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Dear Mr Choi

PROMOTING ACCESS TO AFFORDABLE ADVICE FOR CONSUMERS

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 which 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.

SAFAA welcomes the opportunity to provide feedback on ASIC *Consultation Paper 332: Promoting access to affordable advice for consumers* (the Consultation Paper). We also welcome ASIC's statement that it wishes to help industry increase the availability of good quality affordable personal advice that meets consumer needs. We are also pleased that ASIC clarifies in its consultation paper that it supports the scaling of personal advice to cover one or some of the areas relevant to the client and its acceptance of the value of scaled or limited advice.

SAFAA views the fact that ASIC is seeking feedback on this important topic as a positive step. The availability of good quality advice is increasingly important. The market environment during the COVID-19 pandemic has seen an increase in new investors participating in trading for the first time and a substantial increase in equity trading and online day trading.¹

A recent report prepared by Rice Warner for the Financial Services Council highlighted the need for advice:

*In the current volatile economic conditions, it is even more important that consumers receive sound guidance about their finances.....Most Australians are unable to manage their finances without support due to the complexity of markets, products, legislation, and taxation. Few people have the financial literacy to navigate through this alone.*²

We note that in response to the adverse economic effects of the coronavirus, ASIC provided temporary relief to facilitate retail clients receiving timely and affordable advice. The *Urgent advice measure*, giving licensees additional time to provide a statement of advice to clients in relation to urgent, time-critical, COVID-19 advice and the *ROA for an existing client measure* facilitating access to timely and affordable COVID-19 advice for

¹ IOSCO's Retail Market Conduct Task Force, *Retail Market Conduct Task Force Report: Initial Findings and Observations About the Impact of COVID-19 on Retail Market Conduct*.

² Rice Warner, *Future of Advice*, 2.

existing clients reinforce the importance of consumers being able to access a financial adviser during complex and volatile market conditions.

The Rice Warner report also highlighted one of the biggest hurdles to the provision of affordable advice to consumers:

The government has attempted to improve standards by raising the education of financial advisers. However, the current approach has led to a reduction in the number of financial advisers both through large numbers leaving the industry and fewer advisers joining. This leads to lower levels of advice being delivered to the community – and at a cost which is too high for most consumers.³

We agree with this finding of the Rice Warner report and would add that it is not merely the increased educational standards that have increased the cost and availability of advice to consumers. The added layers of regulation imposed on the financial services industry over some years, particularly in response to the recommendations of the *Final Report: Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*, has increased both the cost of doing business and regulatory risk, making the provision of advice to retail clients more costly. SAFAA therefore welcomes the opportunity to respond on behalf of our members to Consultation Paper 332: *Promoting access to affordable advice for consumers*.

Executive summary

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

- ASIC's own inconsistent approach to scaled advice
- 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 financial advice industry of experienced, retail advisers as a consequence of FASEA's refusal to recognise 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
- Difficulties obtaining professional indemnity insurance due to the perceived increase in the regulatory risk environment that is leading some to consider exiting the retail advice business.

These issues are not caused by technological change or shifts in consumer behaviour. The increased and unhelpful regulatory burden is a consequence of government policy and legislation. We strongly urge ASIC and the government to revisit the regulatory settings around the provision of advice to retail clients in general and scaled advice in particular.

While SAFAA has included specific recommendations in our submission, our overarching recommendation is that the government and regulators need to move away from a 'one-size-fits-all' approach to the provision of personal advice to retail clients. Consumers want different advice for different needs and the regulatory environment needs to accommodate consumer preferences and requirements and not seek to shoehorn all consumers into one advice service. We note that other industry representatives also make this point, thus fulfilling the government and regulator's desire to hear the industry speaking in one voice. SAFAA stands ready to assist ASIC and the government to improve the regulatory environment to provide for consumers being able to access the advice they want, be it limited advice or full-service advice.

³ Ibid, 3.

Our detailed comments on the questions to which we are providing a response are below.

Detailed comments

B1 Q5 What is our interest in the issue of promoting access to good-quality limited advice?

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.

Australia has a strong culture for individual share market investment by ordinary citizens — the result of decades of public policy driving Australians in that direction. For example, the dividend imputation system was designed to encourage Australians to invest in equities, so that the benefits of corporate prosperity could be spread, and to support the use of savings to finance equity in Australian companies. Public policy encouraging demutualisations and privatisations in turn also encouraged ordinary Australians to become shareholders. In 2020, the *ASX Investor Study* showed that Australia continues to be a nation of investors, with close to nine million adult Australians holding investments outside their super and primary dwelling. Retail investors have been key to supporting Australian companies through investments in the listed equities markets.

