

2 December 2003

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Attention: Mr Brian Lovell

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Dear Brian

### **Financial Services Regulation**

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Thank you for asking me to address your Members at the AFIF AGM.

It appears from the response received that your Members are very interested in this topic. I spoke about an option that if your Member's activities require an Australian Financial Services Licence (licence) under the Act, one option would be that your Members involve a licensed entity in the sales process ("Insert a Licensee"). In other words, your Members are appointed by, for example, a licensed insurance broker or underwriter as its "authorised representative". Therefore, your Members will not require a license and can continue to provide those services as the "authorised representative" of the licence holder. The insurance underwriter or broker would, we have no doubt, require your Members to enter into a written contract with them. In this respect, we could prepare a contract document for AFIF which your Members could use in negotiating to become an authorised representative. If you would like us to prepare a draft document for AFIF for this purpose kindly let us know.

Brian, in accordance with your request please find below an abbreviated summary of my presentation. This is a snapshot of a complex regime – there are issues to be considered on an individual basis for each prospective licensee. If you or your Members have any queries in relation to the below or any aspect of FSR, please do not hesitate to contact me.

### **Commencement**

- Licences will be required by 11 March 2003;
- Applications for a licence need to be lodged with ASIC by 10 December 2003;

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- In August 2003, the Treasurer Peter Costello stated that no extensions to the commencement date will be given.

### **Penalties**

- Individuals who provide a financial service without a licence may be liable for penalties of \$22,000 and/or two years imprisonment. Companies who provide financial services without a licence may be liable for penalties of up to \$110,000.

### **Costs**

- The cost for a company lodging an application for a full licence ranges from \$270 to \$540, depending on the method of submission (electronically submitted applications are cheaper than paper applications). The costs associated with the preparation of an application for a licence will vary between companies, depending on the scale and complexity of the entity's financial services business and the amount of documentation required to support the application. In addition to management time, costs may be incurred if the applicant chooses to engage an external provider, such as a law firm, to assist with the preparation of their licence application.

### **Option 1**

- Members inform their clients that their clients are to use their own insurance company and make their own insurance arrangements.
- If this option is taken, Members will not require a licence.

### **Option 2**

- Members may "refer" their clients to a broker or underwriter.
- Members may choose to provide their clients with a list of, say, one, two or more insurance brokers or underwriters' names with instructions that the clients may contact them directly.
- Members may get the benefit of the "referral" exemption.
- Members will need to ensure that they operate solely within the parameters of the referral exemption in the Corporations Regulations 2001. For a more detailed explanation, please refer to the ASIC Guide, Licensing: The scope of the licensing regime: Financial product advice and dealing.
- Members should make a statement that they are **not** recommending a particular broker, in order that it may not be argued by ASIC that they are providing a financial product advice.

- Members must disclose any commissions received for referrals made to a particular broker or underwriter.

### **Option 3**

- If Members arrange insurance on behalf of their clients ie contact a particular insurance broker or underwriter and arrange for a policy to be issued, they will require a licence.
- An option available to Members would be to involve a licensed entity in the sales process. For example, a licensed insurance broker, insurance company or underwriter appoints the particular freight forwarder as its "authorised representative". In this case, Members will not be required to obtain a licence. Members should approach their insurance brokers and/or underwriters to make enquiries about becoming an authorised representative.
- Members may also apply for an exemption with ASIC, however this is unlikely to succeed if Members are "arranging insurance".

If your members are of the view that they should not be caught by the FSR requirements, a submission could always be prepared and lodged with the Government seeking relief by way of amendments to the Act and Regulations. Alternatively, a submission to ASIC may be filed seeking a "Class Order", in other words, a ruling that your members are excluded from compliance.

Brian, as discussed above, if you or your Members require any advice on FSR licensing requirements or assistance with the application process, kindly let us know. Furthermore, as mentioned above we are able to assist AFIF and its members by preparing written contracts between your Members in relation to becoming an authorised representative. If we can be of any assistance in these areas, do not hesitate to contact us.

Yours faithfully  
**EBSWORTH & EBSWORTH**

Per

**Tony Greenwood**