MARCH 2018
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Stockbrokers

And Financial Advisers MONTHLY

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Association Limited

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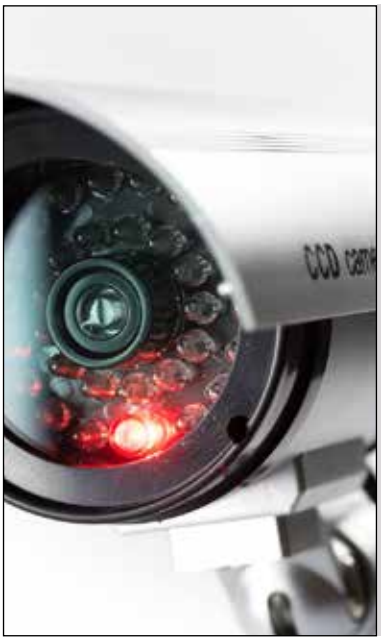

Stockbrokers And Financial Advisers Association Limited

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Labor's plan to scrap cash refunds for excess dividend imputation credits will have dire consequences for retirees planning to live too long

I have been inundated with calls from members about the damaging impact on clients of Labor's plan to scrap cash refunds for excess dividend imputation credits.

Today's call (15th March 2018) came from a 71-year-old who said as follows.

"I'm trying to slow down - but I don't want to end up doing nothing.

"So I've taken up playing the ukulele and have just come back from practising with my band.

"I plan to live until I am 95.

"I have arranged my investments so that I have a small amount in cash and bonds and a large part still in equities.

"I need the equity return to make sure I have enough to last me until I turn 95.

"Now here is the problem with what Labor is proposing.

"The compounding effect of cash refunds from excess franking credits is just enough to get me to 95.

"If I don't have the cash refunds, I have calculated I will run out of my ability to fund my retirement when I am 85.

"I will then have to rely on the old age pension."

What we are doing about Labor's plans to scrap cash refunds for excess dividend imputation credits

The Association is conducting empirical research on the impact of plans to scrap cash refunds for a range of different classes of investors. The analysis will be objective. This is not a partisan issue. The issue relates to changing the goal posts for investors who have made retirement plans based on existing law. Changing the goal posts after the countdown has begun is retrospective legislation. If Labor insists that changes are to be made to scrap cash refunds, then justice demands that compensation be paid to investors who have painstakingly planned their retirement based on certain rules.

SAFAA 2018

Fantastic line-up of speakers for SAFAA 2018

What a treat we have in store for delegates lucky enough to get tickets to attend our annual conference in Melbourne on May 23rd & 24th. We have more than 30 speakers comprising subject matter experts covering issues at the core of listed equity and debt markets in Australia.

Since the program was set, the issue of scrapping excess franking credits has arisen.

Unless the issue is satisfactorily solved before the conference, the franking credits issue will be placed on the agenda.

Andrew Green

FASEA's Pathway for Existing Advisers

In our estimate, up to 90 percent of the 3,000 financial advisers who advise exclusively on Listed Products will not meet FASEA's Guidelines for Existing Advisers.

FASEA's Guidelines pose existential issues for these advisers and for this Association.We are working constructively with the government and FASEA to achieve an outcome that is reasonable for our members.

Advisers do not need to meet any new qualification until January 2024.

A lot of water must still pass under the bridge.

Please be assured that advocacy is at the heart of what we do. It's why we exist, and we will not let you down. ■

ASIC issues Consultation Paper 298 on AFCA

ASIC HAS ISSUED Consultation Paper 298 relating to updated Guidance on the new Australian Financial Complaints Authority (AFCA).

The establishment of AFCA, as the single financial complaints body to replace FOS, the Credit Industry Ombudsman and the Superannuation Complaints Tribunal, is a decision that has already been taken by the Government. The provisions governing AFCA will be set by the Government and by the Terms of Reference for AFCA (when those are determined).

However, there are some matters over which ASIC will have some authority, and it is in respect of these that ASIC is now consulting.

The establishment of AFCA, as the single financial complaints body to replace FOS, the Credit Industry Ombudsman and the Superannuation Complaints Tribunal, is a decision that has already been taken by the Government.

