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Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Mr Sullivan

RE: INQUIRY INTO THE CORPORATIONS LEGISLATION AMENDMENT (SIMPLER REGULATORY SYSTEM) BILL 2007

From the outset, we would like to acknowledge the Government's efforts in reducing the costs of advice by reducing unnecessary compliance burdens imposed upon financial planners without providing any benefits to consumers, and for its consultative approach since its proposals paper was released November 2006.

We also welcome the Government's approach to refer Proposal 1.1 to the wider financial services industry to consider greater clarity in the general and personal advice definitions of the *Corporations Act (2001)* [The Act].

This Bill is widely supported by our membership because it will reduce administrative and regulatory complexity, and a smooth passage through Parliament would be welcome.

However, we would like to bring to the attention of the Committee some significant issues identified in the Bill and its associated Explanatory Memorandum.

THE PROPOSED THRESHOLD OF $15,000

The Explanatory Memorandum proposes a $15,000 materiality threshold, and as argued previously in our submission (extract attached for ease of reference and marked "Appendix A"), the FPA believes that a threshold of $25,000 would be more effective, with the inclusion of superannuation and life insurance products.

We certainly welcome an increase from the proposed amount of $10,000 and the inclusion of existing superannuation arrangements. However, we look forward to further discussions with the Government to present a case to adjust the threshold (to be stipulated by regulation) to a level that encourages a worthwhile percentage of the community to seek professional advice to enable them to consolidate their superannuation, to ensure that their savings are managed wisely, and to protect their assets.

LIFE RISK PRODUCTS

Upon analysing the Bill, the FPA is disappointed that life risk insurance products appear to be excluded from the materiality threshold, pursuant to the new section 946AA(1)(b)(iii) – except to the extent that advice about a superannuation product relates to a life risk insurance product. It is our position that this would create a bias towards advice on life insurance attached to superannuation, and anecdotal evidence from members suggests that many consumers mistakenly believe that insurance attached to superannuation is adequate. Reasons for excluding life risk insurance have not been articulated in the Explanatory Memorandum.

Several thresholds were proposed by the FPA in its earlier submission (please see the attached enclosure). However, feedback from financial planners and risk specialists suggests that an indexed $1,500 threshold applying to risk premiums (pursuant to appropriate regulations and a consequent amendment to the proposed section 946AA), whereby life risk advice on premiums less than this amount would enable a RoA to be issued in place of a SoA, would be a significant step in the right direction. It is noted that a RoA still should be "clear, concise and effective", must disclose any conflicts and remuneration, and be backed by a reasonable basis for the advice. This threshold may also apply to insurance associated with superannuation accounts.

CRIMINAL SANCTIONS

Section 946AA(4) of the Bill requires that the providing entity must comply with "any applicable requirements of regulations made for the purposes of this section" or criminal offence is committed. This is inconsistent with other sections of the Act which identify the relevant Regulations that apply. Any "applicable" requirements of the regulations are open to interpretation, and imposing criminal sanctions in case of unintentional breaches (particularly where there is no consumer detriment) is unnecessary and excessive. We look forward to the opportunity to comment on any new proposed regulations that are intended to modify the present regulations governing the requirements of a RoA.

NO PRODUCT RECOMMENDATION AND NO REMUNERATION

The FPA believes that a financial adviser should be able to be compensated for his/her time in providing strategic advice where no specific products are recommended. We would therefore argue that relief from the requirement to give a SoA for strategic advice should not be conditional on the financial adviser not receiving remuneration. Since the type of advice covered by this provision does not involve a particular financial product (named or implied) or brand of products, no remuneration will be received for that advice. A client may receive strategic advice without direct charge or, more commonly, be charged for the advice on a fee for service basis. Fee for service charges are made by way of invoice and therefore the client will have a written record of the exact amount of the charge.

Of course, after strategic advice, further advice may be given involving product placement, and remuneration will most likely be received. However, for the strategic advice, the fact that the particular advice is paid for should not affect the quality of the advice or influence it toward any particular product outcome. We suggest that section (b) Item 118 should be removed.

