Stockbrokers and Financial Advisers Association

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Email: SDBconsultation@treasury.gov.au

The Manager
Adviser and Brokers Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

SINGLE DISCIPLINARY BODY FOR FINANCIAL ADVISERS

The Stockbrokers and Financial Advisers Association (SAFAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and Advisory firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

Thank you for the opportunity to provide feedback on the exposure draft of the *Financial Sector Reform (Hayne Royal Commission Response – A new disciplinary system for financial advisers) Bill 2021* (the Bill).

SAFAA attended a Treasury roundtable with other industry associations on 28 April 2021 at which we provided member feedback.

Executive summary

The availability of good quality advice to Australian consumers is increasingly important. ASIC is currently consulting with industry as to how it can help increase the availability of good quality affordable personal advice that meets consumers needs. SAFAA and its members are involved in this consultation and have provided extensive feedback on this important topic.

The following are just some of the matters having a significant impact on the ability of our members to continue to provide good quality, affordable advice to retail clients:

- FASEA's lack of understanding about how stockbroking and investment advice differs from financial planning that has led to it's 'one-size-fits-all' approach to financial advice that is negatively impacting the stockbroking and investment advice profession
- the FASEA Code of Ethics, particularly Standard 6 that directly conflicts with the provision of scaled advice and Standard 3 that is impossible to comply with and conflicts with the law
- an accelerating exodus from the stockbroking and investment advice industry of experienced, retail advisers as a consequence of FASEA's refusal to recognise a stockbrokers' qualifications, coupled with a mandatory exam, the content of which is largely irrelevant to their day-to-day business
- a significant increase in regulatory burden resulting in rising costs of providing advice to retail clients.

As SAFAA has pointed out previously, the increased and unhelpful regulatory burden is a consequence of government policy and legislation and we have long advocated for government and ASIC to revisit the regulatory settings around the provision of advice to retail clients and to move away from a 'one-size-fits-all' approach. It is important that the winding up of FASEA and introduction of the Single Disciplinary Body not add to the costs of providing advice to clients and acts as a 'step-change' to improve the regulatory environment for consumers and advice providers.

While SAFAA has included specific recommendations in our submission, the key issues for SAFAA members concerning the Single Disciplinary Body are:

- The obligation to register a financial adviser must sit with the financial services licensee on whose behalf the adviser is authorised to provide personal advice to retail clients.
- An expeditious method of dealing with minor contraventions of financial services laws must be developed to ensure that the Panel only deals with material matters. Otherwise the Panel will be overwhelmed by immaterial matters and not operate effectively.
- To ensure that the Panel has the relevant experience and expertise to deal with issues relating to stockbroking and investment advice the Minister, Treasury and ASIC must consult with SAFAA on the stockbrokers and investment advisers to be appointed to it. SAFAA does not want the FASEA approach to financial advice repeated in the Single Disciplinary Body.

Recommendations

SAFAA makes the following specific recommendations:

Single Disciplinary Body

- The Minister, Treasury and ASIC should consult with SAFAA on the stockbrokers and investment advisers to be appointed to the Financial Services and Credit Panel ('Panel') to ensure that it has the relevant experience and expertise to deal with issues relating to stockbroking and investment advice.
- The terms and conditions that ASIC will impose on Panel members should prescribe the qualifications and level of seniority of the ASIC-appointed chair to ensure that the chair has sufficient seniority and experience to undertake the role.
- The Panel not consider any disciplinary action arising from a possible breach of Standards 3 or 6 until the Code has been reviewed by Treasury in its role as the standard setter for the Code. This is because as currently worded, elements of the Code are unworkable and conflict with the corporations law.
- An expeditious method of dealing with minor contraventions of financial services laws be developed to ensure that the Panel only deals with material matters. Otherwise the Panel will be overwhelmed by immaterial matters and not operate effectively.
- The terms and conditions provide that the quorum for panel decisions comprise three panel members, including the Panel chair. This will ensure that in all cases, there are at least two industry representatives on the Panel.
- Details of a first offence or a breach of a minor, immaterial matter should not be included on the Financial Advisers Register (FAR).

- ASIC consult with industry on how it will manage vexatious complaints, so that there is certainty from the outset as to how such complaints will be dealt with.
- Before imposing an administrative sanction, the written notice of the proposed sanction should also be sent to the licensee. It is important that the licensee be aware of any proposed sanction that may be imposed on their adviser and the contravention to which it relates.
- The Bill be clarified to ensure that Standard 1 of the Code not be used as a mechanism to 'double up' the penalties that may be imposed on an adviser.
- The maximum financial sanction will be the greater of 5000 penalty units (currently $1.1 million) and three times the benefit derived and detriment avoided. Only the most egregious breaches of the Corporations Act that result in significant harm to consumers should attract such substantial penalties.
- In making determinations, the Panel should have reference to actions taken by the licensee against the adviser relating to the conduct under investigation including:
    - administrative sanctions
    - other remedial action including training and supervision
    - loss of financial benefit that the adviser directly or indirectly obtained
    - compensation of any client that suffered loss or damage directly as a result of the breach.
- The rules about recognition of prior education and training be clarified to ensure that registered advisers who are currently on the FAR and who are suspended by the Panel have their education and training recognised and will not be required to undertake the professional year when they are re-registered.
- The Bill provide for the adviser or their lawyer to be able to question any person called by the Panel to give evidence and for the adviser to be able to request the chair to call for documents that may support their defence.

