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Dr Sarah Bachelard
Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Suite SG.64
Parliament House
Canberra ACT 2600

By email: corporations.joint@aph.gov.au

Dear Dr Bachelard,

Inquiry into regulation of property investment advice

The Securities & Derivatives Industry Association was formed in 1999 at the time of the demutualisation of the Australian Stock Exchange to represent the interests of market participants. Currently we have 69 member organisations which account for 98% of trading by value on ASX. In addition we have over 1300 individual members and are working to build the profession of stockbroking. Our member firms employ in excess of 8,000 people and account for some \$2.5b worth of trading daily on ASX.

On 14 October 2004, SDIA made a written submission to the **Ministerial Council on Consumer Affairs** on its Discussion Paper on *Property Investment Advice* dated August 2004. Based on that submission, we would like to provide the following comments for the consideration of the Committee in relation to the regulation of investment property advice.

- 1. Level Regulatory Playing Field:** regulation of the property investment advisory industry ought to be on a level playing field with other investment products. Early in 2004, our Member firms completed the transition to the Commonwealth's financial services reform legislation. The FSR changes introduced a uniform licensing and disclosure scheme for all participants in the financial services industry. Our Member firms now hold Australian Financial Services Licences under the *Corporations Act*, typically to advise and deal in Financial Products. The FSR regime introduced more rigorous requirements, including enhanced consumer protection measures for disclosure, adviser conduct, suitability, complaints handling and training. For example, retail clients can refer complaints against our members to an external complaints resolution scheme which has the power to make binding orders against our members to pay compensation of up to \$100,000.

In addition to regulation by ASIC, as Market Participants of Australian Stock Exchange Limited, our members are subject to another layer of strict regulation. Our members are regulated by ASX and its associated companies in their trading, clearing and settlement functions and activities. ASX has rigorous investigation and enforcement powers, and harsh penalties can be imposed in the case of misconduct. For example, ASX has the power to fine member firms up to \$250,000. The ASX Disciplinary Tribunal often exercises this power, with 6-figure fines not uncommon.

Some investors in property schemes are being advised to make very large commitments. Sometimes direct property investment is their sole or major financial investment. We see no reason why these investors should be denied the same rights and protections as those afforded to investors in financial products under the *Corporations Act* which, in our industry, is enhanced by the regulation and supervision of ASX.

2. **Domestic carve-out:** our members are most concerned about schemes that market significant financial investments aimed at the investment/superannuation market. Sometimes these schemes offer a '**Whole financial solution**', so that direct property investment becomes a person's sole or major financial investment. Seldom would professional advisers recommend such a major proportion of one's investment in just one asset class. In the domestic area, we agree that appropriate carve-outs for domestic (i.e. owner occupied) housing ought to apply and that the current State-based Real Estate Agents legislation should suffice. However, once the agent's advice moves into the area of investment, the same regulation as applies to financial products ought to apply.
3. **Regulatory Structure:** ideally the Commonwealth (through ASIC) should take over the regulation of this area, rather than a Federal/State arrangement. The Co-Operative Scheme for the regulation of securities and futures that operated until 1991 was abandoned because it was complex, burdensome, ineffective, and expensive. It would be unfortunate if the regulation of property investment advice suffered the same fate. As we have seen in the securities area, Constitutional hurdles can be cleared. A National scheme ought to be adopted from the outset, which could be easily achieved by amendments to the definition of 'financial product' under the *Corporations Act*.
4. **Definition of Retail investor:** in our earlier submission to the Ministerial Council, we noted that its Discussion Paper contained its own definition of 'retail investor'. Under FSR, the concept of 'retail investor' has been the subject of much discussion and work by market participants, ASIC and The Federal Treasury. Our members are still grappling with the differing definitions of 'retail investor' under the *Corporations Act*, and it would cause further confusion if another definition were added.

Thank-you for the opportunity to contribute to this important review. If you have any queries, please contact Doug Clark, Policy Executive on 0417 168804 or email: dclark@sdia.org.au.

Yours faithfully,



David Horsfield, MSDIA
Managing Director/CEO

cc. Mr Mark Adams, ASIC
Ms Christine Jones, Johanna Turner & Mr David Lawrence, ASX
Mr Mike Rawstron, Treasury