



FPA

FINANCIAL PLANNING
ASSOCIATION
of Australia Limited

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1 March 2004

Dr Kathleen Dermody
Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
The Senate
Parliament House
Canberra ACT 2600

Dear Dr Derrnody

Parliamentary Joint Committee Hearing on Draft Corporations Amendment Regulations Batches 6,7 and 8

The Financial Planning Association of Australia Limited (FPA) is the **peak** professional organisation for the financial planning industry in Australia. With approximately 14,500 members organised through a network of 31 Chapters across Australia **and** a state office located in each capital city, save Darwin, **the FPA** represents qualified financial planners who manage the financial affairs of over five million Australians with a collective investment value of more than **\$560** billion.

On behalf of its members, the **FPA** is pleased to **present** its submission to the Parliamentary Joint Committee on Corporations and Financial Services Review into **Draft Corporations Amendment Regulations Batches 6,7 and 8.**

FPA members are committed to the implementation of a more effective disclosure regime, and have actively endorsed the Financial Services Reform Act (**FSRA**) provisions which required the disclosure of **fees** and charges in dollar based terms unless **this is not "reasonably practicable"**.

However, the requirement to disclose in dollar terms unless it is "not possible for a compelling reason as determined by ASIC" imposes much greater obligations on **AFSL** holders than the existing requirements which require dollar disclosure only where **it was** "reasonably practicable" to do **so**, and FPA members are concerned that **the** Regulations may have unintended consequences for consumers. In particular, **the** "reasonably practical" benchmark affords protection to consumers, **but** additional and increased costs of compliance being introduced by the proposed Regulation will not be offset by improved consumer protection.

Draft Regulations

There are **two** key changes introduced by the new Regulation:

- **The** new requirements no longer enable the licensee to determine those circumstances in which they should not be required to disclose in dollar terms, and vesting that responsibility with **ASIC**; and

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- Raising the requirement for exemption **from** the need to disclose in dollar terms from those situations in which it is not "reasonably practicable" to those in which it is "not possible".

Importantly the "reasonably practicable" test was developed after six years of consultation between industry, consumer groups and **policy-makers**. It had been accepted by all participants as the appropriate disclosure benchmark **for** consumer protection and industry **efficiency** outcomes. Accordingly, we firmly **believe** that the "reasonably practicable" test should be allowed to operate in the marketplace before a change is made to a higher and technically dependent benchmark.

FPA members who are AFS license holders believe that the costs of meeting the higher and untested benchmark proposed by the Regulation, although **difficult** but **technically possible**, will necessitate **significant system** changes and process redesign. Consumers will have the costs of such changes passed on to them however, the benefits to be achieved by the consumer where the AFS licensee meets the higher benchmark are intangible with the **likely** consequence that the consumer is forced to meet higher costs for **little** or no gain.

FPA Recommendation

The FPA recommends that the Regulations and associated sub regulations are redrafted **so** that each reference to "not possible" in relation to dollar disclosure is replaced with "not **reasonably practicable**". However we recommend that **the** determination of "reasonably practicable" should rest with **ASIC**.

This recommendation maintains the higher standard established **as a** result of requiring **ASIC**, as opposed to the licensee, to **determine** appropriate situations in which to grant relief from requirements to disclose in dollar terms. However, **it also** introduces sufficient **flexibility** and interpretive power to ensure that **ASIC** is able to fully consider the implication of disclosing in dollar terms in each instance **so** as to avoid any unintended impacts on licensee *and* consumers.

Transitional Date

FPA proposes an extension of the transitional period from **1 July 2004** to **1 July 2005**. Assuming that the Regulations will be finalised by late March, the current timeframe leaves less than four months for participants in **the** financial services sector to implement the significant changes to systems and processes to enable them to achieve compliance with the requirements. This is commercially unrealistic and may not be technically achievable.

Further, the determination as to whether **it is** possible to disclose in dollar terms will be vested with **ASIC**. Accordingly **it is** vital that a comprehensive **policy** statement **as** to what constitutes "compelling reasons" for non disclosure in dollar **terms** be established in close consultation with financial services sector participants. Such a policy statement will require appropriate consultation and then **sufficient** time for **ASIC** to draft and circulate their position. **It** therefore seems **unlikely** that a **1 July 2004** start date would allow sufficient time for this process to be completed in an appropriate manner.

We **also** recommend that **ASIC** be given additional powers to further extend the **implementation** date in specific situations where **AFSL** holders identify that they may not be able to **comply** by the revised transitional date.

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Such provisions *will* need to be carefully controlled to ensure that they are not subject to abuse, however without such flexibility some institutions may be in contravention of the law simply because system upgrades and modifications were not technically possible in the timeframes provided,

If you have any questions in relation to the matters we have raised, please contact Mr Con Hnstodoulidis, Manager, Public Policy & Government Relations, on (03) 9627 5249.

Yours sincerely



Kerrie Kelly
Chief Executive Officer