Registration of financial advisers

- The obligation to register a financial adviser must sit with the financial services licensee on whose behalf the adviser is authorised to provide personal advice to retail clients.
- Bearing in mind the large cost burden currently imposed on licensees as a result of the significant increases in the ASIC industry funding levy; implementation of Royal Commission recommendations; and the costs associated with the FASEA exam and education requirements any registration fee per adviser must be a nominal one.
- A single registration period per year for all financial advisers be adopted to bring adviser registration into line with other professional registrations.

Wind up of FASEA and transfer of standard functions to the Minister and ASIC

- Commerce, economics, business and finance degrees from established Australian universities should be included in the list of approved courses – financial planning qualifications must not be the only approved courses for financial advisers.
- The government immediately step in and:
    - provide greater flexibility for advisers to sit the exam

- allow advisers who have prepared for and sat the exam, but failed, be provided another opportunity to sit an exam that is fit for purpose once FASEA has been disbanded and responsibility for approving the exam has been transferred to Treasury.

- The government more fully consider the role of professional associations in regulating the financial services sector, retain mandatory inclusion on the FAR of the field to show membership of a professional association and move to mandating membership of a professional association for financial advisers to fulfil its pledge to embed professionalism in the sector.

Our detailed feedback on the Bill and the importance and role of professional associations is set out below.

Detailed comments

Importance and role of professional associations

The stockbroking profession has existed for many centuries and is highly regulated, governed by the ASIC Market Integrity Rules, the operating rules of the various market operators such as ASX, Chi-X and NSX and the Corporations Act. The profession has made an incredible contribution to Australia's economic strength, not only in terms of personal wealth creation, but also in the all-important equity formation for Australian companies, ranging from CSL, BHP and CBA down to the smallest and smartest technology and science successes.

SAFAA is a professional association that sets and enforces high educational, ethical and professional requirements on its members. The aim of these standards is to give investors confidence that, when they deal with a SAFAA member, they are dealing with a person who exhibits the highest level of professionalism and integrity, and the services that they receive will be of a high quality.

SAFAA's professional, ethical and education standards are contained in:

- SAFAA Code of Ethical Conduct
- SAFAA Constitution and Rules
- Standards promulgated by the SAFAA Board or a relevant SAFAA Committee from time to time.

In order to ensure that its standards are met, SAFAA has established a Complaints Handling Process and a Conduct Review and Disciplinary System to investigate and determine complaints against members as well as any other referral involving the conduct of a member. By becoming a member of SAFAA, the member agrees to be bound by SAFAA's Complaints Handling Process and the Conduct Review and Disciplinary System.

SAFAA also maintains high professional standards by offering industry education. Finance professionals can accelerate their careers with leading postgraduate courses. Developed jointly by SAFAA and Western Sydney University's highly regarded Sydney Graduate School of Management, SAFAA offers the:

- Master of Stockbroking and Financial Advising
- Graduate Diploma of Stockbroking and Financial Advising
- Graduate Certificate of Stockbroking and Financial Advising

SAFAA supports its members with a high calibre program of continued professional development (CPD) designed to enhance their knowledge and skills and meet their ongoing CPD requirements.

Presented by leading experts, SAFAA offers:

- industry accreditation in relevant aspects of operating in equity markets and abiding by the Market Integrity Rules and training programs
- annual conference—the flagship event to equip stockbrokers and investment advisers to embrace technological, social and regulatory change
- an accredited tax (financial) adviser Association for the purposes of the *Tax Agents Services Act 2009*
- member access to free CPD webinars.

The Association maintains a CPD store for members with details of the many thousands of education and training courses undertaken by them, going back to 2001. This assists SAFAA members to comply with their CPD obligations.

SAFAA considers that the Single Disciplinary Body contained in the Bill is essentially a government-imposed statutory model of regulation that is prescriptive and adopts a 'one-size-fits-all' approach. We note that the Professional Standards Council has set out three approaches when considering professionalism: self-regulation; co-regulation; and state regulation. SAFAA favours a co-regulatory model for regulation of the financial services industry and believes that a 'one-size-fits-all' approach where everything is legislated will not be as effective as one that encourages the 'mindset' inherent in professionalism and that recognises the specific expertise and functional knowledge of the industry. We also consider that at this time it is even more important to have professional associations as part of the system of encouraging professional obligations. The Professional Standards Authority contends that an individual's sense of identity and pride in their profession generated through membership of a professional association may increase the likelihood of the individual professional upholding professional obligations.

