

27 December, 2018

Financial Adviser Standards and Ethics Authority

By email: consultation@fasea.gov.au

Relevant Providers Exam -Legislative Instrument Comments by Stockbrokers and Financial Advisers Association

I refer to the Draft Legislative Instrument and Explanatory Memorandum on the Relevant Providers Exam which were released by FASEA for consultation in on 14 December 2018 (“the Draft Guidance”).

The Stockbrokers and Financial Advisers Association (“SAFAA”) provides the comments set out below on the respective Draft Legislative Instrument and Draft Explanatory Memorandum.

At the outset, SAFAA acknowledges the improvements made by FASEA to the original draft guidelines relating to the Relevant Providers Exam

Part A

We note that reference is made variously to “authorised representatives” and “relevant providers”. It would assist in providing clarity and reducing confusion within the Policies by using a single, consistent term. The term “authorised representative” is not ideal, as

there is a class of financial advisers who are employees of an AFSL and who are not authorised representatives.

Curriculum

1. On a general level, it is difficult to comment on the 3 domains of knowledge and skills without more detail on what sits beneath each of the listed dot points. For most of those points, there is a considerable amount of detail that potentially can be included. The scope of the exam could be extremely broad depending on what is included in each. In particular, Chapter 7 of the Corporations Act contains an enormous amount of material.
2. Also on a general level, there remains an unnecessary duplication between Curriculum of the Exam, and the bridging courses that existing advisers will be required to undertake. This was a matter that SAFAA highlighted in our Submission on the previous draft Guidance.

If candidates for the Exam demonstrate their competence by passing the proposed subject areas in the exam, particularly Areas 1 and 3, then there is no reason why those advisers should then be required to study those same subject areas in later bridging courses. Those subject areas should be in either the exam or in the bridging course, but for them to be in both is unnecessary duplication.

It was for these reasons that SAFAA maintains its view that the Exam should be restricted to the subjects of Ethics and Chapter 7 of the Corporations Act only.

3. **Area 1 Regulatory and Legal Obligations.** Further to our comments above about the scope of what is included, there is an issue between what a Licensee is required to comply with, and the obligations on an Adviser. For example, in relation to AML/CTF, it is not appropriate for an adviser to demonstrate the knowledge of all of the matters that the Licensee is required to have in place, for example, enhanced due diligence and risk-based compliance.

In addition, Stockbroking advice in most cases does not constitute tax (financial) advice. The TPB requirement relating to Tax (financial) advice therefore do not apply to the significant majority of stockbrokers. TPB requirements should not be included in the scope of the Exam, at least in relation to stockbrokers.

The curriculum content, particularly in relation to AML/CTF and to Taxation, should be tailored so that it only extends to matters that the particular class of advisers needs to know within the scope of the type of advice that they provide.

4. **Area 2 – Applied Ethics.** The last dot point under this domain area refers to the maintenance of client files and records. This is a specific AFS Licensee obligation under the Corporations Act and Rules (and, in relation to the Market Integrity Rules, on the Market Participant entity). SAFAA submits that the adviser should not be examined on the Licensee/Market Participant obligations. Any treatment of this subject should be limited to the obligations of the individual adviser.
5. **Area 3 – Financial Advice Construction.** Further to our point above on the duplication of this area in both the Exam and the further study (bridging course material). If, notwithstanding our argument, the Area is to remain within the scope of the Exam, there must be separate exam requirements and content for Stockbrokers to those for other financial advisers. Stockbrokers provide limited and scaled advice in relation to Exchange Listed products, including equities, warrants, ETOs and LEPOs, and are not required to undertake the same process and assessments as those required for a financial planner undertaking a holistic assessment for a financial plan. It is not appropriate to require a stockbroker to demonstrate the knowledge required to perform the latter, when that is something they simply do not have an obligation to conduct in connection with such advice.

It is more important for the exam for Stockbrokers to include Product related testing, as was previously required in ASIC Regulatory Guide 146, which was the required qualification for advisers (including Stockbrokers) giving personal advice to retail clients.

Sitting the Exam

6. The mandated 3 month period delay between a candidate being entitled to re-sit the exam should be dispensed with. Firstly, as a practical matter, there will in any event be an inevitable period of time between the ability to re-sit, simply by reason of the time taken to mark an exam, and the next available date on which the candidate will be able to re-sit.

SAFAA is concerned that the mandated 3 month period will create the potential for serious problems if, as might be expected, many advisers attempt the exam later rather than sooner. Should there be a large number of advisers requiring a

re-sit, particularly in the case of older advisers who may find the on-line exam experience to be foreign to them, the mandated 3 month period could lead to a build-up of a significant volume of exam candidates towards the end of the period. It may prove difficult to get all of the advisers through the process by the cut-off date.

