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3 July 2008

Financial Services and Credit Reform Green Paper
Corporations and Financial Services Division
Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

Green Paper on Financial Services and Credit Reform

The Financial Planning Association of Australia Limited (FPA)¹ welcomes the opportunity to respond to the Government's Green Paper on Financial Services and Credit Reform.

The FPA agrees with the main policy objectives of the Green Paper. Adopting a uniform national process for credit related services is imperative to ensure consumers are adequately protected and that the integrity of the financial system is maintained. We note the Green Paper makes a number of high level recommendations and there will be a number of practical considerations to address as part of the implementation process.

In this context, the FPA makes the following recommendations:

Mortgages, Mortgage Broking and Non-Deposit Taking Institutions

Implement option 2 of the proposals that the federal Government regulate all forms of credit. Recognising the necessity to address pressing issues with regard to mortgage regulation it may be necessary to undertake a staged implementation so that mortgage and finance broking is brought under Federal regulation as a priority with other forms of credit to follow. The requirements should be consistent with the current Corporations Act and not require additional licensing for existing Australian Financial Services Licensees.

Trustee Corporations

Option 1 should be adopted to enable licensing and supervision of trustee corporations by ASIC.

¹ The FPA is the peak professional organisation for the financial planning sector in Australia. With approximately 12,000 members organised through a network of 31 Chapters across Australia and a state office located in each capital city, except Darwin, the FPA represents qualified financial planners who manage the financial affairs of over five million Australians with a collective investment value of more than \$630 billion.

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Margin Lending

Option 2 should be pursued. Chapter 7 of the Corporations Act should be amended to include margin loans as financial products.

Debentures

Implement further changes to the regulation of debentures as proposed in the Green Paper. They should be issued by licensed entities so that all the necessary protections are provided to consumers.

Property Investment Advice

Investment properties should be regulated as financial products under Chapter 7 of the Corporations Act.

Other Credit Products

As noted above the federal Government should assume responsibility for regulating not only mortgages but also all other forms of consumer credit including credit cards, car loans and other personal loans.

If you would like to discuss any of the issues raised in the submission, please contact our General Manager Policy and Government Relations, Gerard Fitzpatrick (tel: 02 9220 4513; email gerard.fitzpatrick@fpa.asn.au).

Yours Faithfully,



Jo-Anne Bloch
Chief executive Officer

Attachments:
Detailed Submission to Treasury



**Financial Services and Credit Reform Green Paper
Submission to Treasury**

**Financial Planning Association
of Australia**

3 July 2008

Financial Services and Credit Reform Green Paper

Mortgages, Mortgage Broking and Non-Deposit Taking Institutions

Recommendation: Implement option 2 of the proposals that the federal Government regulate all forms of credit. All credit should be regulated as products under Chapter 7 of the Corporations Act.

Federal regime administered by ASIC

The FPA favours the introduction of a Federally based regulatory regime where all finance brokers and credit providers are regulated under the FSR regime. This would avoid the need for a separate licensing system for finance brokers outside of the FSR regime. The regime should ideally incorporate under the FSR regime all relevant credit products and advice provided in respect of those products. We consider that the most appropriate method to administer the regime would be on the basis of the current requirements and undertaken by the Australian Securities and Investment Commission (ASIC).

A number of FPA members and financial institutions operate across Australia. State based regulation is costly, confusing and adds to red tape. A Federal regime has advantages over a State based model. It ensures uniformity across the country in the regulation of issues which are of a national interest. Even if a State based regime was initially consistent, the ability for jurisdictions to take different interpretations or respond to specific events in dissimilar ways risks a divergence over time.

A Federal regime also minimises the need to deal with other problematic issues including the portability of licenses, the potential duplication of requirements, differences in training requirements, and administrative inefficiencies. These issues are particularly important given the national structure of financial services firms, and given it is not uncommon for finance brokers to move between States.

The FPA considers that the greatest importance is to ensure that mortgages, and consequently mortgage lenders and brokers, are effectively regulated so that consumers have adequate protection in this area. Similarly, other finance brokers should be licensed so as to ensure adequate protections for consumers, equivalent to those which they enjoy when they receive advice on whether to invest in a financial product. Therefore, noting the Government's point that further discussion and analysis would need to be undertaken before all credit and all finance brokers could be incorporated under the FSR regime, the FPA would still be supportive if mortgages were considered separately first, and then other credit products were considered for inclusion in the regime at a later date.

