Stockbrokers
Association of Australia
Incorporating SDIA

Corporations Amendment (Register of Relevant Providers) Regulation 2014

Enhanced Register of Financial Advisers

Submission on Draft Regulation

17 December 2014

The Stockbrokers Association of Australia would like to provide comments on the draft *Corporations Amendment (Register of Relevant Providers) Regulation 2014* (the '**Regulation**'), which was released for comment on 27 November 2014.

We are grateful to have been part of the Government's *AFSL Working Group* which, as noted in the *Consultation Note* accompanying the Regulation, considered in depth a number of implementation issues concerning the register and reported its recommendations to the Government in August.

The Regulation creates a register of financial advisers which includes:

(a) the adviser's name, registration number, status, and experience;
(b) the advisers' qualifications and professional association memberships;
(c) the adviser's licensee, previous licensees/authorised representatives and business name;
(d) what product areas the adviser can provide advice on;
(e) any bans, disqualifications or enforceable undertakings; and
(f) details around ownership of the financial services licensee and disclosure of the ultimate parent company where applicable.

We note that pending further consideration of **training and professional standards**, item (b) above (qualifications and professional memberships) will not form part of the register in its initial phase. As stated in the Explanatory Statement to the Regulation,

> *It is intended that the register will, in time, also contain educational qualifications and professional association membership information. This would require further amendments to the Principal Regulations.*[1]

However, we note that, following the AFSL Working Group meeting on 11 December 2014, this item may be brought forward. Given the tight timeframes in place, we look forward to urgent **clarification** in this regard.

In this **Submission**, we do not wish to ventilate all of the matters that were raised and argued extensively during the meetings of the AFSL Working Group which took place in July and August.

We do, however, wish to raise some general points, and to address the Questions posed in the *Consultation Paper*.

As we stated publicly in October this year after the Government's announcement[2], the Stockbrokers Association of Australia welcomes the launch of a new public register of financial advisers. In the absence of a current register, it will be a great leap forward and should provide useful information for consumers and financial services providers alike.

However, as discussed below, we trust that in the medium term the Register can go further.

Further Enhancements for Bad Apples

For many years the Stockbrokers Association has sought a register which warns consumers and prospective employers about adverse findings or misconduct of advisers: conduct that has fallen short of formal regulatory action, but which nevertheless is important to know. This would provide a more effective mechanism to eradicate and prevent the movement of Bad Apples around the industry. There are some excellent models in operation elsewhere, and Australia is sadly lacking in this area.

Various statutory models (U.S., U.K., Hong Kong, etc) provide for compulsory reporting of specified misconduct, and protection in making and accessing such reports. The U.S. scheme, administered by FINRA, is favoured by the Association as a model for an Australian scheme. In the U.S., when a person leaves a licensed firm, the Firm must lodge a 'Form U-5' which discloses matters regarding the person, including:

- Investigation Disclosure – ongoing investigations or proceeding by a regulator
- Internal Review Disclosure - internal review for fraud, etc
- Criminal Disclosure – convictions for felonies or investment-related misdemeanours
- Regulatory Action Disclosure – concluded actions by a regulator
- Customer Complaints – client claims of over $15,000
- Termination Disclosure – circumstances of the termination

[1] *Draft Explanatory Statement - Corporations Amendment (Register of Relevant Providers) Regulation 2014* p.3
[2] Senator the Hon Mathias Cormann, Acting Assistant Treasurer *Media Release - An enhanced public register of financial advisers* 24 October 2014

The Form U-5 disclosures are accessible to investors via FINRA's BrokerCheck, and must be searched by prospective employers. In particular, information regarding client complaints and circumstances of termination at previous employers can be very useful for future clients and employers.

The new Australian register is a good first step and a big improvement on the current situation where there is no register at all. However, we trust that it can be enhanced to include more meaningful information in the future. While this may involve interference with an adviser's right to privacy, it would be justified by increased consumer protection. The rights of consumers (and prospective employers) to be protected from Bad Apples ought to outweigh an adviser's right to hide an unfavourable past. Good advisers should have nothing to hide.

We trust that these enhancements will form part of future phases in the implementation of the register.

Consultation Note – Questions

The *Consultation Note* accompanying the Regulation poses a number of questions for comment. Those questions and our comments are set out below:

Question 1: Does the definition of 'eventual owner' in section @922C achieve the Government's policy intent?

We understand that the Government's intent in having the eventual owner in the register is to provide transparency for the client to know who the client is dealing with. As we noted in the *AFSL Working Group* meetings, stockbroking firms tend to have very simple ownership structures which are already transparent. In the Market Participant and securities dealer sector, the predominant business model is for the firm to hold the AFSL and to appoint employee representatives rather than authorised representatives. It is estimated that there are 3,000 – 5,000 representatives in this sector. This is to be contrasted with the 'dealer group' model which exists in financial planning.

