24 December 2015

Manager, Financial Services Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: professionalstandards@treasury.gov.au

Dear Mr Hockey

Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015 - Exposure Draft Bill and Explanatory Memorandum

Thank you for the opportunity to make comments on the exposure drafts of the Bill and Explanatory Memorandum in relation to professional standards of financial advisers.

The Australian Financial Markets Association (AFMA) understands that the timing of the consultation process is driven largely by the need to introduce the Bill into Parliament in the February 2016 sittings. However, the short consultation period, which is effectively truncated by the Christmas and new year break, means that AFMA members have had a very limited time to consider the requirements set out in the draft legislation and the likely practical consequences for their employees/authorised representatives and their business. Accordingly, the comments below relate to immediately apparent issues but there may be others that will arise.

Notwithstanding the above, AFMA members remain generally supportive of the need to lift professional standards in financial advice, and welcome an approach that applies across the industry.

Our comments are set out in accordance with the numbering in the exposure drafts.

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1. **Draft section 921B – meaning of education and training standards**

   It is not clear from the drafting whether a person who is or will be a relevant provider has to meet the standards in the order set out in subsections (1) to (5), or whether section 921B should only be taken as a list of the standards a relevant provider must meet.

   If it is the former, there is a problem with the sequencing in that a person cannot be entered on the Financial Adviser Register (FAR) until they have met all the requirements – that is, they cannot provide personal advice to retail clients unless they are on the FAR. However, it is unlikely a person will be able to develop all the skills and competencies required to become a professional adviser unless they have the opportunity to interact directly with clients and participate in the provision of personal advice.

   Accordingly, there needs to be a mechanism by which a person can be entered on the FAR as a relevant provider on a provisional or restricted basis, until such time as they are able to satisfy all of the requirements. It may be, for example, that a provisional relevant provider must be supervised by an experienced adviser as part of the completion of the professional year requirement in s921B(3).

2. **Exemption for time-sharing schemes in draft section 921C(4)**

   In the absence of a clearly articulated reason for this exemption, AFMA does not support carve-outs for relevant providers who are providing advice to retail customers on Tier 1 financial products.

3. **Section 921L(1)(b) – consultation by the standards body**

   The group of entities listed in subparagraph (b)(i)-(iv) with whom the standards body can consult is too narrow, and should be broadened to include other bodies with whom consultation would be beneficial in the course of the standards body carrying out its role.

4. **Section 921MA – Minister to nominate the standards body**

   AFMA is concerned that the standards body is to be, in effect, a private company rather than a statutory body whose operations are funded by industry. While we understand the Government's reluctance to create new government or quasi-government bodies, this should be outweighed by the importance of ensuring that the standards body is able to perform its role on an ongoing basis, unimpeded by the interests of the parties who are to be represented by directors of the standards body. There is a perception risk associated with industry being seen as controlling the body but there is also a risk of other interests seeking to impose unrealistic standards that unduly impact on business and the ability of relevant providers to provide financial services. Taken together, there is a risk of these competing interests resulting in the standards body not being able to carry out its functions properly.

Accordingly, as per our previous submissions in relation to the professional standards framework, it remains AFMA's preference that the standards body is a statutory body appropriately funded through recovery arrangements from industry.

However, if the Government decides to proceed with the model for the standards body as set out in draft Division 8C, then AFMA recommends that the mix of directors is changed to explicitly include directors who have expertise in education and standards setting. These directors could be drawn from academia or from other sectors that are governed by standards bodies that set professional requirements – for example, medicine, law, and accounting.

If the standards body is to be a private company rather than a statutory body, it follows that the Minister should have a power to "approve" the chair of the board of directors, rather than the power to "appoint" the chair. If the standards body is a statutory body, it would be appropriate for the Minister to appoint the chair, at a minimum, and possibly a number of the other directors.

5. Section 922HA – obligation to notify ASIC about compliance with continuing professional development standard

The proposed obligation to lodge a notice annually in respect of each relevant provider is quite onerous and it is not clear what purpose it will serve. Licensees do not have any other annual notification requirements of this nature in respect of their authorised representatives. It is sufficient that licensees be required to ensure that the licensee and/or any relevant providers authorised by the licensee have met the CPD requirements each year.

6. Section 922HB – obligation to notify ASIC in relation to breaches of the Code of Ethics

The proposed requirement on a licensee in s922HB(1)(a) to lodge a notice with ASIC if the licensee becomes aware of an 'alleged breach' of the Code of Ethics by a relevant provider is a significant burden. It potentially means, for example, that every concern raised by a customer or every complaint that would otherwise be dealt with in accordance with dispute resolution arrangements, will need to be notified to ASIC before the matter is properly considered or resolved. AFMA recommends that the notification obligation should apply where it is determined that a relevant provider has breached the Code of Ethics, in accordance with the monitoring and enforcement arrangements that apply to that Code.

