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Sophie Waller
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Strategic Policy
Australian Securities and Investments Commission
GPO Box 9827
Melbourne 3001

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Dear Ms Waller,

RE: Consultation Paper 164 – Additional guidance on how to scale advice

The Association of Superannuation Funds of Australia (ASFA) would like to lodge this submission in relation to the Consultation Paper 164 *Additional guidance on how to scale advice* (the CP).

ASFA is a non-profit, non-political national organisation whose mission is to advance effective retirement outcomes for members of superannuation funds through research and advocacy. We focus on the issues that affect the entire superannuation industry. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self managed superannuation funds (SMSFs) and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

Comments on the consultation paper

The CP is a good start in regards to providing guidance. Greater clarity is always useful as it provides confidence with which advisers can proceed. Notwithstanding this ASFA has some concerns with the timing of the review and would also like to make some general comments on the content of the CP.

The timing of the Future of Financial Advice (FoFA) legislation and the Consultation Paper

The release of exposure draft for the FoFA Tranche One legislation clearly heralds a significant potential impact on the form and content of CP 164.

As stated at our recent meeting with the Australian Securities and Investments Commission (ASIC) in Sydney, the industry is aware that the CP is based on the current law whereas the FoFA legislation will bring about significant change so as to potentially render the CP redundant. The

FoFA changes will no doubt trigger a revision of the CP and notwithstanding any unforeseen delays in Parliament, one might expect the FoFA law to be passed sometime early in 2012.

Therefore the timing between finalising the CP and the passage of the FoFA legislation through Parliament (that features the best interest duty among other things) risks making the CP obsolete in a very short timeframe.

In particular given that the best interest obligations in FoFA is that the objectives, financial situation and needs of the client must be the paramount consideration when providing advice, the CP lacks clarity in how to reach agreement in relation to these issues when scaling advice.

ASFA therefore recommends that finalisation of the CP be deferred until after the FoFA law is settled.

General comments

We make the following general comments in regard to the CP.

- The examples provided in the CP are all a good start to explaining and providing guidance. However there appears to be too much connectivity between the examples outlined in the CP and the intra-fund advice topics, particularly given that “intra fund” only relates to bundling advice costs in the administration fee for superannuation products under Stronger Super.
- The examples also need to include cases where the outcome might not be so clear cut. Examples of situations involving the “grey areas” would be more useful. This should include instances where the conversation with the client moves from a general advice circumstance to a personal advice one and back again.
- The examples at times tend to be unclear and ambiguous in relation to exactly what advice can be provided to members of a superannuation fund. Page 12 sets out an example of single issue advice provided to a superannuation member however the example provides that in relation to the insurance aspect of the advice the adviser is unable to compare the insurance properly and that the member should seek their own advice. It is unclear here whether an authorisation for insurance is required to provide advice about insurance within superannuation. There needs to be greater clarity here as well as around the circumstances in which an adviser needs to decline providing the advice sought by the client.
- The CP also does not provide guidance on the delivery of on-line advice. Examples on how this should be managed would be useful.
- A reasonable contentious issue among the ASFA membership was the potential

revocation of the relief provided under CO 09/210. In the main ASFA accepts that this will be revoked as it is clear that the take up for the class order has been low and that the full impact of the FoFA legislation is yet to be seen. However, it has also been pointed out that if the trustee model for accessing the relief was changed to one that allowed the relief to be accessed by another AFSL provider or related entity of the trustee then the relief may be used more widely.

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We thank you for this opportunity to provide our submission on the consultation paper. On the basis of the above issues ASFA recommends that finalisation of the paper is deferred until after the FoFA legislation is settled.

Should you have any questions on any of the matters raised in this submission please contact feel free to contact me on 02 8079 0858 or at dgraus@superannuation.asn.au.

Yours sincerely



David Graus
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