We note that the Parliamentary Joint Committee Inquiry into proposals to lift the professional, ethical and education standards in the Financial Services Industry recommended that advisers be required to be a member of a professional association. SAFAA has long argued that membership of a professional association should be mandatory in the financial services sector. SAFAA provided a comprehensive submission to Treasury on the importance of mandating membership of a professional organisation in response to the Treasury Consultation Paper on lifting professional, ethical and educational standards in the financial services industry in May 2015. SAFAA urges the government to more fully consider the role of professional associations in regulating the financial services sector. This would include retaining inclusion on the FAR of the field to show membership of a professional association as essential information to be provided at registration. This is an important signal to consumers, who can assess if an adviser is a member of a professional association. SAFAA urges the government to move to mandating membership of a professional association for financial advisers to fulfil its pledge to embed professionalism in the sector.

Single disciplinary body for financial advisers

Membership of the Panel

SAFAA welcomes that the Panel will be made up of industry participants. Review of conduct by peers is an important aspect of professionalism.

Where the Panel is determining a matter involving stockbroking or investment advice, a qualified and experienced stockbroker or investment adviser must be on the Panel to ensure that it has the requisite technical and specialist knowledge. One of the biggest shortcomings of the FASEA regime is that at the outset stockbrokers and investment advisers were not included on the board. As a result FASEA adopted a 'one-size fits all' approach to personal advice and treated stockbrokers and investment advisers as if they were financial

planners. This has resulted in unfairness to stockbrokers and investment advisers that SAFAA does not want repeated in the Single Disciplinary Body.

We recommend that the Minister, Treasury and ASIC consult SAFAA on the stockbrokers and investment advisers to be appointed to the Panel to ensure that it contains the relevant experience and expertise to deal with issues relating to stockbroking and investment advice.

SAFAA looks forward to reviewing the terms and conditions that ASIC will be imposing on Panel members, and in particular, the provisions concerning ASIC's power to terminate a Panel member's membership of the Panel. SAFAA would be concerned if ASIC could exercise this power to terminate a Panel member's membership simply because the member disagreed with the ASIC-appointed chair.

SAFAA recommends that the terms and conditions prescribe the qualifications and level of seniority of the ASIC-appointed chair to ensure that the chair has sufficient seniority and experience to undertake the role.

Who is subject to disciplinary action by the Panel?

SAFAA agrees that the Panel should only have power to take action against individual financial advisers and not financial services licensees. AFSL holders are already subject to significant obligations under the Corporations Act and are regulated by ASIC.

What kinds of matters can be referred to a Panel?

SAFAA has two main concerns about the kinds of matters that can be referred to a Panel.

FASEA Code of Ethics

We note that as currently drafted, a failure to comply with the FASEA Code of Ethics is a contravention of a restricted civil penalty provision that allows the Panel to issue an infringement notice or recommend to ASIC that it seeks a civil penalty.

SAFAA has consistently voiced its serious concerns that elements of the Code are unworkable and conflict with the law.

Standard 3 of the Code that imposes a blanket prohibition on any conflict of interest is impossible to comply with and conflicts with the law. The test in Standard 3 has no element of materiality or proportionality. For example, in any payment mechanism (commission, hourly rate, asset-based fee etc), there will be potential conflicts between the interests of the adviser and/or of their licensee and the client.

SAFAA has recommended in submissions to FASEA that the Code should utilise the wording of the Intent as Standard 3, so that the Standard states: 'Advisers must not advise, refer or act in any other manner where they have a conflict of interest or duty that is contrary to the client's best interests.' This gives effect to the intent of the FASEA board without conflicting with the corporations law.

Standard 6 of the Code conflicts with the provision of scaled advice and is inconsistent with section 961B of the Corporations Act (the 'best interests duty'). The Minister and ASIC have strongly supported the provision of scaled advice. Stockbroking involves the provision of scaled advice. While Standard 6 remains unchanged, stockbrokers and investment advisers providing scaled advice risk being found to be in breach of the standard by failing to take into account a client's broader, long-term interests and likely circumstances. SAFAA has called for Standard 6 to be removed from the Code.

Until these changes are made, advisers risk contravening a civil penalty provision and being subjected to disciplinary action.

SAFAA recommends that the Panel not consider any disciplinary action arising from a possible breach of Standards 3 or 6 until the Code has been reviewed by Treasury in its role as the standard setter for the Code.

