

13th February, 2018

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ASIC DRAFT REGULATORY GUIDANCE - MANAGEMENT REQUIREMENTS

Thank you for the opportunity to provide comments on the Draft Regulatory Guide on Management Requirements for Market Participants (“Draft RG”). SAFAA’s comments on the Draft RG are below.

As a preliminary matter, in our Submission on CP 277, our principal concerns can be summarized as follows:

1. ASIC should not adopt the approach of regulating by way of Guidance Note. Any Guidance should be the subject of widespread consultation partly with a view to guarding against this, and to ensure that the Guidance was soundly based.
2. The effect of the MIR Harmonisation was to make the Rules more general and “fuzzy”. As a consequence, Participants could potentially face greater regulatory risk in having to interpret the Rules and apply them in the context of their businesses, but later facing possible action because ASIC might take a different view and consider the participant’s “call” as being wrong. For this reason, SAFAA sought clear guidance to assist firms in their decision making.

3. On the matters of education qualifications and CPD for Responsible Executives, SAFAA saw the removal of those express obligations from the MIRs as being a step backwards.

In this context, we offer the following comments on the Draft Guidance Note.

A. Generality of the Draft RG

The wording of the Draft RG is very general. A large part of the contents is a rephrasing of the requirements under specific MIRs. The Draft RG probably contains less guidance and is of less assistance than the old ASX GN 6 on Management that previously applied to this subject.

Whilst on the one hand it is good that the RG is not an inflexible set of principles and allows adaption to the size and nature of very different business models, the RG does not provide a great deal of guidance, in our view.

B. Regulatory risk

Following on from A. and from the previous SAFAA Submission on CP 277, we believe that the risk remains that members could make a call in good faith on how to interpret the management requirements in the context of their businesses, but face action in the event that ASIC took a different view.

C. Role of Compliance

The Draft RG says little about the role of Compliance within a Market Participant, including reporting lines.

D. Interaction with the Responsible manager AFSL requirements

The Draft RG does not give any indication how the management requirements interact with the AFSL management obligations and Responsible manager regime.

E. Education and CPD

Following on from our CP 277 Submission, the absence of any discussion about educational standards in the Draft RG leads to an outcome that SAFAA believes is a backward step. Notwithstanding that ASIC has proceeded to remove the RE exam and CPD requirements, the Draft RG could still contain guidance about the merits of obtaining accreditation and qualifications from professional associations such as SAFAA

as a means of demonstrating that the management of the Participant is and remains qualified.

CONCLUSION

SAFAA appreciates the opportunity to comment on the Draft RG. In our view, a wide consultation with Market Participants generally should generate useful feedback on areas where Participants are seeking more guidance to help them in their decision making.

We would be happy to discuss any issues arising these comments, or to provide any further material that may assist. Should you require any further information, please contact Peter Stepek, Policy Executive, on (02) 8080 3200 or email psteppek@stockbrokers.org.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Green'.

Andrew Green
Chief Executive