These include:

- The proposed date of 1 November 2018 for financial firms to update all relevant on-line and hard copy disclosures to clients as to their entitlement to take a complaint to AFCA. This includes changes to FSG's and PDS's.
- Directions to AFCA regarding reporting of serious contraventions and systemic issues of which AFCA becomes aware;
- The role of the independent assessor which will be required to review the operations of AFCA.

The issue of main relevance to members is likely to be the adequacy of the time frame of 1 November 2018 for the updating of disclosures. The Association is interested to hear from members about this and any other issues they might identify in the ASIC Consultation Paper.

The closing date for submissions to ASIC is 6 April 2018. ■

Committee News

Recent and upcoming meetings of the Stockbrokers And Financial Advisers Association - Committees, Working Groups and Advisory Panels:

Derivatives Sub-Committee Meeting, Thursday 1 March 2018

Chair: Peter Tardent MSAFAA, CommSec

Cyber Security Working Group Meeting, Thursday 22 March 2018

Chair: Melissa Nolan MSAFAA, Baillieu Holst

Master Practitioner Member MSAFAA applications approved:

- Benjamin Brockhurst
- Brian Love
- Miles Bellman

Practitioner Member MeSAFAA applications approved:

- Brett Waller
- Callum Glasby
- Gregory Sadler
- Kim Harmer
- Matthew Johnson

Individual Affiliate Member AfSAFAA application approved:

- Glen Frost

Reviewing allocations practices in capital raising transactions

ASIC
Australian Securities & Investments Commission

Businesses thrive if they are able to effectively source capital. Last financial year $52 billion of new capital was raised by businesses on the ASX market[1]. It is vital for our businesses that investors can confidently participate in these capital raisings.

POOR MANAGEMENT of allocations in capital raising transactions can affect the integrity of a capital raising. Our 2016 review of sell-side research and corporate advisory (see **Report 486** *Sell-side research and corporate advisory: Confidential information and conflicts*) uncovered potential issues with some of the market practices around allocations in capital raisings.

We've started taking a closer look at current allocation practices in capital rising transactions.

Receiving an allocation can be beneficial to investors, particularly where an issue is in demand and the price of the securities in the secondary market may be pushed up as a result. This can create incentives for AFS licensees to allocate securities to promote their business or interests – which may be inconsistent with the interests of their other clients, the issuer and other investor clients.

In Report 486 we highlighted a number of allocation practices, including:

- differential treatment of investor clients based on how licensees have classified them
- larger IPO allocations in exchange for a commitment to engage in after-market buying (i.e. laddering) or to compensate a client for earlier trading losses
- allocations to senior management or directors of other companies to secure corporate business from them in the future, and
- investor bids being scaled back in favour of principal or staff allocations.

If your organisation is responsible for managing allocations during a capital raising transaction, you must make sure:

- you adequately manage conflicts of interests
- your messaging to potential investors about the status of the offer is not misleading or deceptive, for example:
  - there should be consistent messaging around the status of the offer, and
  - the use of the words 'covered' and 'cornered' in communications to potential investors should not be used inappropriately to encourage them to bid for securities in a capital raising transaction, and
- you don't breach market manipulation prohibitions (e.g. by engaging in laddering)
- you meet your obligations to provide financial services efficiently, honestly and fairly (see section 912A(1) of the *Corporations Act 2001*).

To better understand how allocations are conducted in practice, we are looking at a selection of transactions (both primary and secondary market) and consulting with a range of stakeholders, including licensees, corporate advisors, corporate issuers and investors. We have also been in contact with international regulators to understand their regulatory approach to allocations. Where needed, we will reach out to licensees and issue notices for further information.

Sell-side research

Late last year we released guidance to help Australian financial services licensees (AFS) that provide sell-side research to better manage conflicts of interest and inside information.

Regulatory Guide 264 *Sell-side research* looks at the key stages of a capital raising transaction and provides guidelines on how conflicts of interest should be managed during each of these stages, including the preparation and production of investor education reports. Regulatory Guide 264 also provides guidance for AFS licensees on the identification and handling of inside information by research analysts, and about the structure and funding of sell-side research teams.

