FINANCIAL PLANNING
ASSOCIATION of AUSTRALIA

Neil Pegg
Tax Practioners Board
GPO Box 1620
Sydney NSW 2001

08 August 2016

Via email: tpbsubmissions@tpb.gov.au

Dear Neil,

The FPA welcomes the opportunity to provide a submissions on the following exposure drafts:

- Exposure draft TPB(I) D31/2015 Code of Professional Conduct – Confidentiality of client information for tax (financial) advisers (Code item 6)
- Exposure draft TPB(I) D32/2016 Code of Professional Conduct – Acting lawfully in the best interests of clients for tax (financial) advisers (Code item 4)
- Exposure draft TPB(I) D33/2016 Code of Professional Conduct – Reasonable care to ascertain a client's state of affairs for tax (financial) advisers (Code item 9)
- Exposure draft TPB(I) D34/2016 Code of Professional Conduct – Reasonable care to ensure taxation laws are applied correctly for tax (financial) advisers (Code item 10)
- Exposure draft TPB(I) D35/2016 Code of Professional Conduct – Having adequate arrangements for managing conflicts of interest for tax (financial) advisers (Code item 5)
- Discussion paper on declaring certain services as tax (financial) advice services

As requested, we have also attached a copy of our Treasury submission on the Corporations Amendment (Professional Standards of Financial Advice) Bill 2016.

If you have any queries or comments, please do not hesitate to contact me or Dimitri Diamantes.

