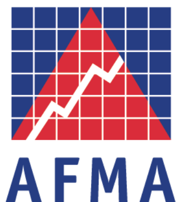

15 September 2014

Committee Secretariat
Senate Standing Committee on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: economics.sen@aph.gov.au

Dear Committee Secretary

Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014

The Australian Financial Markets Association (AFMA) appreciates the opportunity to provide comments to the Senate Standing Committee on Economics (the Committee) in relation to the Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014 (the Bill).

We would like to make the following comments in relation to the Bill.

1. Red tape

We note recent initiatives by the Government to reduce regulatory red tape in the financial services industry. We commend the Government's efforts and recognise that such initiatives are consistent with the objectives of FOFA - namely "to improve the trust and confidence of Australian retail investors in the financial services sector and ensure the availability, accessibility and affordability of high quality financial advice". We are concerned that the obligations being proposed by the Schedule 1 amendments in the Bill are contrary not only to the objectives of FOFA, but also the Government's efforts so far in reducing red tape. We submit that there are already sufficient measures in Chapters 7 and 7A of the Corporations Act which conceptually and practically work to achieve the same outcome the Government is seeking to achieve through the Schedule 1 amendments. We believe that the additional obligation on clients to acknowledge receipt of Statements of Advice (SOAs), as well as receipt of further/varied advice does not serve any real purpose in ensuring accessibility for clients to affordable and high

Australian Financial Markets Association
ABN 69 793 968 987
Level 3, Plaza Building, 95 Pitt Street GPO Box 3655 Sydney NSW 2001
Tel: +612 9776 7955 Fax: +61 2 9776 4488
Email: info@afma.com.au Web: www.afma.com.au

quality advice. Rather, the additional step is likely to confuse clients or delay advice to clients. The industry would also benefit from clarify from Treasury in the Explanatory Memorandum as to the ramifications for a providing entity where the client has not signed/acknowledged in the requisite instances.

2. Specific comments on the Bill

2.1 Section 946A(2A) - the SOA must be signed by the providing entity, or an individual acting on behalf of the providing entity.

Requiring a signature on an SOA does not appear to increase consumer protection for the client and will require significant technology spend to adjust SOA production systems to allow for a signature to be applied before the SOA is sent. If these measures are to proceed, we submit - to ensure that these measures are technology neutral and to avoid the cost and inconvenience to clients of sending hard copies - the provision should be amended to make it clear that "signed by" includes the application of an electronic signature.

2.2 Section 946B(2B) - the client must acknowledge receipt of the SOA by signing the SOA as soon as practicable after it is given to the client.

This requirement will not increase consumer protection and will impose an inconvenience on clients and will require duplicate SOAs to be provided to enable a copy to be signed and returned to the providing entity.

In relation to this provision, the Supplementary Explanatory Memorandum notes at paragraph 1.7 that "the significance of the client's signature on the SOA is to acknowledge receipt of the SOA. In signing the SOA, the client is not agreeing or accepting the SOA, and the client is not signing that they wish the advice in the SOA to be executed."

The realities of implementing this provision are impracticable and administratively burdensome. SOAs are rarely (if ever) issued 'on the spot'. They require detailed and lengthy effort to prepare and are generally sent to the client some time after the adviser and client have met face-to-face. As such, the client must sign the document and send it back to the adviser – yet another document the client must sign and despatch after completing a raft of engagement documents such as application forms, banking authorities, transfer forms and so on. On-boarding of clients in financial services is already administratively intense.

Although the client is "is not agreeing or accepting the SOA, and the client is not signing that they wish the advice in the SOA to be executed", the client will need this to be explained to them. This will no doubt lead to misunderstandings, given that any signature on a document is usually associated with a binding agreement or contract. SOAs are not contractual documents. An SOA is the provision of advice which the client may choose to ignore in whole or part, or indeed, act in contradistinction to the contents. Furthermore, any perception that the client

has agreed to the advice may give pause to a client wishing to seek redress because of poor advice (in as much as "but I agreed to the advice").

We also note, as an aside, as a matter of legislative drafting it is not clear how the client is bound by the provision as it is the licensee and their representatives who are subject to the provisions of the Act, not the client. As there is no consequence for the client if they do not acknowledge receipt of the SOA (as per subsection 946A(2)(2C)) and nor should there be any consequence for them, the requirements set out in 2B lack meaningful purpose.

If these measures are to proceed, we submit that the provision should be amended to make it clear that electronic confirmation of receipt of the SOA is sufficient.

2.3 Section 946A(2E) - if the client seeks further or varied advice from the providing entity, the providing entity must ensure that the instructions for that further or varied advice are documented in writing signed by the client (either before or after the advice is given).

This requirement runs counter to acting the best interests of a client to provide accessible advice in a meaningful way and on a timely basis (often in a market context on a time critical basis). A requirement to *'ensure'* that instructions are provided in writing and signed by the client does not appear to add any consumer protection and could leave clients exposed in times of market volatility. This provision also seem to be overlapping, while also contradicting, the further advice/record of advice provisions set out in section 946B (as modified by Regulation 7.7.10AE).

We submit, rather than requiring the instructions to be in writing, that there simply be a requirement to keep a record of client instructions where advice is sought.

2.4 Section 946A(2G) - the providing entity, or an individual acting on behalf of the providing entity, must acknowledge receipt of instructions for further or varied advice.

This provision will require new business controls for compliance and do not appear to increase consumer protection.

2.5 Sections 947B(2)(c) and (2)(f) – additional statements in SOAs

The proposed amendment in section 947B(2)(cc) stipulates a statement that the provider of the advice is required in circumstances specified under section 961J to give priority to the client's interests when giving the advice. We query whether the statement should be a reiteration of section 961B or, if any of the circumstances listed in section 961J apply, the statement should be that "priority will be given to the client's interests when the advice is provided".

It is not clear how the fee information required by section 947B(2)(cd) will be different to the remuneration and benefits information required by s947(2)(d). We submit that these provisions be consolidated and for additional clarity to be provided to identify the additional information required.

3. Transition period

Not all participants in the financial services sector have had the opportunity to provide input on the content of this latest version of the Bill prior to it being tabled in Parliament. Accordingly, they have not had a reasonable time to consider the likely implications of the requirements in terms of their business processes.

There is currently no transition period for the introduction of the new measures. These new measures will require significant technology build and spend, and new business controls. There is insufficient time for licensees to implement the processes necessary to comply with the new requirements for Statements of Advice by 1 January 2015.

We anticipate that at least 12 months would be required to implement these new measures, and request that provision be made for a transition period of at least 12 months.

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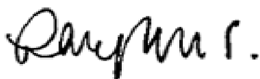
Please contact me on 02 9776 7997 or tlyons@afma.com.au if you have any queries about this submission.

Yours sincerely



Tracey Lyons
Head of Policy