Contravention of a financial services law

The Bill requires ASIC to convene a panel if it reasonably believes that an adviser has contravened a financial services law. A financial services law is broadly defined in the Corporations Act and includes (amongst other things):

- Chapter 7
- Chapters 5C and 5D
- Chapters 6, 6A, 6B, 6C and 6D
- Division 2 of Part 2 of the ASIC Act that covers conduct relating to the provision of financial product advice
- Any other Commonwealth, state or territory legislation that covers conduct relating to the provision of financial services (whether or not it covers other conduct), but only in so far as it covers conduct relating to the provision of financial services.

Both ASIC and the panel will become overwhelmed if all contraventions of a financial services law as defined are captured by the regime without a materiality threshold being applied to ensure that minor and administrative breaches are either filtered out or dealt with expeditiously. The system will become clogged with minor, technical or inadvertent breaches that would not otherwise be significant. This will result in:

- an increase in the amount of 'noise' given that many referrals will relate to trivial failures, thus making ASIC's job harder
- considerable costs to ASIC in triaging matters that will be passed onto the industry via the ASIC industry funding levy.

This issue is similar to the concerns SAFAA and many others in the advice industry have raised in respect of the new breach reporting regime introduced by the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020.* SAFAA considers that a consequence of the new provisions 'deeming' a contravention of a civil penalty provision to be a significant breachwill be a large increase in breach reports for minor, technical or inadvertent breaches. The Taskforce's recommendations that led to the new legislative regime for breach reporting included a materiality threshold for what constitutes a significant breach, yet such a threshold was not included in the new Act. Treasury is currently consultating on a regulatory carve-out to prescribe civil penalty provisions that are not taken to be significant (and therefore may not be reportable) under the relevant breach reporting regime. This is in recognition of concerns that including minor, technical or inadvertent breaches that are otherwise not significant will increase the regulatory burden on firms as well as ASIC and impact the cost of providing financial services. SAFAA understands that ASIC estimates breach reports to increase ten-fold once the new breach reporting provisions come into effect on 1 October 2021. Concerns have been raised by the industry that the dramatic increase in breach reports will overwhelm ASIC's resources.

Clearly, an expeditious method of dealing with minor contraventions of the financial services laws must be developed to ensure that the Panel only deals with material matters. This is important not only for issues of cost and resourcing, but also for consumers. An essential aspect of a professional disciplinary system is to protect consumers and prioritise the interests of the community. Consumers will be overloaded with information if non-material contraventions are included on the FAR which will defeat the purpose of the FAR to provide a service assisting consumers to find an adviser to meet their needs. Moreover, the issue of detriment to the consumer

should sit at the heart of the Panel's work and the importance of determining sanctions in such cases could be lost in the welter of minor matters that have no financial impact on or harm to clients (for example, a FSG being sent three days late).

SAFAA does not recommend that the expeditious process be prescribed in legislation. SAFAA is of the view that the capacity of the ASIC-appointed chair to hold meetings using technology would allow ASIC to conduct investigations into breaches and collate a batch of matters to email them to the Panel. With ASIC making recommendations as to suggested sanctions, minor matters could be dealt with by email and the Panel convened for a face-to-face hearing for serious, material matters.

SAFAA also recommends that ASIC undertake to analyse the data arising from complaints made to the Panel. One breach of a minor, administrative nature causes no detriment to the consumer. However, if a pattern of such breaches by an adviser emerges, then ASIC should be able to bring this to the Panel's attention.

Vexatious complaints

SAFAA is also concerned about ASIC's ability to triage vexatious and frivolous complaints from consumers or referred from AFCA. It is our members' experience that AFCA fails to effectively triage vexatious claims. There is currently no downside to complainants lodging frivolous, vexatious or meritless complaints with AFCA as they don't have to pay for the claim to be lodged and don't experience any consequences if the claim is rejected. AFCA continues to accept vexatious and frivolous complaints and complaints that are past the statute of limitations, rather than rejecting them at first instance. This results in member firms being required to pay AFCA fees and creates issues in managing the expectations of Professional Indemnity insurers concerning the likely outcome of a claim. We are concerned that complainants lodging such vexatious and unmeritorious claims with AFCA will be encouraged to make the same complaint to ASIC as part of the disciplinary process.

SAFAA recommends that ASIC consult with industry on how it will manage vexatious complaints, so that there is certainty from the outset as to how such complaints will be dealt with.

How are matters considered?

SAFAA agrees that the chair of the Panel should have the flexibility to hold meetings using technology. This is particularly important in light of COVID-19 pandemic restrictions that can be imposed at any time. As having the right person on the panel will not be dependent on location, it will allow experts from different locations to participate in meetings, resulting in better outcomes. It also assists with timely decision-making. As noted above, SAFAA is of the view that it will also provide for an expeditious manner of dealing with minor, administrative breaches of financial services law that cause no detriment to the consumer.