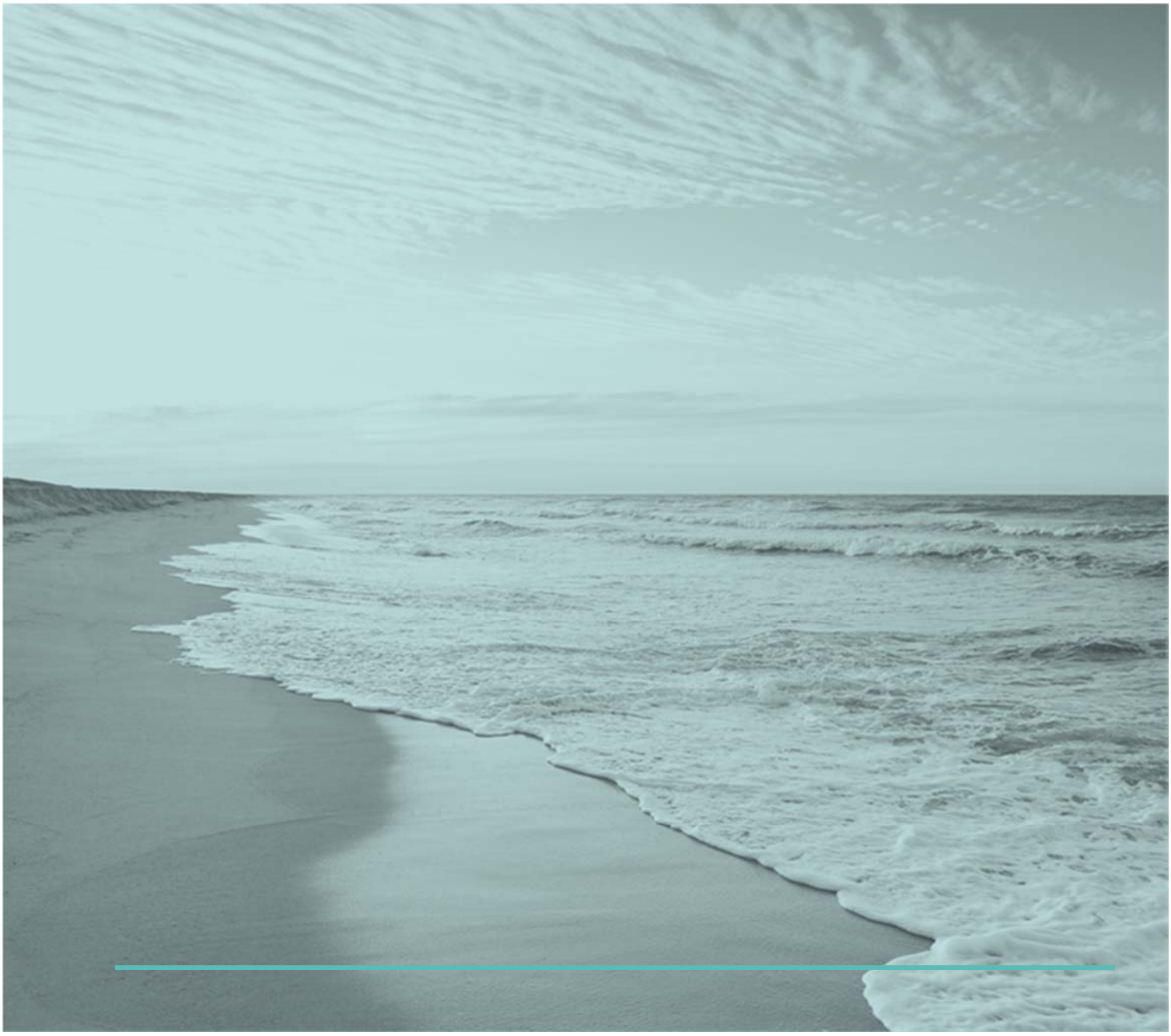
Yours sincerely

Benjamin Marshan
Head of Policy and Government Relations

FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

FPA SUBMISSION
TAX PRACTIONERS BOARD EXPOSURE DRAFTS

Tax Practioners Board
08 August 2016



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Introduction

The FPA welcomes the opportunity to provide feedback on the Board's draft information sheets about how the Code of Professional Conduct applies to tax (financial) advisers. The financial advice industry in particular needs a clear understanding of what the Code requires and how it sits with other legal obligations, such as the best interest duty under the *Corporations Act*.

While the Board's exposure drafts go some way to explaining the Code, we fear that the Board's approach to administering the Code would sit uncomfortably with tax (financial) advisers' other legal obligations. This includes the difference between the Board's interpretation of acting in the client's best interest verse the Corporations Act best interest duty obligation; and the confidentiality of client information in relation to tax (financial) advisers obligations to their Australian financial services licensee (AFSL), as well as the AFSLs own legal obligations.

We would therefore ask that, before issuing the information sheets, the Board seek advice from Treasury about how the obligations on tax (financial) advisers could be harmonised. This would also be an opportunity to address whether it might be preferable from an administrative perspective for a single regulator to administer both sets of statutory obligations, to minimise conflicting views and increasingly similar obligations.

We would also generally ask the Board to consider how promotion of professionalism can be encouraged through highlighting tax (financial) adviser's relationship with Recognised Professional Associations. We believe in particular, this relationship should be highlighted in the Confidentiality information sheet.

Finally, we wish to congratulate the Board on their drafting of the legislative instrument which allows tax (financial) advisers to interact with the ATO Commissioner. This has been a significant issue for tax (financial) advisers for a number of years, and as superannuation law in particular becomes more complex for Australians, the ability of tax (financial) advisers to better assist their clients in managing their super is a positive outcome for improving the financial position of consumers.

1. Acting Lawfully In The Best Interests Of Clients For Tax (Financial) Advisers[1]

The financial advice industry needs a clear understanding of what the Code requires and how it sits with other legal obligations, such as the best interest duty under the *Corporations Act*.

While the Board's exposure drafts go some way to explaining the Code, we fear that the Board's approach to administering the Code would sit uncomfortably with tax (financial) advisers' other legal obligations. In particular, the best interests duty under the Code requires the adviser to act lawfully in the best interests of the client, while the best interests duty under the *Corporations Act 2001* requires that the advice is likely to put the client in a better position.