The guidance addresses uneven market practice that has developed since the publication of **Regulatory Guide 79** *Research report providers: Improving the quality of investment research* in 2004. It also responds to industry requests for more detailed guidance on sell-side research and supplements guidance in Regulatory Guide 79. ■

FOR MORE INFORMATION,
visit our website.

[1] AFMA 2017 Australian Financial Markets Report.

BEWARE the new privacy law

By Guy Griffin

GRC solutions

On 23 February, the Privacy Amendment Act 2018 commenced. All businesses must now notify the Office of the Australian Information Commissioner (OAIC) and any affected clients about significant data breaches. So, what do financial services organisations need to know about data breaches, the new law and its potential impact on your business?

THE MANDATORY data breach notification scheme requires you to promptly notify the Office of the Australian Information Commissioner (OAIC) and any potentially affected individuals of an "eligible data breach".

Data breaches occur in a number of ways, for example:

- lost or stolen laptops, removable storage devices, or paper records containing personal information
- hard disk drives and other digital storage media (integrated in other devices, for example, multifunction printers, or otherwise) being disposed of or returned to equipment lessors without the contents first being erased
- databases containing personal information being 'hacked' into or otherwise illegally accessed by individuals outside of the agency or organisation
- employees accessing or disclosing personal information outside the requirements or authorisation of their employment
- paper records stolen from insecure recycling or garbage bins
- an agency or organisation mistakenly providing personal information to the wrong person, for example by sending details out to the wrong address
- an individual deceiving an agency or organisation into improperly releasing the personal information of another person

When does the notification obligation arise?

You must provide notice as soon as practicable to the OAIC and affected individuals if there are reasonable grounds to believe that an "eligible data breach" has occurred.

1. a data breach will arise if there has been unauthorised access to, or unauthorised disclosure of, personal information about one or more individuals, or where such information is lost in circumstances that are likely to give rise to unauthorised access or unauthorised disclosure (for example, leaving the information on the bus)

2. an eligible data breach will arise where a reasonable person would conclude that there is a likely risk of serious harm to any of the affected individuals as a result of the unauthorised access or unauthorised disclosure
3. serious harm, while undefined, is likely to include serious physical, psychological, emotional, economic and financial harm, as well as serious harm to reputation
4. serious harm will be likely if such harm is "more probable than not" having regard to a list of relevant matters to be included in Part IIIC. The matters include the sensitivity of the information, any security measures taken (such as encryption) and how easily those security measures could be overcome (for example if the encryption key has also been accessed).

Two-step process

Meeting the notification obligation is a two-step process:

1. Prepare a statement about the data breach and provide it to the OAIC
2. Take steps to notify the affected individuals

Policies and procedures

A prudent organisation will have in place detailed policies and procedures that outline the steps that are to be taken in response to a serious data breach, regardless of whether that breach has occurred because of inadvertence on the part of the organisation and its employees (e.g. personal information being lost) or following a co-ordinated attack by hackers.

The first lesson of good data breach risk governance is to not react in a knee-jerk way to cyber scare stories, but to focus your understanding on your business's specific vulnerabilities to data leakage and/or cyber-attack and how to mitigate the threats.

Start from the premise that it is likely to happen to you and focus on how you can be best prepared. Your directors should be familiar with:

- The privacy implications, risks and benefits of new technologies
- New cyber security risks and threats
- Your data breach response plan

Building a robust framework

1 EMBED a culture of privacy that enables compliance. Ensure that your organisation manages data privacy risk in alignment with your overall risk culture and in conjunction with your credit, market and insurance risk management frameworks. Where is there a risk of serious harm? Include the expectations of your board in a formally approved data breach response plan.

2 ESTABLISH robust and effective data privacy practices, procedures, systems. Create a designated position within the agency or organisation to deal with data breaches. This position could have responsibility for establishing policy and procedures, training staff, coordinating reviews and audits and investigating and responding to breaches.

3 ENHANCE your organisation's ability to respond quickly to an issue as it arises. If you remediate a breach before any serious harm occurs you will not have to notify individual customers. In other words, update your data breach response plan with the new mandatory reporting regime in mind!

