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Email transmission

Committee Secretary
Senate Economics Committee

Email economics.sen@aph.gov.au

Dear Sir or Madam

Future of Financial Advice reforms - submission

We refer to the *Corporations Amendment (Future of Financial Advice) Bill 2011* (Cth) (**First Bill**) and *Corporations Amendment (Further Future of Financial Advice) Bill 2011* (Cth) (**Second Bill**).

We thank you for the opportunity to provide feedback on the proposed reforms.

Advising the client

- 1 The statutory based best interest duty requires further clarification. Whilst any change from established law (in this case the fiduciary obligations of service providers) may result in transitional difficulty, moving away from a global obligation to one with required minimum standards may in this case result in a return to a 'checklist' mentality. As a result, ambiguities in the detail of the obligation will prove particularly troublesome.
- 2 The generic obligation, though undoubtedly warranted in the abstract, does not in its formulation appear to cater well for provisions of services in specific limited circumstances ('scaling' of advice or services). Specifically, though the requirement to consider other 'subject matters' in the provision of personal advice given to clients has been removed since the Exposure Draft, there remains a lack of clarity around the meaning of the generic requirement to 'take any other step that would reasonably be regarded as being in the best interests of the client'.
- 3 This may result in clients having to incur unnecessary costs when they are seeking only discreet advice. We believe that advisers and other service providers should be able to circumscribe their

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obligations with the consent of their clients and not potentially be required to consider matters beyond those requested by their client.

- 4 Additionally, we believe that those subject to the obligation to *take steps regarded to be in the best interests of the client* should be clearly provided with some basic protections in circumstances where they have reasonably relied upon the advice or information provided by others (as is the case for corporate directors in *Corporations Act* s. 189) so long as clients are able to avail themselves of remedies against the information providers.
- 5 Further, where an adviser only recommends a single product or products of a single issuer, the Second Bill should clarify that, provided the adviser considers its product meets the client's objectives, the adviser is not required to consider other products (for example, products of the issuer's competitors). In this circumstance, in order to discharge its duty to act in the best interest of the client, the adviser should be required to appropriately disclose in the statement of advice that no other financial products have been considered because the adviser only recommends a single product or the products of a single issuer.
- 6 Finally, we believe there should be greater clarity about the inter-relationship of the opt-in provisions for continuing services and the continuation of the advisor's 'best interest' obligations. Where a client fails to opt-in (perhaps by failing to return the required forms), an advisor previously charged with monitoring a portfolio, for example, is placed in an invidious position unless it is clear that the cessation of services and implications thereof are actually known by the client. The limitation of the obligation to the client in such circumstances should be clearly articulated.

Small value exemption for non-monetary benefits

- 7 We submit that the proposed threshold for 'one-off' non-monetary benefits should be \$1,000 rather than \$300. A soft dollar benefit of \$1,000 is unlikely to influence the choice of financial product recommended by a licensee or representative or otherwise influence the financial product advice given.
- 8 The proposed \$300 limit is not sufficient to cover the cost of reasonable soft dollar benefits which may typically be given to a licensee or representative such as an iPad, laptop, holiday or travel vouchers, etc. Such items, provided they are not given frequently or regularly, would not be considered by most retail clients to impact the advice or recommendations given by a representative or licensee.

Professional development criteria

- 9 The additional requirements proposed for the professional development exemption from the conflicted remuneration provisions as set out in the explanatory memorandum are unreasonable. The explanatory memorandum proposes that any travel costs, accommodation and entertainment outside of the professional development activity must be paid for by the participant or their employer or licensee.
- 10 Professional development activities for genuine educational or training purposes are crucial to maintaining the quality of the advice given to retail clients and the skills and competencies of financial advisers, particularly concerning knowledge of the products they recommend. We submit that the 'expenses' criteria should only require entertainment outside of the professional development activity be paid for by the participant or their employer or licensee.
- 11 It is appropriate for reasonable travel and accommodation costs relating to the professional development activity (for example, the cost of accommodation for the duration of the professional development activity) to be paid by the provider of the activity. Further, the cost of professional

development activities is often subsidised with conference, travel and accommodation costs paid by the participant, or their licensee or employer, in part and the balance paid for by the training or education provider.

- 12 Given the proposed restriction that the professional development must be conducted in Australia and New Zealand and at least 75% of the time of a standard eight hour day spent on professional development, we believe those requirements will ensure the professional development activity is for genuine training or education purposes and there is no need to prohibit the training or education provider from meeting or subsidising the reasonable costs of travel and accommodation.
- 13 Further, if professional development may be provided to advisers there should be consequential clarification that appropriate professional development would not necessarily be considered a commission for prior financial product advice.

Availability of records of exempt non-monetary benefits

- 14 Paragraphs 2.36 and 2.37 of the explanatory memorandum to the Second Bill, indicates that records of non-monetary benefits, which are professional development activities, administrative IT services or infrequent or irregular benefits under \$300, should be made available to a person who request such records. Given the explanatory memorandum acknowledges that such non-monetary benefits are not conflicted remuneration as they are unlikely to influence the products being recommended or advice given to retail clients, we believe it is inappropriate for records of such items to be made available to retail clients.
- 15 We submit that the existing disclosure obligations of such benefits as highlighted in the explanatory memorandum are sufficient and no further information should be required to be provided to retail clients. To do so will impose an unreasonable administrative burden on licensees and representatives in circumstances where such information will not be relevant to retail clients.

Please contact me if you wish to discuss our submission further.

Yours sincerely

Tim Wiedman
Partner