It is unclear what the Code requires where the relevant law is unsettled. It is possible the Board will require tax (financial) advisers to take a conservative view of the law where there is conflicting legal onion. By contrast, in certain cases, the *Corporations Act 2001* appears to require the advice (if any) be based on a less conservative view of the law; for example, where a client with a high tolerance to legal risk, seeking tax-effective investments receives a legal opinion that a particular tax planning strategy is lawful but not finally determined by the courts.

Given that, in practice, virtually all financial advice involves tax (financial) advice, it is bizarre that the law would impose too irreconcilable obligations. We would therefore ask that, before issuing the information sheets, the Board seek advice from Treasury about how the obligations on advisers could be harmonised. This would also be an opportunity to address whether it might be preferable from an administrative perspective for a single regulator to administer both sets of statutory obligations, to minimise conflicting views.

If the Board still goes ahead with issuing the information sheets, we'd respectfully ask that the Board clarify that 'lawfully' in 'lawfully acting in the best interests of [the] client' means a reasonable arguable legal opinion. In our view, this approach provides a way to reconcile the obligations under the Code and the *Corporations Act 2001.*

Do you agree with the general principles outlined in paragraphs 4 to 7?

The FPA agrees with the general principles outlined in paragraphs 4 to 7. However, just to clarify, presumably the obligation mentioned in the first dot point of paragraph 5 would also generally be met, notwithstanding the existence of an actual or potential conflict of interest, where the client has consented to the conflict based on a full and frank disclosure of all the material facts2; the disclosure is appropriate given the sophistication and intelligence of the client3; and the adviser's objectivity is not impaired4.

[1] http://www.tpb.gov.au/TPB/Publications_and_legislation/TPB/Publications_and_legislation/ED/0714_-_Code_of_Professional_Conduct_-_Acting_lawfully_in_the_best_interests_of_clients_for_TFAs.aspx
[2] *Blackmagic Design Pty Ltd v Overliese* [2011] FCAFC 24; (2011) 191 FCR 1; 276 ALR 646 at 668 [110],
[3] *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* [2007] HCA 22; (2007) 230 CLR 89 at [107]
[4] TPB(I) D35/2016, [12]

Paragraph 7 details some characteristics that may be relevant to determining the scope of the duty to act lawfully in the best interests of a client under the Tax Agent Services Act 2009(TASA). Do you agree with these circumstances? What other circumstances, if any, should be included in the list?

The FPA agrees with the circumstances and we add the following additional circumstance:

the objectives of the TASA, which are to ensure that tax (financial) advisers services are provided to the public in accordance with appropriate standards of professional and ethical conduct, and the Code prescribed under the TASA to achieve this purpose.5

In relation to Examples 1 and 2, do you have any comments about the scenarios and what steps would be required for the purpose of acting lawfully in the best interests of a client?

While the FPA generally agrees with the analysis of the scenarios, the examples are easy cases. The examples would be more useful if they also include harder cases: see our next response (below).

Are there any additional examples or scenarios that should be incorporated into the information product? If so, please also outline what you consider is required for the purpose of acting lawfully in the best interests of a client in relation to these examples / scenarios.

To help avoid confusion, the FPA would suggest the Board includes an example to highlight the difference between the conflict rule under the Code compared to the statutory 'best interest' duty. The Code requires that, in circumstances where there is an actual or potential conflict, the adviser does not promote their own interests. By contrast, in these circumstances, the statutory 'best interest' duty requires that the adviser, if promoting their own (or certain other) interests, gives priority to their client's interests.

More specifically, an adviser would breach the Code (but not necessarily the 'best interests' duty under the Corporations Act) if, for example, in circumstances where there is a conflict between the adviser's interests and the client's interest, the adviser promotes both interests, putting the client's interests first; but the client hasn't given informed consent in respect of a conflict and no techniques for controlling the conflict have been implemented.