CONSOLIDATION ADVICE

One area which we believe requires greater clarification surrounds section 947D of the Act, which applies when advice recommends replacement of one product with another, and is specific to additional information to be included in a Statement of Advice. The Explanatory Memorandum at part 1.3 and 1.5 states "…Where this occurs, the Record of Advice must disclose the matters listed in section 947D of the Corporations Act. These disclosures relate primarily to charges and pecuniary interests relevant to the client." However, this is inconsistent with the Bill which does not propose to extend section 947D to other advice documents, such as a SoA.

With that said, the FPA believes that any such changes would defeat the purposes of this provision. Licensees providing consolidation advice should be able to rely on section 945A which still requires a financial adviser to have a reasonable basis for advice, appropriate to the client, after making inquiries. And, as noted above, requirements to disclose potential conflicts and remuneration are also integral requirements of a RoA.

SOPHISTICATED INVESTORS

Section 761GA, which applies to sophisticated investors, appears to be limited exclusively to investment products. The FPA believes that these amendments were intended to include life insurance products (such as group life cover), but these provisions appear to exclude such products without justification. Simple amendments to the wording of the provisions would correct this anomaly.

SUMMARY

As a package, the Bill introduces a number of measures which will go a long way in reducing the compliance burden on financial advisers and we applaud the Government on its ongoing commitment to improving the affordability of advice and reducing the compliance burden. We look forward to working with the Government to address the issues that we have outlined above, and to resolve the intended changes to the personal and general advice regimes.

We would welcome the opportunity to attend the hearing in Canberra to present our case to the Joint Parliamentary Committee.

If the Committee is interested to discuss these issues in more detail, please contact the FPA's General Manager Policy and Government Relations, Gerard Fitzpatrick, on Tel: 02 9220 4505

Yours sincerely,

Jo-Anne Bloch
Chief Executive Officer

Appendix A: FPA Submission to Treasury, January 2007

PROPOSAL 1.3 – THRESHOLD FOR REQUIRING A SOA

Introduce a threshold into the Statement of Advice requirements such that a full Statement of Advice would only be required if the advice given is in relation to an investment amount that is above $10,000, except in relation to superannuation. A Record of Advice would need to be kept for advice in relation to amounts smaller than this threshold.

In line with a number of previous submissions, the FPA in its submission of 26 May 2006 supported the establishment of a 'materiality' concept in relation to provision of a SoA. The expanded use of a RoA has significantly eased problems where a further SoA was thought to be required in an existing ongoing client relationship. It is also acknowledged that other proposed refinements, particularly incorporation by reference, will help address concerns about the cost and length of SoAs.

However, there are limits on the situations in which a RoA can currently be used. Consequently, the lack of a materiality threshold continues to inhibit the provision of cost effective advice. The FPA therefore welcomes this proposal but is concerned that its usefulness will be significantly reduced both by the exclusion of superannuation and insurance from its application and the level of threshold suggested. The FPA opposes fragmentation of the regulatory regime without valid reason because of the unnecessary compliance costs and confusion it creates.

In arguing for a materiality threshold, the FPA has been strongly motivated by concerns across its membership that the costs of producing a SoA are denying many Australians the benefit of professional advice when considering whether to consolidate a number of superannuation accounts. (The Appendix contains an actual, de-identified case study illustrating the economic unviability of consolidation advice.) ASIC was concerned at what it found in this regard in the results of its Shadow Shopping Survey into superannuation advice and has been exploring different options with the FPA and other stakeholders to ease regulatory barriers to consolidation.

A recent ***Choice*** report on multiple superannuation accounts details the adverse consequences and costs of there being an average of 2.6 superannuation accounts for every member of the Australian workforce. It is noteworthy that amongst the causes of this situation Choice lists difficulties in obtaining simple financial advice on consolidation.[1] One of the report's recommendations is "Legislation or ASIC guidance should make it easier for funds and financial advisers to provide basic and targeted financial advice about account consolidation".[2]

The costs associated with the preparation of formal written advice are often disproportionate to the level of risk to the client associated with the advice being provided. With the introduction of a realistic threshold, it would for example be possible to deal in many cases with the consolidation of a number of minor superannuation

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[1] Choice, The Super Secret: How multiple accounts cost consumers billions, November 2006, page 2.

[2] Choice, Op.Cit, page 4.

accounts with the recommendation being recorded in a RoA. All other existing obligations such as the need for the advice to have a reasonable basis would remain.