SAFAA members represent the full range of advice providers from online providers providing execution-only services to full-service stockbroking.

Scaled advice is an accepted concept adopted by stockbrokers in Australia and forms the basis of the business models of many stockbroking businesses. It is very common for clients of stockbrokers to contact their adviser for advice on particular stocks to buy or sell. This does not require 'holistic' or 'comprehensive' advice on the client's full financial situation, but discreet advice on what is generally a small portion of the client's portfolio of investments. Where stockbrokers provide personal advice to retail clients, in most instances this advice is limited advice: it is scaled and specific to the client's needs. The advice is client-centric, focused and scaled as to the information received from the client. It is also often episodic.

To ensure that clients understand the nature of scaled advice, stockbrokers clearly set out the limitations and scope of the advice in the statement of advice.

Stockbroking is a fast-paced, time-sensitive service. That is why the Corporations Act was amended in 2003 to insert section 946B providing for further advice for market-traded products where clients required the advice to be provided promptly. Scaled advice can be delivered as further advice and a Statement of Advice (SOA) is not required in the case of further advice. A simplified process of providing advice to the client then arises.

This approach can be contrasted with the traditional financial planning advice model where advice is provided on all aspects of a client's financial circumstances and a full financial plan prepared. An advantage to clients of scaled advice is that they do not have to pay for the time-consuming preparation of a financial plan and this reduces the overall costs of advice and allows advice to be provided in a more timely or immediate fashion. Some stockbroking firms provide financial planning services and clients are informed of this so they can avail themselves of this service if they require it. The financial planner provides an overall, holistic plan in relation to investment needs, superannuation and insurance. Stockbrokers provide advice and execution and management

in relation to the investment component and this is largely in the listed equities and fund markets. Stockbrokers and financial planners often work hand-in-hand with complementary skillsets.

A table of compliance steps for giving scaled advice in stockbroking (pursuant to the further advice provisions) is included as Appendix A.

ASIC's own research highlights that many consumers preferred receiving piece-by-piece or limited advice, rather than comprehensive advice and that in terms of topics of interest, 45% of consumers had either received advice on or were interested in receiving advice on investments such as shares and managed funds.

Scaled advice is expressly permitted under the Corporations Act as evidenced by the following commentary which has been included at section 961 B (2):

Note: The matters that must be proved under subsection (2) relate to the subject matter of the advice sought by the client and the circumstances of the client relevant to that subject matter (the client's relevant circumstances). That subject matter and the client's relevant circumstances may be broad or narrow, and so the subsection anticipates that a client may seek scaled advice and that the inquiries made by the provider will be tailored to the advice sought.

The scaled advice model allows clients to access research and stockbroking services at a reasonable cost and without having to provide extensive personal information which is irrelevant to the limited advice sought by the client.

SAFAA agrees with the statement contained in Regulatory Guide (RG) 244: *Giving information, general advice and scaled advice* that all personal advice is 'scaled' or 'limited in scope' to some extent—advice is either less or more comprehensive in scope along a continuous spectrum.

As SAFAA stated to Commissioner Press at the online meeting SAFAA held with her and other ASIC representatives on 6 November 2020, our members effectively and efficiently provide limited or scaled advice to their clients hundreds of times a day while meeting their best interests duty and related obligations. Our members support scaled advice and would be extremely concerned if any changes to legislation or ASIC guidance supporting scaled advice were made that would impede our members' ability to continue to provide it. The area of law concerning advice is complex. Members have established systems and processes to facilitate the provision of scaled advice. Our members do not want this area of law to be further complicated by another layer of regulation.

B1 Q5 What does SAFAA think are the impediments to the advice industry providing good-quality limited advice?

While SAFAA's members provide good quality limited advice every day, we recognise that there are significant regulatory impediments that impact on the affordability and ease of doing so.

ASIC's inconsistent approach to scaled advice

We note that in the Consultation Paper ASIC states that it considers that a great deal of uncertainty remains regarding the provision of scaled advice within Australia. SAFAA considers that a cause of this uncertainty is ASIC's inconsistent approach when issuing policy guidance and undertaking advice reviews.