In our view, if the Board's interpretation of the 'no conflict' duty under the Code is correct, the only situation where the 'no conflict' duty under the Corporations Act would do any work is in the tiny fraction of financial advice cases that don't involve tax (financial) advice. Arguably, this tiny fraction of cases would require that tax (financial) advice be ruled out under the terms of engagement. While we think that such an outcome is bizarre, we accept that it is the only logical way to reconcile the existence of the two sources of legal obligation.

On a separate (but related) issue, how will the TPB assess contentious cases? For example, where an adviser holds a reasonably arguable view that an action is lawful and, by reference to

[5] See Explanatory Paper TPB 1/2010, *Code of Professional Conduct*, [56] http://www.tpb.gov.au/TPB/Publications_and_legislation/Board_policies_and_explanatory_information/TPB/Publications_and_legislation/EP/0402_TPB_EP_01_2010_Code_of_Professional_Conduct.aspx#_ftnref38

that view, the adviser acts in the best interests of the client, how would the Board view advice to do the action (or the adviser doing the action) where the Board holds a contrary view about the lawfulness of the action or where the courts subsequently hold that the action is unlawful?

Presumably, the scope of the 'best interests' duty under TASA is affected by the duty to '…take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which [the adviser is] providing advice to a client'.

The duty to take reasonable care in applying the tax law requires registered tax (financial) advisers to take 'reasonable care' to ensure the correct interpretation and application of the taxation law. An incorrect interpretation and application of the taxation law, therefore, may not necessarily amount to a failure to take reasonable care for the purpose of the TASA.[6]
…
There is no set formula for what it means to take reasonable care in any given situation. However, it may include the registered tax (financial) adviser referring to some or all of certain material to seek clarification and ensure that they apply the taxation laws correctly to their client's circumstances.[7]

The material from which the adviser might draw is from a range of different sources (including both official and non-official ones), and will be in conflict - or silent - in hard cases (i.e. cases where there is no authoritative determination on the relevantly similar facts). In hard cases, is it sufficient for the purposes of the 'best interests' duty under TASA, that the adviser's advice or action is based on a reasonably arguable view of the law? The FPA's view is that this should be sufficient.

We accept that if the case (or one based on relevantly similar facts) is determined by a tribunal or court (especially the higher courts), it becomes increasingly difficult or impossible for a contrary view to be reasonable. However, applying the tax laws based on a view that was reasonably arguable at the time of the application does, in our view, meet the duty to apply the tax laws correctly – even where that the view ceases to be reasonable at a later point in time because, for example, the courts decide against that view.

Our argument is further supported the existence of the Board's power to apply an administrative sanction for breach of the Code if '… satisfied, after conducting an investigation …' that the adviser has failed to comply with the Code. The FPA would expect that, especially considering the severity of some of the sanctions, the Board would normally not treat the above situation as involving a breach of the Code unless there is no reasonably arguable position that the action is lawful.

Without such an approach, advisers are forced to adopt an extremely conservative position on the law, which at the time of the advice would be to the potential disadvantage of the client. Indeed, in certain cases, the Corporations Act appears to require the advice (if any) be based on a less conservative view of the law; for example, where a client with a high tolerance to legal risk, seeking tax-effective investments receives a legal opinion that a particular tax planning strategy is lawful but not finally determined by the courts. This follows from ASIC's view that, under the best interests duty in the Corporations Act, the standard for assessing advice is whether at the time it was given a reasonable adviser would believe it is likely to put the client in a better position.

[6] TPB(I) D34/2016, [9].
[7] TPB(I) D34/2016, [11].

Given that, in practice, virtually all financial advice involves tax (financial) advice, it is bizarre that the law would impose too irreconcilable obligations. We would therefore ask that, before issuing the information sheets, the Board seek advice from Treasury about how the obligations on advisers could be harmonised. This would also be an opportunity to address whether it might be preferable from an administrative perspective for a single regulator to administer both sets of statutory obligations, to minimise conflicting views.