SAFAA agrees that the Panel should have the ability to make decisions according to circular resolution or a similar agreed procedure.

SAFAA recommends that the quorum for Panel decisions comprise three panel members, including the Panel chair. This is important as the chair has both a deliberative and a casting vote to resolve deadlocks. If a Panel member is not entitled to be present at a meeting due to the disclosure of a conflict and has to withdraw, the current provision would allow a Panel of two members to exercise the Panel's powers. In light of the chair's deliberative and casting vote, the ASIC staff member would make the decision in the event the chair and the industry panel representative disagreed. This may not result in a fair outcome.

What actions can a Panel take?

SAFAA considers that details of a first offence or a warning for a breach of a minor, administrative matter should not be included on the FAR. As stated above, specified circumstances that allow a Panel to impose an administrative sanction include a contravention of a financial services law, which is broadly defined in the Corporations Act and may include a minor breach.

Before imposing the administrative sanction, the Bill currently requires the Panel to give the financial adviser a written notice of the proposed sanction, including various details including their right to make a submission or request a hearing. SAFAA recommends that the written notice of the proposed sanction should also be sent to the licensee. It is important that the licensee be aware of any proposed sanction that may be imposed on the adviser and the contravention to which it relates. The licensee needs to know if there has been a contravention of the law within its organisation and may decide to:

- provide assistance to the adviser with their submission or appear with them before the panel
- take action against the adviser
- provide other training or support to assist the adviser with their compliance
- provide training more generally to its financial advisers if the matter so warrants.

Standard 1 of the Code provides that '*You must act in accordance with all applicable laws…….'* Consequently, the breach of a financial services law by an adviser can give rise to both administrative sanctions as well an infringement notice or civil penalty arising from the same contravention. SAFAA recommends that the Bill be clarified to ensure that Standard 1 of the Code not be used as a mechanism to 'double up' the penalties that may be imposed on an adviser.

We note that the maximum financial sanction will be the greater of 5000 penalty units (currently $1.1 million) and three times the benefit derived and detriment avoided. SAFAA considers that only the most egregious breaches of the Corporations Act that result in significant harm to consumers should attract such substantial penalties.

In making determinations, the Panel should have reference to actions taken by the licensee against the adviser relating to the conduct under investigation including:

- administrative sanctions
- other remedial action including training and supervision
- loss of financial benefit that the person directly or indirectly obtained
- compensation of any client that suffered loss or damage directly as a result of the breach.

SAFAA agrees with the right of the adviser to apply to the Administrative Appeals Tribunal for a merits review of the Panel's decision or to ASIC to request that the instrument be varied or revoked.

We note that a Panel can suspend an adviser's registration where there are specified circumstances. We consider that the rules about recognition of prior education and training should be clarified to ensure that registered advisers who are currently on the FAR and who are suspended by the Panel have their education and training recognised and are not required to undertake the professional year when they are re-registered.

Panel hearings

SAFAA supports the ability of the Panel to hold its hearings online. This will assist with cost effectiveness and timeliness of the Panel's operations.

We recommend that the adviser or their lawyer be able to question any person called by the Panel to give evidence. We also recommend that the adviser be able to request the chair to call for documents that may support their defence. SAFAA notes that the hearing may involve conduct that occurred when an adviser was employed at a different firm from the one they are currently employed at and they may require access to documents from the former employer as part of their defence.

Alternatives to administration or civil sanctions

SAFAA supports the ability of the Panel to accept enforceable undertakings as they are an effective means of changing behaviour and culture.

How do you pay an infringement notice

SAFAA supports the ability of an adviser to pay an infringement notice by instalments.

Registration of financial advisers

What is the process?

SAFAA agrees that the obligation to register a financial adviser must sit with the financial services licensee on whose behalf the adviser is authorised to provide personal advice to retail clients, as currently set out in the Bill.

AFSL holders are subject to the licensing obligations in section 912A of the Corporations Act including the obligations to:

- take reasonable steps to ensure that their representatives comply with financial services laws
- have adequate resources (including financial, technological and human resources) to provide the financial services covered by the licence and to carry out supervisory arrangements.

The obligation to register advisers falls within and is consistent with these obligations. The obligation to register advisers being imposed on the licensee also makes practical sense. Time spent by individual advisers lodging forms and keeping abreast of registration is better spent servicing clients and building the client relationship.

Feedback from SAFAA Principal Members with large numbers of advisers is that it is not logistically sensible for the registration obligation to be devolved to individual advisers. The licensee undertakes active oversight of the adviser to ensure they are fulfilling their obligations in relation to the fit and proper declaration and education and CPD obligations. The process of checks that attends adviser registration by the licensee is an important aspect of securing Professional Indemnity (PI) insurance, as insurance firms need to confirm that licensees have active oversight of their advisers. SAFAA is concerned that obtaining PI insurance, which is already challenging, will become even more difficult if the licensee cannot provide evidence to the insurer of its active oversight of adviser registration.