As to the specific wording, while there are different tests of 'control' as well as ownership in the *Act*, it is consistent with the market integrity rules and would appear to achieve the Government's intent.

Question 2: Is 'authorisation' the most suitable term to describe instances where an individual, either as a:
- natural person AFS licensee;
- authorised representative of a licensee;
- any employee or director of the licensee; or
- an employee or director of a related body corporate;
is able to provide personal advice on more complex products to retail clients, or is there an alternative more appropriate descriptor (such as 'permitted' or 'allowed to'?)

'Authorisation' would appear to be a suitable term, and is consistent with the structure of an AFSL.

Question 3: Should the requirement to provide the recent advising history information instead be a transitional regulation?

Providing 5 years' information for every adviser will be a significant task for the whole industry, particularly to trace all movements of advisers during that period. It would be appropriate that it be a transitional requirement, or at least subject to accommodation by ASIC, preferably the former.

Other: Any views on the proposed implementation timeframes, transitional arrangements and form lodgement fees are welcomed

In this section we would like to comment on the following matters:

- Scope
- Timing
- Funding, and
- Link to FSG

Scope: While in the Minister's October announcement, and throughout all of the deliberations of the AFSL Working Group, the emphasis has been on registering advisers with retail clients, we again would like to put on record our view that eventually, the register should capture ***all*** **advisers, retail and wholesale**. We have seen some serious trading and advisory issues in the wholesale space, for example the UK LIBOR manipulation and related Australian matters. The United States FINRA scheme discussed at the start of this Submission, and others, do not distinguish between wholesale and retail advisers. Advisers may also change roles between retail and wholesale and vice versa. It is therefore important that wholesale advisers also be captured by the register, otherwise it may leave a regulatory **blindspot**.

Timing: The timing of the launch of the new register (March 2015), especially with the legislative instruments and ASIC forms not even finalised as of mid-December, will obviously present logistical challenges for the industry. The tight timeframe is not assisted by the holiday period, which means that systems development is generally frozen during December and January, which makes it difficult to implement the necessary changes to systems, policies and procedures. As with other new FOFA measures, we trust that ASIC adopts a **facilitative approach** to the launch of the register, and that strict compliance is not expected, provided that licensees are making genuine efforts to put new systems, policies and procedures into place in order to comply with the new registration and lodgement requirements. Moreover, we note the recent recommendation of the Government's *Financial System Inquiry* in relation to the timing of implementation of regulatory change, which states –

> *Except in exceptional circumstances, Government and regulators should give industry participants* ***at least six months*** *to begin implementing regulatory changes once they are finalised. Additional* ***transitional periods of 12–24 months*** *will also generally be appropriate. Grouping commencements at*

> *fixed dates during the year — for example, 1 July and 1 January — would help industry participants to accommodate overlaps between related changes, rather than having to make multiple system changes.*[3]

Funding: The development of the register will be funded by an increase of $5 in the ASIC filing fee for the new form for the Appointment of an Adviser, which will be $43 per adviser.[4] If we can assume that 15,000 employee representatives will need to be registered for the first time under the arrangements, that amounts to $645,000 online / $1,290,000 paper across the industry just in filing fees. If we assume an internal cost to the licensee of $50 to collect information[5], prepare and lodge per form, which adds another $750,000 across the industry, meaning that the commencement of the adviser register will cost the industry over $2,000,000. These costs are significant, and it is a shame a more staggered approach, especially in relation to funding ASIC's development costs, was not considered. However, it is perhaps understandable that under the current circumstances of the registry business, the Government wishes to recoup the extra costs sooner rather than later.

Link to FSG: While it has already been recommended but rejected, we trust that the register could one day include a link to the licensee's Financial Services Guide to provide important information about the firm.

Thank-you for the opportunity to provide comments on the draft regulation, whose implementation will enable an important gap in financial services regulation to be filled.

We would of course be happy to discuss any of the matters raised further with Treasury. Should you require further information, please contact me, or Doug Clark, Policy Executive dclark@stockbrokers.org.au .

David W Horsfield
Managing Director/CEO
STOCKBROKERS ASSOCIATION OF AUSTRALIA
17 December 2014

[3] Commonwealth of Australia *Financial System Inquiry – Final Report* November 2014 Recommendation No.31, p.257 (emphasis added)
[4] See *Consultation Note* at paragraph 42. At the time of writing the new ASIC form had not been released. Presumably, the new form will be based on the current ASIC form *FS30 Appointment of Authorised Representative* for which the filing fee is currently $38 for electronic lodgement or $74 for paper lodgement.
[5] This estimate may be very conservative, for instance where advisers have changed employers in the previous 5 years.