In summary, there may be cases where an adviser who has a reasonably arguable view that advice or action is based on a correct interpretation of the law (but the TPB holds another reasonably arguable view that the advice or action is based on an incorrect interpretation of the law). Just to be clear, it is our view that in this case the adviser would meet the lawful element of the duty to act in the best interests of the client.

We hold that where the adviser's advice or action (as applicable) is based on a view that is reasonably arguable in light of the availability and content of material from sources mentioned in TPB(I) D34/2016 at paragraph [11], the adviser meets the lawfulness element of the 'best interests' duty under TASA.

On a different (but related) issue, the FPA agrees that '…while compliance with relevant Corporations Act and ASIC requirements will be a relevant factor, it is not conclusive in relation to whether obligations under [the duties of independence] in the TASA have been satisfied.' However, it seems inconceivable that there are any cases where, even though the safe harbour provision under the Corporations Act are satisfied, including the 'catch-all' step; and the adviser does not promote their own interests - or make an unauthorised profit from the client - in circumstances where there is an actual or potential conflict of interest, the duty to act lawfully in the best interests of clients is not met. We ask that this issue be expressly addressed in the information sheet.

2. Reasonable Care To Ascertain A Client's State Of Affairs For Tax (Financial) Advisers[8]

Do you agree with the general principles outlined in paragraphs 7 to 11?

The FPA agrees with the general principles outlined in paragraphs 7 to 11.

Paragraph 12 details some circumstances where a tax (financial) adviser needs to make further enquiries of their clients. Do you agree with these circumstances? What other circumstances, if any, should be included in the list?

The FPA agrees with the circumstances listed. We'd add 'state of the client – e.g. emotional state'.

Paragraph 16 outlines a number of sources where the terms of an engagement with a client can be found. Do you agree with these sources? What other sources, if any, should be included in the list?

The FPA agrees with the sources listed. We would add 'new, amended or replacement terms of engagement agreed otherwise than by a signed, written document (e.g. agreed orally)'.

In relation to the examples, do you have any comments about the relevance of the scenarios and what would constitute the reasonable care steps?

The scenarios are relevant. However, the grounds for the belief that the advisers failed to take reasonable care to ascertain the client's state of affairs are unclear. For example, in example 1, did the adviser ask the client to complete a table of assets and liabilities; and income and expenses? Were there any reasons to believe that the tables were inaccurate or incomplete (for example, the client's expenses significantly exceeded her stated income)? If, for example, the client has more expenses than income and the adviser failed to investigate further, this would provide grounds for holding that the adviser hasn't taken reasonable care to ascertain the client's state of affairs.

Example 2 is also unclear. Did the adviser ask for details of current (and all previous) relationships? If so, what clues were available to the adviser that a previous relationship was missing? If, for example, the client said that he didn't fill in the fact find completely as any previous relationships are irrelevant to the advice about his current situation, and the adviser failed to investigate further, the adviser would have breached the duty to take reasonable care to ascertain the client's state of affairs.

Are there any additional examples or scenarios that should be incorporated into the information product? If so, please also outline what you consider to be reasonable care steps.

We would not add any additional examples. However, as discussed above, we would provide much more detailed information to the existing examples.

[8] http://www.tpb.gov.au/TPB/Publications_and_legislation/TPB/Publications_and_legislation/ED/0715_-_Code_of_Professional_Conduct_-_Reasonable_care_to_ascertain_a_client_s_state_of_affairs_TFAs.aspx

3. Reasonable Care To Ensure Taxation Laws Are Applied Correctly For Tax (Financial) Advisers[9]

Do you agree with the general principles outlined in paragraphs 7 to 10?

The FPA agrees with the general principles outlined in paragraphs 7 to 10.

Paragraph 11 details some material that a tax (financial) adviser may refer to for the purpose of seeking clarification and ensuring that taxation laws are applied correctly to their client's circumstances. Do you agree with these sources? What other sources, if any, should be included in the list?