SAFAA also points to the difference between stockbroking and investment advice firms and many financial planning businesses, as a matter that needs to be taken into account when considering the role of the licensee in adviser registration. Many financial planning businesses are small businesses or SMEs. Stockbroking and investment advice firms, on the other hand, are large businesses and becoming larger, given they operate in global markets and provide time-related advice, including reaching out to thousands of clients instantly for capital raisings and rights issues. The investment required for such firms is very different to the investment required for financial planning firms providing advice on taxation and superannuation law. Amalgamations are underway to provide scale in the stockbroking and investment advice industry to meet those investment requirements. Efficiency in larger firms is generated through active oversight by compliance departments.

With approximately 20,000 advisers currently registered on the FAR, the registration process must be streamlined, quick and straightforward to enable the legislative intent to be effected and ensure it is not administratively burdensome and costly for both licensees and ASIC. As an alternative to the current process we suggest a more streamlined approach where a licensee can lodge bulk annual declarations and an adviser's registration continues until revoked. This may reduce the administrative burden.

Fees

SAFAA is concerned to know the amount of the registration fee. Bearing in mind the large cost burden currently imposed on licensees as a result of the significant increases in the ASIC industry funding levy; implementation of Royal Commission recommendations; and the costs associated with the FASEA exam and education requirements, SAFAA strongly recommends that any registration fee per adviser be a nominal one.

SAFAA understands that the government intends to utilise the existing FAR for the purpose of registration, but that the FAR contains outdated and inaccurate information. It has been suggested that advisers taking responsibility for registration will enhance the quality of data on the FAR. Currently, ASIC charges a fee each time the FAR is updated, even though the licensee does the work of updating the register and ASIC undertakes no verification of the data to justify charging for the update. SAFAA notes that in order to contain costs, updates are collated and made at the one time, which explains why the data can be out of date. SAFAA recommends that waiving lodgement fees for updating the FAR would result in a more accurate and up-to-date record of adviser details. There should only be the one annual fee for registration, but not ongoing lodgement fees for updates.

We note that Treasury advises that in time the FAR will form part of the Modern Business Registry project, to be administered by the Australian Taxation Office (ATO). However, given Treasury advises that this will not take place in the near future, the aim is to ensure that the registration process does not involve additional fees. Given that the FAR currently interacts with licensees' systems, SAFAA would be very concerned if a decision was taken to change the registration process from one undertaken by licensees, as this would involve system changes that would in turn involve additional fees imposed on advisers.

What information will be available on the FAR?

We note that the FAR currently includes a section that contains details of an adviser's membership of professional bodies or industry associations relevant to providing financial services.

As mentioned earlier in this submission, membership of a professional or industry association is an important aspect of professionalism and SAFAA strongly recommends that this part of the FAR be retained. It is an important signal to consumers.

When does registration commence?

SAFAA also strongly recommends a single registration date per year for all advisers be adopted to bring adviser registration into line with other professional registrations. We consider that a rolling renewal date with each adviser having a different date will be administratively burdensome for licensees and advisers.

Wind up of FASEA and transfer of standards functions to the Minister and ASIC

SAFAA welcomes the winding up of FASEA and the transfer of standards functions to the Minister and ASIC.

FASEA's 'one-size-fits-all' approach to financial advice evidences its lack of understanding about how stockbroking and investment advice differs from financial planning and has negatively impacted the stockbroking and investment advice profession.

As discussed previously in this submission, Standard 3 of the Code must be amended and Standard 6 removed. SAFAA has advocated for these changes for some time. SAFAA urges the Minister to make these changes as soon as the Bill comes into effect.

The impact of the FASEA educational requirements

The FASEA educational requirements are also negatively impacting the stockbroking and investment advice industry and require change. SAFAA has long advocated for commerce, economics, business and finance degrees from established Australian universities to be included in the FASEA list of approved courses – financial planning qualifications must not be the only approved courses for financial advisers.

SAFAA members report that the loss of experienced advisers due to the FASEA educational requirements is a top risk on their risk registers. Stockbrokers who have been providing advice for many decades, with longstanding clients who are deeply satisfied with the service they receive, find it incomprehensible that they should have to undertake educational qualifications in financial planning in order to retain their livelihood. They will therefore retire from the industry rather than face the humiliation of being required to train for a financial advice service so different from the one they provide and which they have no desire to offer.