4 ENSURE:

- the implementation across your business of data retention, publication and disposal controls in accordance with APRA and OAIC guidelines
- your organisation has internal guidance, policies and procedure to define what constitutes serious harm in the context of your organisation's business and to outline your information collection practices
- you review contracts with service providers. Do they contain privacy and data breach notification obligations on the service provider that will allow you to comply with your obligations?
- you have draft notifications ready to be dispatched. Your draft notification should include the information specified in the new law and that can be adapted to a particular breach.

SAFAA accredited Privacy CPD training

GRC Solutions have developed a robust, two-hour Privacy CPD course that is accredited by the Stockbrokers and Financial Advisers Association. The e-learning delves into the topics mentioned before and gives a well-rounded overview, including recent cases and FS-related examples. It has been developed with Australian retail and institutional stockbroking firms and investment banks in mind. ■

FOR FURTHER INFORMATION, visit http://grcsolutions.com.au/CPD or email contactus@grcsolutions.com.au

Salt CPD is not a tick-and-flick exercise: it is a carefully developed program designed to help advisers and brokers grow their skills and maintain high levels of competency.

ABOUT THE AUTHOR

Guy specialises in financial services and credit licensing compliance. His other areas of practice include prudential risk and compliance for ADIs and advising on all aspects, legal and non-legal, of effective board governance for ADI directors. He has wide experience in delivering workshops at high levels in these areas. For further information, visit http://grcsolutions.com.au/CPD or email contactus@grcsolutions.com.au

An exciting change we would like to share with you is that your Association has moved to a new education provider/partner –

THE COLLEGE RTO, AT WESTERN SYDNEY UNIVERSITY.

As at March 1st 2018, The College RTO has been administering our Accreditation programs.

This has seen us say goodbye to DeakinCo who have been administering our Accreditation programs. DeakinCo have been a wonderful partner for SAFAA and we will remain firm friends.

What does this mean for you?

Well…… it's business as usual.

Candidates will continue to enrol directly through SAFAA, through our website. Once candidates have enrolled they will be sent their materials electronically along with instructions on how to sit their assessment/s. Any help candidates require will be a phone call or email away. There have been no fee increases as a result of this change. Prices will remain the same.

Please contact us on education@stockbrokers.org.au if you require further information.

Can a SMSF invest in bitcoin?

By Peter Grace

With value of bitcoin going through the roof (and crashing down again) there have been many questions about whether investing in bitcoin (or any other crypto currency) is feasible in a SMSF.

The short answer seems to be 'yes' it is possible, but whether it is a good idea and what processes and records are required are other questions. The ATO has, to date, been silent on whether it is allowed so all the usual rules apply.

TRUSTEES OF A SMSF should follow a logical process in making a decision to acquire any asset as an investment. The ATO has stated that bitcoin is not money or a foreign currency but it is an asset for CGT purposes.

Investing in bitcoin must be allowed by the fund's trust deed and incorporated into the investment strategy. The trustees should apply the prudent person test – firstly, do I understand the investment? One observer has commented 'cryptocurrencies don't physically exist. They are intangible and are created as reward for mining the blockchain ledger.' The old adage applies – if a trustee doesn't understand that statement, then they should not be investing.

Trustees must also consider is the asset likely to produce a positive return? Is the risk acceptable? Is the asset liquid? Does it make sense in terms of the fund's total portfolio. Holding bitcoin is no different to holding gold bullion in that it produces no income but may provide capital appreciation.

The investment must satisfy the sole purpose test meaning it must be to provide retirement benefits and not provide any immediate benefits to the members. Some cryptocurrencies pay affiliate fees to the person who referred the account holder and trustees should take care that that no benefit accrues to a member.

In the same way as acquiring other assets, an SMSF cannot acquire bitcoin from a member or a related party. Bitcoin is acquired from a coin exchange and trustees must ensure this entity is reputable and has similar compliance and complaints handling procedures as a stockbroker.

Administratively, trustees will need to keep excellent records and be prepared for extra processes and fees to manage a new and unusual type of asset.