It has come to our attention that at the same time ASIC is looking to encourage the implementation of scaled advice, our members have received reports from ASIC relating to personal advice reviews conducted by it in 2018 and 2019 that conflict with the law on scaled advice.

The reports relate to a surveillance ASIC conducted on the retail financial advice business of eight AFS licensees who are ASX market participants. The purpose of the reviews was to understand the participants' advice businesses, to the extent it involved the provision of investment-related personal advice to retail clients. An area of focus was the steps the participants had taken to comply with their obligations under Chapter 7 of the Corporations Act regarding the provision of that advice.

The ASIC reports that we have viewed cause us considerable concern about ASIC's approach to the provision of scaled advice to stockbroking clients, and in particular, the level of enquiries ASIC asserts stockbrokers must make and the records that are required to be maintained to comply with the Corporations Act provisions on scaled advice.

Worryingly, the reports we have viewed do not take the scaled advice model into account, but presume that each client should receive a full advice service when this is not the case. We are advised that most of the files reviewed by ASIC related to clients seeking transactional advice concerning stockbroking services where there was no need to undertake the depth of enquiry, provide the level of detail in disclosure documents or maintain the level of detail in client files or order records that ASIC stated in the reports as being necessary.

One of the key observations and recommendation of one of the ASIC reports was as follows:

We observed that the client files we reviewed largely recorded advice on ASX listed securities and investments and did not provide broad investment portfolio or asset allocation advice. We also found that the standard text within the SOAs stated:

'We are specialists in relation to Market-traded securities, therefore, the focus of the Personal Advice will be on how these investments can meet your investment objectives and needs. Our advice will not cover other aspects of your situation...'

We understand that many clients receive advice from other service providers such as accountants and financial planners and therefore may only be seeking scaled or limited advice about their investment portfolio or a portion of their investment portfolio. However, many client files reviewed did not have full records detailing:

- the subject matter of the advice the clients were seeking; and*
- the objectives, financial situation and needs of the client that would reasonably be considered as relevant to advice sought on that subject matter (the client's relevant circumstances).*

Without this information, it is difficult to determine if the scope of advice is consistent with the client's relevant circumstances or the subject matter of the advice sought.

Recommendations

We recommend that [Broker A] communicate to their advisers that they should not assume that clients are seeking scaled or limited advice about market traded securities, nor that the advice being sought by the client matches the adviser's service offering.

We consider that this view conflicts with the provision of limited advice and evidences a complete misunderstanding of stockbroking and how stockbrokers provide limited advice. There is an assumption that stockbrokers must provide full-scale financial planning style advice and conduct a full fact find. There is an assumption that to provide compliant advice, an adviser should conduct an annual review of the client's personal circumstances. There is also an assumption that clients who contact their stockbroker for advice do not understand the services they are receiving, notwithstanding the disclosure stockbrokers are required to make to clients before providing services to them and the complete lack of any evidence by ASIC that customers of stockbrokers are in fact confused. Our members advise us that they have never received a complaint from a client who was aggrieved about being provided with stockbroking and investment advice instead of financial planning advice and that clients understand that they are seeking specialist stockbroking and investment advice when they contact their stockbroker. Our members note that their clients are generally in the market because they follow the market and also want to generate wealth.

Those of our members offering financial planning services are able to refer clients requiring those services to the relevant advisers. Financial planning is a different type of service to stockbroking. If the stockbroking industry is required to implement the recommendations contained in the ASIC reports, it will become impossible to provide limited advice, thereby increasing the cost and complexity of advice processes. Those retail clients who do not fall within the high net worth category will be required to conduct their trading online and receive no advice. SAFAA is firmly of the opinion that this is in not in the interests of retail investors.

FASEA reforms

The Consultation Paper refers to the 14.6% drop in the number of financial advisers on the Financial Advisers Register as of 5 November 2020 compared to 1 January 2019, the date on which many of the FASEA reforms commenced. Indeed, Adviser Ratings issued the following data early in January 2021:

Year-on-year, adviser numbers have moved from:

- 2017 — 25,484
- 2018 — 28,353
- 2019 — 23,639
- 2020 — 20,791

The decline in numbers is not a coincidence. The FASEA reforms have significantly increased the regulatory burden on firms providing personal advice to retail clients and run counter to ASIC's stated aim of a financial advice industry that provides good-quality and affordable limited advice.