Adviser Ratings research shows the number of advisers is predicted to fall to 13,000 in 2023 from 20,764 at the beginning of 2021 — a 30% drop in two years. And this will take place at the same time as retiring baby boomers come into their superannuation and a $1.5 trillion transfer of wealth takes place between generations. Despite the fact that the impact of COVID-19 resulted in extraordinary market volatility, through which experienced stockbrokers and investment advisers steered their clients safely, their experience is treated with disdain. This is why the exodus of experienced stockbrokers and investment advisers is a top risk on the risk registers of SAFAA members. It is also a risk to Australian investors, who will find it much harder to access experienced advisers once this exodus has taken place. Furthermore, highly experienced advisers who leave the industry as well as those who remain but do not complete the educational requirements will be unable to supervise the next generation of advisers. This will be a huge loss to the industry as those people who would normally act as senior mentors will effectively be unable to supervise the next generation coming through. The task of mentoring will fall to a smaller pool of advisers. Mentoring requires the mentor to take time out from providing advice, thus placing more pressure on advice costs and availability.

Currently, all FASEA-approved degrees are in financial planning or with financial planning majors (with one exception, being a wealth management degree from UNSW), notwithstanding that the Corporations Act does not require financial planning qualifications to be the only approved courses for financial advisers. The legislation provides that a 'degree equivalent' is required – it does not specify the narrowness of a financial planning degree, which are not awarded by universities ranked in the top 100. FASEA's board, which included financial planning and other academics who had compiled the curriculum for the Financial Planning Association, simply adopted that same curriculum for FASEA, thus narrowing the scope of the approved qualification. The issuers of those degrees did not have to apply to FASEA for their courses to be approved.

This decision is just one example of the lack of understanding by the FASEA board of how securities and investment advice, execution services and equity capital raising for Australian investors is a different service from financial planning.

Degrees in economics, finance, commerce and business from all Australian universities, particularly those from universities rated in the top 100 – qualifications which until now have been considered most suitable to a profession in investing – have not been approved by FASEA. They are only considered to be 'relevant' degrees, the individual units of which counts towards a FASEA-approved degree equivalent. FASEA refuses to approve

these degrees and has stated that universities must apply to FASEA for their degree to be considered as an approved course, despite the fact that the universities with degrees included in the Financial Planning Association curriculum did not need to apply for approval. Our members have informed us that some of their advisers have approached an established university and asked for their economics and business degrees to become FASEA-approved. The university concerned advised that it would not go through the accreditation process. This highlights that it should not be up to the universities to apply to FASEA for approval.

The outcome of the decision by the FASEA board not to approve economics, finance, commerce and business degrees from all Australian universities is that an individual holding a Bachelor of Economics from Melbourne University is considered less qualified to provide stockbroking or investment advice than one with a Bachelor of Property (majoring in financial planning) from Central Queensland University. The individual in this example who completed the Central Queensland University course need only complete the Ethics unit of study to become FASEA-qualified. Those with 'relevant' degrees in other subjects from universities (such as a Bachelor of Commerce or a Masters of Finance) must at a minimum do three additional subjects (plus ethics) as they only receive four credits, when all 'approved' financial planning degrees receive seven credits.

This has created an uneven playing field which favours financial planners over other types of investment advisers.

We have numerous case studies of advisers from a range of different firms who have significant undergraduate and postgraduate education qualifications in commerce, economics, finance and business from Australia's most established universities who are required by FASEA to undertake a minimum of three additional units of study (plus ethics) because their qualifications are not approved by FASEA.

SAFAA has called on FASEA to include commerce, economics, business and finance degrees from established Australian universities to the approved list of courses. FASEA has refused. FASEA maintains its belief that financial planning is core education for all forms of financial advice, rather recognising that financial planning is itself a specialisation.

Financial planning degrees and postgraduate diplomas are not the foundation education for the entire advice industry. Financial planning is already a specialist area of advice. In medical terms requiring stockbrokers and investment advisers to undertake financial planning degrees is akin to making orthopaedic surgeons undertake training in pathology. We strongly support the financial planning profession and education qualifications to enter it. We note that the impetus for legislating education requirements for financial advisers was due to salespeople with no formal education in financial advice calling themselves financial planners, which resulted in harm to consumers.

However, SAFAA stresses that education qualifications must be suited to the financial advice provided. The degrees sought by the stockbroking and investment advice industry are ones in commerce, business, economics and finance.

The discriminatory approach from FASEA has another serious consequence, which is that top graduate talent is being deterred from entering the stockbroking and investment advice profession, to the detriment of investors. A graduate with a finance, economics, commerce or business degree from a top globally ranked university will essentially have to 'start from scratch', that is, they will have to complete an unrelated second Graduate Diploma in financial planning before they can remain in or enter the stockbroking industry. The lack of current Professional Year provisional advisers in the stockbroking and investment advice sector clearly demonstrates this. SAFAA understands that there are currently less than 200 provisional advisers throughout the entire

financial advice industry. In our recent member survey we found nine Professional Year candidates in the stockbroking and investment advice industry and only 20 are expected to enter in 2022 (with one firm bringing on the majority of candidates). The mentor program for any aspiring new entrant to the industry will be extremely difficult. There will be lower numbers of remaining advisers, and those who do remain will have higher client numbers therefore having less time to mentor and be involved in supervision.