The FPA agrees that these sources should be included in the list. We have no further sources to add.

Paragraph 13 outlines a number of sources where the terms of an engagement with a client can be found. Do you agree with these sources? What other sources, if any, should be included in the list?

The FPA agrees with the sources listed. We would add 'new, amended or replacement terms of engagement agreed otherwise than by a signed, written document (e.g. agreed orally)'.

In relation to the examples, do you have any comments about the relevance of the scenarios and what would constitute the reasonable care steps?

Example 1 is relevant. However, example 2 is more closely related to the duty to ascertain the client's state of affairs than the duty to apply tax laws correctly. We would suggest amending the second example such that the adviser knows of other concessional contributions (but fails to identify them as such). For example, if the employer is paying the super fund's insurance premiums for the members, the premiums will be treated as concessional contributions. If the adviser works out the maximum additional salary sacrifice that would bring the client just to their concessional contributions cap (incorrectly assuming the insurance premiums aren't concessional contributions), the client would exceed their cap and the adviser would have breached the duty to take reasonable care to apply the tax laws correctly.

Are there any additional examples or scenarios that should be incorporated into the information product? If so, please also outline what you consider to be reasonable care steps.
We don't propose adding any examples.

9 http://www.tpb.gov.au/TPB/Publications_and_legislation/TPB/Publications_and_legislation/ED/0716_Code_of_Professional_Conduct_-_Reasonable_care__-_taxation_laws_applied_correctly_TFAs.aspx

4. Having Adequate Arrangements For Managing Conflicts Of Interest For Tax (Financial) Advisers[10]

Do you agree with the general principles outlined in paragraphs 9 to 11?

The FPA agrees with the general principles outlined in paragraphs 9 to 11.

Paragraphs 12 to 22 detail some techniques that a tax (financial) adviser may use to manage conflict(s) of interest. Do you agree with the mechanisms provided?

The FPA agrees with the mechanisms provided. However, we are concerned that paragraph [13] implies that a disclosure might be appropriate even though a conflict that exists before a financial service is provided is not disclosed prior to that service being provided. We can't imagine how a disclosure made at the same time a financial service is provided would allow the client a reasonable time to assess it effect.

We understand that, depending on their experience, ability and emotional state, a client may properly assess the disclosure quickly. However, it is unhelpful for the information sheet to suggest that the assessment could ever be done in an instant.

What other mechanisms, if any, should be included, and: in what circumstances would the techniques be used; and what would constitute adequate arrangements for the use of these mechanisms?

Where there is an ongoing adviser-client relationship, the adviser should disclose to the client an actual or potential conflict of interest that materially impacts the relationship, within a reasonable period of becoming aware of the conflict. Given the broad wording of the duty to manage conflicts of interest, it would seem the duty's intended to cover not only actions or omissions, but also the quality of the relationship. The FPA has a similar requirement in its Code of Professional Practice.

In relation to Examples 1 and 2, do you have any comments about: the relevance of the scenarios; or what would constitute adequate arrangements for managing the conflicts of interest?

The examples in the draft would be atypical for the bulk of financial advisers. We would suggest they be replaced with relevant examples. We address what these scenarios look like (and how conflicts of interest should be managed) in our response to the next question.

Are there any additional examples or scenarios that should be incorporated into the information product? If so, please also outline what you consider to be adequate arrangements for managing the conflicts of interest.

Example 1: Jack Smith is employed as a financial adviser by Big Super Fund. His client, Jill Jones (age 56) finished her formal education at age 16 and has no experience in investing or, beyond the

10 http://www.tpb.gov.au/TPB/Publications_and_legislation/TPB/Publications_and_legislation/ED/0717_Code_of_Professional_Conduct_-_Having_adequate_arrangement_managing_conflicts_of_interest_TFAs.aspx

most basic, in tax. Jack advises Jill to increase her salary sacrificed contributions to superannuation. As part of the advice, Jack compared - over a 35-year projection period - the estimated tax on the proposed contributions with the estimated personal tax liabilities if Jill continued to take the equivalent gross amount as income. He also compared the estimated tax on the earnings on accumulated savings and the estimated tax on drawdown.