Licensing

There is no necessity for a separate licensing system for finance brokers outside of the FSR regime, and it is recommended finance brokers are incorporated under the existing regime. Consistency in regulatory requirements will in the long run be of benefit to consumers. Duplication of licensing may otherwise become an issue if a separate regime was established. Bringing finance brokers and credit providers under the FSR umbrella would create a level playing field such that finance brokers that are giving the equivalent of financial product advice would be subject to the same disclosure and training

framework as financial planners providing advice of a similar nature. Consistent access to external dispute resolution schemes and professional indemnity insurance would also be assured.

Compliance and disclosure obligations

The requirements of an Australian Financial Services License attach extensive compliance and disclosure obligations to the provision of product related advice which are aimed at protecting the interests of consumers. These obligations come at a cost that is not borne by those providing unregulated advice.

Having effective consumer protections in the form of consistent disclosure requirements as required by Chapter 7 of the Corporations Act is important for persons receiving advice on mortgages just as it is for those receiving advice on other financial products. As with financial services, investors in facilities provided by finance brokers should have all the information disclosed to them that is necessary in order to make an informed decision.

The FPA has also recently released a short form Statement of Advice which will be discussed within the Financial Services Working Group (FSWG), and which has formed the basis of discussions with ASIC about how to reduce the size and complexity of SOAs across the industry. Continuing work in this area will be extremely important in order to allow for mortgage brokers to be brought in under Chapter 7 of the Corporations Act, without imposing substantial costs on their business operations.

There should exist minimum entry and ongoing training requirements corresponding with existing obligations for financial product advice. Requirements to satisfy training and experience criteria could include obligations similar to ASIC's Regulatory Guide 146 Licensing: Training of Financial Product Advisers (RG146). Alongside which there would be potential for industry bodies to develop courses for RG146 accreditation and Continuing Professional Development (CPD). There may also be scope to develop tools such as voluntary industry codes to work in conjunction with the new regime.

Finance Brokers and their representatives should be required to be members of an approved EDR scheme at the time they apply for their broking license and for the terms of the license. This is an important aspect of ensuring that consumers are adequately protected with access to free alternative dispute resolution mechanisms.

The FPA considers that brokers should have mandatory equivalent and compatible PI requirements to those established for financial advisers or alternative comparable arrangements approved by ASIC.

Reverse Mortgages

As noted in the Green Paper, a particular example of the need for consistent licensing and regulations for those providing advice on financial products and on credit products relates to reverse mortgages: The regulatory treatment of different intermediaries who may provide advice and play an important role in the distribution of reverse mortgages is unequal. Financial planners are subject to comprehensive consumer protection requirements under Chapter 7 of the Corporations Act, while mortgage brokers are subject to a variety of regimes and remain largely unregulated in certain aspects. The FPA

commends the Government in pointing out that a level playing field is essential to ensure sufficient transparency and consumer protection in this area.

The Green Paper notes ASIC's Report entitled "All We Have is this House: Consumer Experiences with Reverse Mortgages", where various difficulties affecting consumers who utilised reverse mortgage products were highlighted. Of particular note is that most consumers assessed as part of the Report did not discuss any alternatives to reverse mortgages and were unaware of the risks involved. In cooperation with the Australian Consumers Association, Choice and Senior Australians Equity Release Association of Lenders ("SEQUAL"), the FPA has developed guidance to assist financial planners in advising clients on whether equity release products such as reverse mortgages are suitable. This guidance focuses on ensuring the reverse mortgages are appropriate for the client.

Trustee Corporations

Recommendation: Option 1 should be adopted to enable licensing and supervision of trustee corporations by ASIC.

The FPA supports the reforms outlined in the Green Paper concerning the provision of a single national regulatory regime for trustee corporations. Bringing such corporations into the regime should focus on the need for consistent consumer protection by ensuring that the applicable requirements operate across all states and territories. The current fragmented regime can result in differential experiences with potential negative consumer outcomes. A federal regime administered by ASIC would assist to reduce these inconsistencies.

Margin Lending

Recommendation: Option 2 should be pursued. Chapter 7 of the Corporations Act should be amended to include margin loans as financial products.