7. Part 10.23A – transitional provisions

AFMA believes that the proposed transitional arrangements for existing advisers are too narrow and do not provide an appropriate pathway for experienced advisers who may not hold an appropriate degree or qualification.

Over time, there will be a diminishing number of existing relevant providers who do not hold a bachelor degree or equivalent. It is highly likely that all new advisers coming into the financial services industry now hold a bachelor degree.

Advisers who have been in the industry for a long period of time and have good compliance and performance records should not be penalised or effectively forced out of the industry by this legislation. Indeed, some of these advisers are the very people who would be expected to provide mentoring and supervision to new and inexperienced advisers.

As per our previous submissions, AFMA believes there should be scope for the standards body to establish alternative pathways under which an adviser who has a minimum period of experience and a good record can be assessed to determine whether they meet the minimum expected standards for professionalism, competence and knowledge. We envisage that a relatively small proportion of existing advisers would need to use this pathway in any event.

AFMA is a registered training organisation regulated by ASQA and has substantial experience in establishing training programs that meet vocational standards. We have considered what options would be available to a relevant advice provider who does not hold a bachelor degree to meet the "equivalent" qualification test by 1 July 2019. In our view:

(a) If an individual commenced a bachelor degree at the beginning of calendar year 2016, they would have to study full time in order to meet the deadline of 1 July 2019, and even then it may not be possible to complete a degree in time, depending on the course and the university. It is not feasible or realistic to expect existing advisers to do this.

(b) For those people who hold a bachelor degree that is determined by the standards body to not be appropriate for inclusion in the professionalism framework, there will be insufficient time between the point at which the standards body decides which degrees can be included and which cannot and 1 July 2019 to complete a suitable bridging program.

(c) There are existing programs at AQF 7/post graduate level offered by universities that a ***financial planner*** could undertake. For example, the University of NSW offers a graduate certificate in financial planning that can be completed in 6 months full time study or 12 months part time, or a graduate diploma that could be completed in 12 months full time or 2 years part time. Postgraduate university study is costly – for example, the cost of completing a graduate certificate or graduate diploma in financial planning at UNSW in 2016 is $15,600 or $31,200 respectively.

However, critically, there are currently no similar postgraduate qualifications for ***financial advisers*** who offer advice in a specialist product eg. foreign exchange. Financial planning is a profession that requires the practitioner to take a holistic view of the client's financial profile across their lifespan and consequently it is essential that the financial planner has a thorough education in superannuation, insurance, tax and social security, retirement and post-retirement planning, and estate planning. This requirement is articulated in RG 146. Specialist product advisers do not need knowledge of areas such as estate planning, superannuation and social security; the knowledge and skills required to advise clients in a specific product area are very different. For example a foreign exchange adviser must have an in-depth knowledge of foreign exchange markets and participants, and of foreign exchange products and derivatives.

(d) New programs could be developed to meet the needs of individuals who do not hold a degree or have a degree that is not considered appropriate to meet the professionalism standards set by the standards body. However, given that these standards may not be known in sufficiently final form until mid-2017, there will not be enough time for education providers - whether in the higher education or vocational education sector - to develop new courses and meet all of the regulatory requirements in relation to the approval of new training programs.

For example, in the vocational education sector, the prescribed process for developing new qualifications and obtaining the Australian Industry and Skills Committee's endorsement involves extensive industry consultation, approval by State education authorities and a rigorous quality assurance process. In AFMA's experience, this process alone takes 12–18 months. It is only after endorsement that a registered training organisation can develop programs based on the new qualification. Consequently, it is not possible for a product adviser to complete a new vocational qualification at AQF level 7 or 8 in time to meet the July 2019 deadline.

Similarly, in the higher education sector, the quality assurance standards for new course development mean that it is unlikely that higher education institutions could develop new qualifications in sufficient time to permit financial product advisers to complete them by July 2019. Non self-accrediting institutions must obtain accreditation from the Tertiary Education Quality Standards Agency (TEQSA) for any new courses. This process is onerous as very detailed plans and documentation, covering all aspects of a course, from design to monitoring and review, must be prepared before TEQSA commences its review which takes at least six months. Universities are able to self-accredit new qualifications and so have the capability to develop new courses in shorter time frames. However, it is unrealistic to expect universities to be able to do so in less than 12 months as they must work to the TEQSA Core Standards for course development and undertake rigorous internal course quality assurance processes.

We trust these comments are of assistance. If you have any queries please contact me on 02 9776 7997 or tlyons@afma.com.au . Please note I am on leave until Monday 11th January 2016.

Yours sincerely

Tracey Lyons
Head of Policy