There is a potential conflict of interest as there is an incentive for Jack to skew the comparison in favour of superannuation (for example, by ignoring or understating the effect of legislative risk). Nevertheless, Jack did not disclose - or take any other action to manage – the conflict before the advice was given. Jack has breached the duty to manage to conflicts of interest as has done nothing to manage it.

To fulfil the duty, Ben should have disclosed the conflict to Jill in terms that make sense to her – and Jill given consent to the conflict - before the advice was given.

Example 2: A self-licensed financial adviser, Ben Bacon has an ongoing adviser-client relationship with Daniella Dante that covers the ongoing provision of personal financial planning advice (including advice about the tax costs/benefits of a broad range of investment and tax structures; and obligations and entitlements in respect of self-managed superannuation funds). Daniella is the CEO of a financial services organisation, has degrees in accounting, finance and law and has extensive experience in business and investing.

Ben changed licensees to Advice Co three months after his last contact with Daniella. The terms of Ben's authority to give advice didn't materially change with the move to a new licensee. Further, Advice Co's parent company, Money Co also owns Wealth Co. Wealth Co provides superannuation and managed investment products.

There is a potential conflict between the Daniella's interests in having access to tax (financial) advice from Ben, and Ben's interests in maintaining good standing with his licensee in light of the licensee's connection with a product manufacturer. This is because, while Ben can give tax (financial) advice on products beyond those offered by a related party of his new licensee, his objectivity in giving that advice might be impaired because of the limited product suite of a related party of his new licensee.

Ben takes no action to manage the conflict of interest, such as obtaining tax modelling from an independent accounting or para-planning service – and has no further contact with Daniella until three months after he changes licensee, at which point he discloses the conflict. The fact that Ben waits an excessively long time to disclose the conflict and takes no other action to manage it means Ben has breached the duty to have adequate arrangements in place to manage the conflict of interest. While the conflict hasn't affected any advice, it has undermined the independence of the adviser-client relationship by calling that independence into question.

To fulfil the duty, Ben should have disclosed the conflict to Dante within a reasonable period after becoming aware of it (e.g. 20 days from when the agreement to move to the new licensee was made).

5. Code of Professional Conduct – Confidentiality of client information for tax (financial) advisers

We note that we have already provided feedback on this Exposure Draft to the Board in an earlier submission. We continue to commend the Board's efforts to raise awareness of the important role tax (financial) advisers have in protecting the confidentiality of their client's personal and sensitive information.

As noted in our previous submission, the Board's treatment of third party access to client confidential information differs from the approach taken in the Privacy Act 1988 (Cth) and to 'principal and agent' principle underpinning Chapter 7 of the Corporations Act 2001 (Cth).

Under this exposure draft, individual practitioners and entities must each treat anyone external to the practitioner and client or the firm and client relationship, as a third party. For a practitioner, this means treating their employer and/or their Australian Financial Services licensee as a third party for the purposes of disclosure and consent to access. Our members will find this impractical. We wonder whether this approach is intentional or necessary.

The Privacy Act 1988 (Cth) treats the acts done by, or consents given to the individual in certain capacities as the acts of the organisation: [see Division 3 of Part 2 of the Privacy Act 1988 (Cth)]. The Corporations Act similarly treats the acts of a representative of an AFS licensee as the acts of the licensee for most purposes. Under the TPBs approach, practitioners may not be in a position to contest their employer or licensee's requirements that they collect, utilize and disclosure to third parties their client's confidential information.