In respect of the financial planning process, where a margin loan is provided as part of an overall financial plan, the Corporations Act applies to all elements of the plan, as the margin loan facility is considered to be an investment vehicle. It is consistent to bring margin loans under Chapter 7 to ensure consistency of regulatory treatment where advice is provided, irrespective from whom the consumer is obtaining advice.

The growth in margin lending, the relatively high risk of these activities, and the complexity of margin lending products underpins the need for a robust regulatory regime to protect consumers in this area. We agree with the assertion in the Green Paper that since Chapter 7 deals with financial services, financial service providers, and financial markets, the positioning of the regulation of margin lenders within Chapter 7 is an appropriate and efficient extension of the regime. This would provide comprehensive consumer protection in this area which is not entirely evident in the current environment.

Debentures

Recommendation: Implement further changes to the regulation of debentures as proposed in the Green Paper. They should be issued by licensed entities so that all the necessary protections are provided to consumers.

As indicated in the Green Paper, studies indicate that many consumers do not fully understand or recognise the nature of risk and the need to diversify investments. Ensuring that consumers obtain financial advice is an important ingredient in remedying this problem and in improving financial literacy across Australia.

Within the context of the Westpoint property collapse, ASIC, the FPA and the industry as a whole has worked hard to counter unethical advisers who tarnish the reputation of the profession and who undermine the confidence of consumers in the financial planning profession. It is important that any negative effects on consumer confidence flowing from the corporate collapses are minimised. This is true in terms of the high yield finance sector to which the corporate collapses relate, and also to other sectors such as the financial planning profession who may be effected by events.

It is essential that the consumer protection regime is sound, and that consumers are provided with adequate information to make informed decisions. ASIC's recent work in the area of non-listed /non-rated debentures has done much to advance this objective.

On a legislative level there appear to be some gaps, not least the concern that the value at which promissory notes are defined as debentures provides insufficient protection to retail investors. The FPA supports the proposed changes to the debenture regulation outlined in the Green Paper to (i) Harmonise the regulation of promissory notes regardless of their value; (ii) Extend the licensing requirement for debenture issuers; (iii) Requiring debenture trustee companies to be licensed; and (iv) Review the duties of trustees.

Debentures should be issued by licensed entities so that all the necessary protections are provided to consumers. Issuers carrying on an investment business which regularly offers securities to investors and for whom such issues constitute their main source of funding should be licensed by ASIC.

Property Investment Advice

Recommendation: Investment properties should be regulated as financial products under Chapter 7 of the Corporations Act.

While investing in real property, investors hope to enjoy a capital return, a yield and any possible tax advantages available from the investment. In this regard there is little difference between investing in real property to investing in what the Corporations Act considers a financial product. People making property investments should be entitled to the same protections and comforts that they would receive when purchasing a financial product under the FSR regime. These protections include membership of an external dispute resolution service, professional indemnity insurance by an adviser, disclosure requirements, having appropriate compliance structures in place, and specific educational training requirements.

The current regulatory framework does not ensure clients have the protection they deserve when investing in real property. Therefore, while consumers may envisage both real property and financial product investments to be available for the same purpose of wealth creation and financial management, there is a lack of uniformity in the standard, quality and regulation offered to investors.

The Green Paper states that property investment advice can be provided by a range of individuals and entities including real estate agents, property valuers and property developers as well as accountants, buyers' agents, financial planners, and finance and mortgage brokers. However, of this group only financial planners are required to hold an AFS License and meet the requirements of Chapter 7 of the Corporations Act. Rather than attempting to regulate the activities of only one of these entities, the FPA suggests the introduction of a national regime in which investment properties are regulated as financial products under Chapter 7. This would be consistent with the recommendation to meet the objectives identified above and would ensure that consumers have the necessary protections whenever they receive advice relating to investment properties.

We note that consideration would need to be given to differentiate when the property is bought as the purchaser's residence, the purchase of which would not be primarily for investment purposes. We recognise this aspect would need further consideration as to how this transaction should be defined.

Other Credit Products

Recommendation: The federal Government should assume responsibility for regulating not only mortgages but also all other forms of consumer credit including credit cards, car loans and other personal loans.

As detailed above, the FPA favours the Government taking responsibility for all forms of credit in order to ensure stability, consistency and efficiency within the regulatory environment. However, the FPA would not wish to delay the inclusion of mortgages under the FSR regime as part of this process. As such it may be worth first addressing the issue of including mortgages as financial products under Chapter 7, and subsequently consider undertaking research as to whether to include other credit products.