This indicates that the number of advisers leaving the industry will not be replaced. It is anticipated that the number of advisers will reduce substantially over the course of 2021 due to the requirement to complete the exam by 31 December 2021. It is further anticipated that more mature advisers who complete and pass the exam and continue to work after 1 January 2022 will decide not to complete further education resulting in even greater numbers of advisers departing the industry in the lead up to the 2026 education deadline.

The costs and time required to complete these additional courses acts as a disincentive for advisers to remain in the industry.

By way of example, FASEA requires advisers to complete a mandatory ethics subject. SAFAA is encouraging advisers to undertake the ethics course offered by QUT, which is one of the most cost-effective on offer and is structured around the jobs of stockbrokers and their hours. The course is a 12-week program of online learning involving two assessments, including a 1,200-word assignment and video presentation and a two-hour open book exam. The cost of the QUT ethics course is $1,700. SAFAA strongly supports all advisers undertaking the Ethics unit — we have referenced this to illustrate the time and costs involved in highly qualified people having to undertake further, unrelated study.

FASEA exam

The second standard that must be satisfied for an adviser to provide personal advice to retail clients is to pass a FASEA-approved exam. Advisers have a deadline of 31 December 2021 by which to do this.

It costs an adviser $540 plus GST each time they sit the exam. The current exam is tailored to financial planning. SAFAA hears from its members that experienced stockbrokers who have sat the exam — despite extensive study and preparation — have frequently failed it at their first sitting. They advise us that it is because so many questions are geared to financial planning and that even while the exam is not meant to be about technical detail, the focus on matters on which they do not provide advice (insurance, Centrelink benefits, aged care etc) derails them and causes them undue stress.

It is also unique to the FASEA exam that there is only a reading list without any course materials or guidance provided to advisers on the exam. Whilst SAFAA welcomes the provision of practice exam papers, which have assisted financial advisers to prepare for the exam, this is not sufficient.

SAFAA does not consider that the FASEA exam is fit-for-purpose for stockbrokers and investment advisers.

According to the FASEA website over 13,500 advisers financial advisers have passed the exam as at May 2021. Time is running out for the remaining 6,500 advisers to sit the exam. Only six exam sittings were scheduled for 2021. Advisers who have not already booked into an exam have only three more opportunities to sit.[1] Because results are not available until after the next exam sitting, if an adviser fails the exam, they can't register for the next exam sitting, but only the one after that. In reality, advisers who sit and fail the May exam will only have one remaining opportunity to sit before the deadline of 31 December 2021.

[1] The remaining exam sittings for 2021 are July, September and November. Bookings for the May exam sittings closed on 30 April.

Notwithstanding advocacy efforts from many in the advice industry FASEA refuses to:

- increase the number of exam sittings
- hold exams every month
- provide more tailored feedback, noting that the feedback is generic and we have heard from advisers that have attended the debrief sessions for failed advisers that the commentary is also generic
- provide exam results more quickly
- waive the three-month wait time before exam resits.

Urgent action is needed on the issue of the exam. SAFAA urges the government to step in and:

- provide greater flexibility for advisers to sit the exam
- allow advisers who have prepared for and sat the exam, but failed, another opportunity to sit an exam that is fit for purpose once FASEA has been disbanded and responsibility for approving the exam has been transferred to Treasury.

What standards function will ASIC perform?

SAFAA welcomes the transfer of the administration of the financial adviser's exam that has been approved by the Minister to ASIC. One issue with FASEA administering the exam has been its lack of resources. Once ASIC is responsible for administering the exam there should be no excuse for tailored and bespoke scenarios not being provided in the exam that would make it fit for purpose for stockbrokers and investment advisers.

Tax (financial) advice services

SAFAA welcomes the elimination of the duplication imposed by the *Tax Agents Services Act* on financial advisers providing tax (financial) advice. Advisers providing tax (financial) advice are already captured under FASEA education, requiring the adviser has completed education in tax law, and tax (financial) adviser relevant CPD requirementsfor ongoing training in tax advice. Singling out tax (financial) advisers for additional education and training requirements is duplication. Therefore, SAFAA strongly recommends that the additional education and training standards set out in the bill be removed.

Conclusion

SAFAA is happy to engage with Treasury and provide whatever assistance is necessary to improve the operation of the Single Disciplinary Body.

If you require additional information or wish to discuss this submission in greater detail please do not hesitate to contact SAFAA's policy manager, Michelle Huckel, at michelle.huckel@stockbrokers.org.au.

Kind regards

Judith Fox
Chief Executive Officer