

Submission to Treasury on Draft FoFA Grandfathering Regulations – Conflicted Remuneration

SB1340



About ISN

Industry Super Network (ISN) is an umbrella organisation for the industry super movement.

ISN manages collective projects on behalf of a number of industry super funds with the objective of maximising the retirement savings and incomes of their members through improving the super system and enhancing the value of industry super to members, the value of the generic industry super category and the brand of network participants and expanding the market share of network participants.

About AIST

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's \$500 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

AIST is a registered training organisation and has recently expanded its education program to encompass the growing and changing needs of all members of the not-for-profit superannuation sector.

AIST offers a range of services including compliance and consulting services, events - both national and international - as well as member support. AIST also advocates on behalf of its members to relevant stakeholders.

AIST's services are designed to support members in their endeavour to improve the superannuation system and build a better retirement for all Australians.

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ISN and AIST wish to make a brief submission in relation to the Exposure Draft Regulations which provide for grandfathering arrangements for the conflicted remuneration ban contained in Division 4 of Part 7.7A of the Corporations Act.

These regulations will repeal the existing Regulation 7.7A.16 and create separate grandfathering provisions for conflicted remuneration benefits which are paid by platform operators and those paid by product providers who are not platform operators.

1. ISN and AIST strongly support this approach in the draft regulations to ensure that all new clients benefit from the bans on conflicted remuneration which are a critical aspect of the FOFA reforms. We conceded throughout the consultation for these reforms that the grandfathering of existing arrangements was necessary to allow the industry an opportunity to transition affected businesses away from dependence on conflicted forms of remuneration. However, the grandfathering provisions must be drafted so as to ensure that conflicted remuneration is not able to be generated in relation to new clients/business who seek advice after the commencement of the FoFA reforms.
2. Due to the complexity of arrangements which exist between platform operators and licensees or representatives of licensees, it is necessary to draft the grandfathering arrangements in different terms. Indeed, the transitional arrangements set out in s1528(2) of the Corporations Act only provides for grandfathering of pre-existing arrangements for non-platform providers, such drafting necessitated by the fact that new clients could be placed within pre-existing arrangements with platform operators, allowing conflicted remuneration to be generated even after the FoFA reforms come into effect. These regulations therefore clarify when the conflicted remuneration provisions do not apply to platform operators, while clarifying when they do apply to non platform operators.
3. ISN and AIST therefore support the structure of the draft regulations.
4. However, in relation to the drafting of Regulation 7.7A.16(2)(c), we are concerned that there remains inconsistency in that grandfathering for platform operators is more generous than for non platform operators. The draft regulations grandfather not only the client's existing investment, but also any future investment the client makes on the platform. For non platform providers, it is only existing investments which are grandfathered. We strongly urge that this regulation should be amended to make clear that only *the investments* held by clients prior to 1 July 2014 should be grandfathered. We submit that any new investment product acquired post that date should be required to conform with the ban on conflicted remuneration. In its current form, the regulation for platform providers not only gives platform operators a significant commercial advantage over other non-platform product providers, it is

also very likely to result in biased advice, with a significant incentive for dealer groups to leave clients within an existing platform.

5. We note that the transition date has been extended by 12 months so that new clients can be placed under grandfathered arrangements which pay conflicted remuneration until 1 July 2014. Again, while it is unfortunate that such delay has occurred, we concede it would be impractical to require licensees and platform providers to be fully compliant by 1 July 2013. However, we strongly support that new arrangements cannot be made between platform operators and licensees/representatives after the commencement date of FoFA (1 July 2013).

We are happy to clarify any aspect of our submission should this be of assistance.