Apart from lacking any strong policy basis, the exclusion of superannuation will minimise the impact of the proposal. A survey done for the FPA in late 2004 found that 45% of all advice provided by a financial planner involved superannuation.[3] It is notable that this result was before the introduction of Super Choice on 1 July 2005 and announcement of the Government's Simpler Super reforms which are commonly acknowledged to have made superannuation the investment vehicle of choice for Australians. The percentage if a survey was taken now would most probably be significantly higher.

As superannuation is their second most important asset after the family home for many Australians, it is inconceivable that a financial planner would ignore superannuation when giving comprehensive advice. In fact, ASIC would rightly criticise any financial planner who gave financial planning advice without considering the client's superannuation interests.

In these cases where the amounts involved were below the agreed threshold, the benefit of Proposal 1.3 would be denied the client. A SoA will still be required because the financial planner cannot provide a RoA covering superannuation advice and preparing a RoA for investment advice below the threshold and a SoA for superannuation would multiply the costs unnecessarily.

Given the potential benefits and the absence of any compelling reason to the contrary (the Proposals Paper is in fact silent on this issue), the FPA strongly believes that the materiality threshold should also apply to superannuation. Nor have any reasons been given for the exemption of insurance products from the proposal. In view of the widely acknowledged under-insurance problem in Australia, facilitating cost effective advice through application of a materiality threshold would seem an obvious step to take.

For practical reasons related to the timing of the consultation period, FPA is not in a position to make specific recommendations on the level of threshold suitable for each product type. However, feedback from FPA members has been strong that in relation to investment amounts, the threshold should be significantly higher than the proposed $10,000. For example, in view of common levels of business and the cost of providing a SoA, $25,000 has been cited as an appropriate dividing line for superannuation and non superannuation investments.

The case for altering the proposal is shown by the example of a client who seeks advice on how to invest $12,000 in superannuation and $9,000 in a managed investment fund. (These amounts would not be restricted to high net worth clients.) As the proposal now stands, a SoA would required for the superannuation component of the advice, denying the client the benefit of the proposal. If the proposal is allowed to apply to superannuation, the total of the investment advice is well above the $10,000 threshold again making the proposed change inoperable.

[3] Consumer Sentiment Survey Report, January 2005, conducted for FPA by RMIT University, page 13

Strong reasons also exist to consider the value of a range of thresholds to apply to common situations:

- an additional investment into an existing portfolio where the additional investment represents less than 20% of the current portfolio;
- a client initiated rollover into an existing portfolio where the rollover comprises less than 20% of the current balance;
- asset allocation and portfolio advice provided to Corporate Superannuation fund members;
- advice to make regular contributions to an existing portfolio where annual contributions do not exceed $25,000;
- an increase or reduction of life risk cover where the increase/decrease less than 20% of the current cover;
- life and TPD with a sum insured under $500,000;
- trauma with a sum insured of $100,000;
- any life cover with an annual premium under $500; and
- a monthly income sum insured of $4,000 in relation to continuous disability cover.

Rather than being determined by Government alone without the benefit of comprehensive input on product characteristics and costs, FPA strongly urges that materiality thresholds appropriate to particular product type be developed by industry in co-operation with ASIC. The thresholds could be contained in an industry code to be adopted by FPA and other relevant organisations.

The FPA notes that the Proposals Paper refers to future investments being taken into account when calculating the threshold. The FPA recommends that there be a limit on the time frame for taking future investments into account, otherwise the threshold will have limited application.

The FPA would also flag the need for the threshold to be indexed over time to ensure its continued effectiveness. The method of indexation should ensure that the amount is increased to whole numbers.

As explained above in relation to Proposal 1.2, the RoA provisons will need to be revised to enable this proposal to apply in situations where a SoA has not already been given.

FPA Position
Threshold for requiring a SoA: FPA supports a full SoA only being required if the advice given is in relation to amounts above product specific thresholds to be determined through industry consultations (but greater than $10,000 for investments). There would be no exceptions to application of the threshold which would apply to superannuation and non superannuation products alike. A RoA would need to be kept for advice in relation to amounts smaller than the relevant threshold.

The FPA notes that the RoA provisions would need to be amended to allow a RoA to be used in certain situations where a SoA does not already exist.