30th January 2020

The Treasury

stampingfeeteam@treasury.gov.au

Dear Sir/Madam,

Stamping Fee Exemption Consultation

We are a relatively small Financial Planning business, operating in various guises for over 18 years. We have adapted over this period to the various reforms and continue to pursue a 'fee for service', client centric business. Under the various previous regimes, we have been recipients of commissions and benefits provided by product manufacturers but have generally seen 'the writing on the wall' and foregone these prior to changes in regulations.

It is therefore with some dismay, we observe the clear abuse of exemptions, such as the one into which you are enquiring. We understand there may be a need for those raising capital to offer an incentive to ensure funds are raised. However, we do not believe that the raising of capital for LIC/LIT/REIT falls within the definition of 'capital' as originally intended. Funds raised in this manner are used to buy existing securities and/or financial assets. This compares to the 'old fashioned' concept of raising capital for general business use.

As you are well aware, the recent changes to regulation promotes an advice process that is client centric, in that, we are no longer 'sellers' of financial products, but 'buyers' of products on behalf of our clients. Not only is this consistent with the Best Interest Duty, it is also consistent with the new FASEA code of conduct. We now occupy the unique position of the 'gate-keeper' for the public interest for investment; not unlike a Doctor prescribing a remedy for a patient.

A large part of this client centric investment process relies on research. It is incumbent on us to ensure due diligence on any product and ensure it is fit for purpose. This can be a timely process, but any decent investment product ought to be able to withstand these timeframes. We are not talking about speculation here, but investments we would expect to be held for extended periods of time.

Alas, while we have sought to keep ahead of regulatory change, we recognise there are those who have not, and maintain 'traditional' business models. This leaves us at a disadvantage as potential clients are drawn to the 'path of least resistance'. This path runs through organisations whose incentive is to 'sell' as much product as possible to generate income. As recent issues have reflected, this is rarely the best outcome for the client.

There have been various examples of funds raising capital in recent years, without the need for incentives. In these cases, it is clearly a case that the product on offer speaks for itself. Advisers will promote these merely because they believe it is good for the client. It may be unsurprising that these products also seem to be relatively simple. Anecdotally, it appears the more complex a strategy, the bigger the incentive required to 'get the issue away'. History shows us this rarely ends well.

For their part, clients are rarely willing or able to understand disclosures that are meant to make it clear advisers are getting paid and have a conflict. They rely on the integrity of the adviser to ensure appropriateness and are generally willing to pay for this. However, commissions paid by product providers are generally not recognised as a cost to the client; thus, an apparent 'free-kick' for the client.

I don't believe this is all about advisers generating commissions, I believe the issuers are complicit in abusing the exemption by also taking 'the path of least resistance'.

The relatively unsophisticated investor needs to be protected from the predations of unscrupulous issuers, conflicted advisers and, well, themselves. Commissions generate pressure to sell, pressure to sell generates cognitive dissonance in which client outcomes are inevitably subordinated. In our experience, clients are susceptible to selling techniques. It is actually something of a relief that we can say NO to a client; happy that it is in their best interest and either way does not affect business revenue – a win-win.

It is our understanding that the FASEA code of conduct prohibits the acceptance of these commissions by adviser. We also understand that a licensee is not prohibited as they are not 'relevant providers' for the purpose of the code. Nevertheless, an adviser is likely to feel under pressure to 'sell' an issue knowing the revenue raised by the licensee may have a direct bearing on their own position and long term remuneration. Again, a cognitive dissonance that requires resolution. It is an unnecessary conflict for the adviser to have to resolve, and again subordinate's client's interest.

We also understand the code applies only to retail clients as defined. However, in my 35 years' experience across financial markets, I can confidently state that having lot of money does not make someone a sophisticated investor. Rescinding this exemption would also serve to protect the 'wealthy, but unsophisticated' who would otherwise remain at risk, if applied only at the 'retail' level.

The current exemption, we believe, undercuts the intention of reforms to the Financial Advice sector and reduces the confidence of the public in the sector. We, therefore, believe the exemption should only apply to companies raising capital for 'traditional' purposes. LIC/LIT/REIT and any other listed investment vehicle ought to be excised from the exemption.

We can see no clear objective reason for maintaining the exemption in its current form. We believe the intent of the exemption has been undermined and is no longer fit for purpose.

Yours sincerely,

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