Under existing Privacy Act and Corporations Act obligations, most financial institutions manage financial services customer privacy consents through a group privacy policy. Larger groups utilize shared access to client confidential information to deliver important adviser monitoring and supervision systems and processes with scale efficiencies that fulfil licensing requirements and can enhance consumer protection.

Administering conflicting privacy, Corporations Act and the Board's guidance around client confidential information regimes may impose significant compliance costs on businesses at a time of other significant regulatory change. Such costs are likely to be passed onto consumers in the form of higher costs for financial advice. It is unclear whether the differing approach will deliver any net benefit to consumers.

Registered Professional Associations
Concerning the application of Code Principle 6 client confidentiality in paragraph 9: In particular, it is important to be mindful of Code Item 6 which provides that a registered practitioner must not disclose **any** information relating to a client's affairs to a **third party** without the client's permission, unless there is a legal duty to do so.

The concept of a 'legal duty to do so' (see also clause 24*ff)* in the client confidentiality ED) does not appear to accommodate professional body complaints and disciplinary investigations and proceedings which are private tribunal proceedings authorised through the contract of membership. In circumstances where the complaint is initiated by the member's client this is not

generally an issue because direct authority from the client complainant can usually be obtained to release the information. What is more of a concern, is the potential limitation this places on professional body 'own motion' initiated investigations (and complaints taken over by the professional body) where client confidential information is sought from the member and the member does not have prior authority from the client to release it to the professional body for the purposes on the investigation. A good example is where the impacted clients from a bad advice practice of the member are not known by the professional body.

ASIC and Australian Information Commissioner
Similarly, absent prior irrevocable written consent from the impacted retail client, it appears a licensee would be in breach of the Board's position if it accessed client confidential information in order to comply with ASIC's proposed guidance on retail client remediation schemes.

We would highlight that the Board's concept of client permission does not appear to be enough in many circumstances. The client's authority would need to be legally 'irrevocable' in order to resolve the conflict with ASIC's position on retail client remediation schemes, and situations where a client tries to subsequently revoke authority, but there is a legal obligation on the tax (financial) adviser and AFSL to maintain records of the advice provided for seven years. However insisting on irrevocable authority from the client would appear to be in conflict with the Australian Privacy Principles and general public policy concerns that mitigate against the ability of a consumer to permanently sever there information relationship with a service provided.

The Board needs to work with all three regulators (Australian Information Commissioner, ASIC and TPB) to get a combined single position or each position is unworkable professionally.

FPA's preferred approach
The FPA would prefer the TPB amended the Exposure Draft to ensure consistency with current Privacy Act and Corporations Act requirements for advisers. The TPB should permit practitioners and firms to conjointly manage client consents and disclosures.

In particular, the TPB should treat the acts done by, or consents given to the individual practitioner as a representative and/or employee of an AFS licensee, or by or to a Corporate Authorised Representative as the acts of the AFS licensee or Corporate Authorised Representative and vice versa.

Alternatively, if the TPB has evidence that current industry use of group privacy policies to share client confidential information is having a detrimental impact on consumers, the TPB could consider introducing arrangements to restrict or quarantine client information sharing beyond the practitioner and the advice licensee.

The FPA would also like the TPB to include reference in the information sheet to practitioner and entity responsibilities to ensure that letters of engagement and/or disclosures and consents do not unduly restrict the practitioner's capacity to meet any obligations to cooperate and share information with professional bodies for the purposes of disciplinary investigations and complaints, or with their licensee to enable licensing obligations to be met.

6. Discussion Paper - Declaring certain service as tax (financial) advice services

We would like to congratulate the Board on their proposal to declare certain services as tax (financial) advice services. We therefore wish to note that we have not identified any additional services which would need to be covered, and we agree that tax (financial) advisers can and should be able to provide the services listed under the current TASA regulatory environment.

We appreciate other interested parties may suggest that broader issues may need to be considered if the Board is to continue to implement these proposals, and if this is the case, we would welcome the opportunity to have further discussions.