SMSF auditors may have difficulty with this new asset will want to ensure the SMSF owns the asset, the asset actually exists and there is a sound basis for an objective and provable valuation.

So, yes trustees can acquire and use bitcoin but they must make sure they get their record keeping and processes right. They should seek advice form an expert in cryptocurrencies and superannuation. ■

Our RG146 Superannuation course is highly recommended for anyone who advises on securities in self managed or other superannuation funds. Each month we will be publishing a short article covering a current superannuation topic written by Peter Grace the author of the course. Peter can be contacted on wordsandtraining@bigpond.com

ACCREDITATION & TRAINING March, April & May 2018

Responsible Executive (RE) Series Workshops	**RE REFRESHER** – 4 CPD (COMPLIANCE) This workshop provides a refresher on the requirements applicable to REs and reviews some of the main topics in The ASIC Market Integrity Rules (ASX Markets) 2010 and/or The ASX Clear Operating Rules (Clearing & Settlement) Responsible Executive Examination. Intended as a refresher course for existing REs who have already passed the Exam(s), this workshop could also be of interest to potential REs. Topics include RE Management & Supervision Requirements (& ASIC RM comparisons); Capital Adequacy, Records, Trust; Dealing & Client relations rules; Disciplinary Processes; Corporations Act requirements.	SYD: Tues 1 May | 9:00am – 1:00pm
	RE EXAM PREPARATION 'SHORT COURSE' – 4 CPD (COMPLIANCE) This 4-hour intensive workshop is a condensed version of the Stockbrokers And Financial Advisers Association 2-day RE Exam Preparation Workshop. It covers The ASIC Market Integrity Rules (ASX Markets) 2010 and/or The ASX Clear Operating Rules (Clearing & Settlement) Responsible Executive exam syllabuses in detail, with 7 subject areas and 2 assessments during class time.	SYD: Wed 2 May | 9:00am – 1:00pm
Professional Development Workshops	**MARKET MANIPULATION AND OTHER PROHIBITED CONDUCT** – 4 CPD (COMPLIANCE) This workshop covers an in-depth examination of what constitutes market manipulation and other prohibited market conduct. Involving a mix of presentation and scenario-based discussion, it is designed to suit market professionals, both front and back office, including: Sales staff/client representatives; Proprietary Traders; DTRs; Investment banking; Settlement staff; and Compliance & Legal.	SYD: Thurs 15 Mar | 9:00am – 12:00pm
	REVIEW & REMEDIATION – 2 CPD (COMPLIANCE) This 2 hour workshop will cover the key components of review and remediation. The aim of review and remediation is to place the affected client in the position they would have been in had misconduct not occurred. This is an important area - to be ready and prepared to address complaints and issues that can arise from potential misconduct or deficient advice. The workshop will be of interest to all AFS licensees, no matter the size of the licensee. It will have value not just to those who have a current need to put a remediation/review program in place, it will also cover how the licensee assesses whether a program is required.	SYD: Thurs 22 Mar | 12:00pm – 2:00pm
	CONDUCT RISK – 1.5 CPD (COMPLIANCE) In this lunchtime seminar hear from a Conduct Risk specialist on what it is; where Conduct Risk might go wrong; and where it belongs in the risk world. More importantly, learn how it will affect you.	SYD: Tues 10 Apr | 12:30pm – 2:00pm MELB: Tues 17 Apr | 12:30pm – 2:00pm
Introductory Series Workshops	**THE BUSINESS OF STOCKBROKING IN AUSTRALIA** – 2.5 CPD This workshop provides an overview of Australia's financial markets and the critical role that stockbrokers play in both retail and institutional markets. A short history of broking in Australia sets the scene for explanation of the current market structure, operations and regulation..	MELB: Mon 16 Apr | 1:30pm – 4.30pm

For further information visit **www.stockbrokers.org.au**

STOCKBROKERS AND FINANCIAL ADVISERS CONFERENCE

SAFAA 2018

23 & 24 MAY 2018
CROWN PROMENADE MELBOURNE

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SAVE THE DATE

23 & 24 MAY 2018

...plus... CHARITY GOLF DAY

Woodlands Golf Club | 22 May 2018

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