SAFAA submits that there does not need to be a time limit between re-sits.

7. **Feedback/Review of Results.** SAFAA submits that a candidate who has failed the exam should be given additional information about whether they have passed either of the multiple choice or written parts of the exam. This is material information in the decision whether to avail themselves of the option to request a review of their marking or not. If the candidate has passed the written questions, but failed the multiple choice, then requesting a review would presumably be a waste of time, and possibly also of the request fee.

In addition, it makes no sense, in our view, that a candidate who has failed one part of the exam, but not the other, should be required to sit the entire exam again. If the candidate has demonstrated sufficient knowledge of the multiple choice questions but has failed the written portion, it makes no sense to require the candidate to have to sit the multiple choice questions all over again. Similarly, if the candidate has satisfactorily passed the written question area, then it makes no sense to require that part of the exam to be taken again.

This is a further reason for candidates who have failed to be given the breakdown of their results between the two exam components.

SAFAA seeks clarification around the definition of the 'credit level' where used- specifically what percentage of the exam's total marks does a 'credit level' pass represent?

Delivery Mode

8. SAFAA has concerns about the considerable number of advisers who are located in regional areas outside the 9 specified exam locations. We note the reference to a digital option being available in "Special Circumstances". SAFAA urges that these special circumstances not be defined excessively restrictively. The cost and expense of large numbers of advisers living in places such as Albury, Dubbo, the Gold Coast or Armidale, having to travel to a capital city should make it essential that the digital availability should be afforded them on the basis of

remoteness alone, without any other additional factors being required for eligibility.

Examination Timetable

9. We note that the examinations will be scheduled “bi-monthly” from 2020. This term has acquired multiple meanings in recent times, and its meaning by FASEA should be clarified in the final version of documentation. We note that FASEA has indicated that the examinations will be available every two months, and not twice each month.

Examination Logistics

10. We note the requirement for a candidate to have two pieces of identification, including photo ID. We question whether two pieces of photo ID are necessary, given that only one is needed for AML purposes. If the reference was meant to be one photo ID and one other ID, then it is still not clear why a second piece of ID is considered necessary.

SAFAA submits that one piece of ID bearing a photo and residential address should be all that is needed. It should only be that, if this is not practical, then second form of ID should be required.

Additional needs

11. SAFAA remains concerned about the difficulty that older advisers may have in navigating between multiple screens during the exam, or with sufficient speed, to access the permitted resource material on the same terminal as the exam. SAFAA urges that there be the ability in appropriate cases for advisers to bring the permitted resource material in hard copy into the exam location, or alternatively, to have the permitted resource material available in physical form at the exam venue. for those candidates who are in this position.

Special Consideration

12. The reference to “acute illness” as the relevant pre-condition to re-sit the exam without incurring additional fees is, in our view, excessively draconian. Given that a medical certificate is required to support an application, the condition need only state “illness impacting on a person’s ability to undertake the examination”, or words to that effect.

The requirement for applications for Special consideration to be submitted in writing within 14 working days of the date of the examination may operate unfairly in some cases if the person has become unable to function adequately due to a serious illness. There should be provision for allowing for an extended period of time for such applications in appropriate cases based on a medical certificate.

Learning/Study Materials

13. SAFAA notes that FASEA is to provide material on the website to assist candidates to prepare for the examination. SAFAA welcomes this. A “recommended reading list” does not, in our submission, provide adequate guidance for the material that needs to be studied, and some additional clarity or guidance beyond this is essential.

Extension of Exam Deadline

14. Members have identified that the deadline for existing advisers to complete the Exam may be an issue in cases where an adviser who otherwise qualifies as an existing adviser takes a period of extended parental leave, sick leave or some such absence. Allowing an adviser who finds themselves in this situation a reasonable period of time to undertake the exam upon their resumption of work would be a fair provision to incorporate into the exam framework. We suggest allowing the adviser to complete the exam within a period of six months of their returning to work after the leave of absence.

Clarification of the timeframe to be on the ASIC FAR for Existing Advisers

15. Members have advised that there is potential for confusion arising from the differing references in the policy documentation as to when an adviser must be on the ASIC FAR in order to be an existing adviser e.g. “between 2016 and 1/1/2019” and “on 1/1/2019”. The references should be made consistent and in line with the definition in the Legislation. An adviser may not be on the FAR as at 1/1/2019 by reason of being unemployed or through some other absence, but may nevertheless be entitled to be an Existing Adviser under the Legislation.

We would be happy to discuss any issues arising from our submissions on this issue. Should you require any further information, please contact Peter Stepek, Policy Executive, on (02) 8080 3200 or email psteppek@stockbrokers.org.au .

Yours sincerely,



Peter Stepek
Policy Executive