financial planner' and 'financial adviser'. However, I suggest that it is not the descriptor used/not used by property spruikers that is the cause of the problem. Rather,

it is the manner in which the spruikers are paid, namely by commissions on the sale of real estate (which are structured in the same way as percentage-based asset fees). I accept that imposing a ban on the use by property spruikers of the terms 'financial planner' and 'financial adviser' (and a multitude of other similar terms that property spruikers might seek to adopt) may achieve limited protection for some consumers. However, it will not stop the enthusiastic (and at times, unethical) selling activities of spruikers. This can only be addressed by removing the conflicted payments (commissions) that cause their bad behaviour in the first place. I suspect that measure is unlikely to be introduced any time soon.

If the government is determined to place legislative restrictions on the terms 'financial planner' and 'financial adviser', an effective measure from a consumer protection viewpoint would be to legislate so that those terms may ONLY be used by licensed persons who do not receive any form of conflicted remuneration. Then, at least, consumers could have the confidence and trust that licensed financial planners and financial advisers with whom they consult are what they claim to be, that is, un-conflicted professional advisers whose interests are clearly and unambiguously aligned with their clients' best interests.

Robert M.C. Brown AM BEc.,
Fellow of the Institute of Chartered Accountants in Australia

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