FASEA's 'one-size-fits-all' approach to financial advice evidences its lack of understanding about how stockbroking differs from financial planning and provides significant challenges to the stockbroking profession.

We note the recent government announcement that FASEA will be disbanded and its functions taken over by ASIC and Treasury. SAFAA understands that while the Minister intends to introduce the legislation giving effect to a single, disciplinary body within ASIC and move the standard-setting functions of FASEA into Treasury early this year, the draft legislation could well be referred to committee. This makes 1 January 2022 the most likely commencement date which means that the FASEA regime will not be dismantled in the short term and our members will continue to be bound by its standards. In turn, the lack of understanding about how stockbroking differs from financial planning will continue to affect our members negatively.

FASEA Code of Ethics

SAFAA has consistently voiced its serious concerns about the FASEA *Financial Planners and Advisers Code of Ethics*. Elements of the code are unworkable and conflict with the law.

Standard 6 of the Code is an impediment to the provision of limited advice. It provides as follows (our emphasis added):

*You must take into account the broad effects arising from the client acting on your advice and **actively consider the client's broader, long-term interests and likely circumstances.***

SAFAA has long advocated for this standard to be changed to take into account the fact that it conflicts with the provision of limited advice and is inconsistent with section 961B of the Corporations Act (the 'best interests duty'). While this standard remains unchanged, 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. A stockbroker should not be required to advise a client who telephones them to buy BHP shares to place their funds into a term deposit instead or consider their insurance needs.

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 their licensee and the client. While strictly speaking, Standard 3 does not impact on the provision of limited advice, we consider that a blanket prohibition on any conflict of interest is an impediment to the provision of advice to retail clients.

B1 Q5 How do you think industry and ASIC should address these impediments?

The FASEA standards are a legislative instrument and require amendment by Parliament. While there is nothing that either industry or ASIC can do to change the FASEA standards without Parliamentary intervention, SAFAA considers that it is vitally important that agreement is reached between ASIC, the industry and government about the changes that need to be made.

Standard 6 needs to be removed from the Code. Continuation of Standard 6 in its current form will defeat any efforts by ASIC to provide guidance on scaled advice.

Standard 3 needs to be amended to utilise the wording of the Intent of 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*, in order for it to fulfil its objective of supporting ethical duties that go beyond the minimum requirements of existing law, while remaining consistent with the law.

In order to facilitate access to affordable advice, SAFAA strongly recommends that ASIC reconsider its conflicting views on limited advice and ensure its reports to licensees are consistent with the provision of limited advice.

B2 Q 1 Questions about ASIC guidance on limited advice

ASIC RG 244 contains sensible, easy-to-understand guidance on the distinctions between factual information, general advice and personal advice, and how to give scaled advice. However, as we have stated above, Standard 6 of the FASEA Code of Ethics is inconsistent with ASIC's regulatory guide and is an impediment to the provision of limited advice. Guidance provided by FASEA on how to apply the FASEA Code has been unhelpful and confusing. Duplicative guidance and standards are increasing the complexity for advice providers.

We note that Minister for Superannuation, Financial Services and the Digital Economy, the Hon Senator Jane Hume has recently called for input from the industry on the definitions of ‘personal advice’, ‘general advice’, ‘single issue advice’ and ‘intra-fund advice’. Two bodies have so far released policy proposals for the future of advice — the Financial Planning Association and the Financial Services Council (via its independent research report from Rice Warner). Both include recommendations on definitions of advice.

SAFAA is currently considering the proposals from both bodies and obtaining the views of its members in order to develop a position on these matters and contribute to the debate.

Our preliminary views are that:

- clients generally understand what constitutes personal advice
- clients are often confused about what constitutes general advice and the general advice warning.

We consider that there is an important opportunity for ASIC to develop educational material aimed at investors that discusses the distinctions between personal and general advice as well as what constitutes scaled, or scoped or limited advice.

B2 Q2 Questions about examples in appendix to RG 244

The scenarios in RG 244 deal with superannuation, insurance and retirement planning and of the 14 examples in the appendix, only one deals with stockbroking. SAFAA recommends that ASIC include two additional examples in the appendix that deals with a client accessing stockbroking services that highlights how the broker can provide scaled advice and comply with their best interests duty. Perhaps one example can involve a new client and include a sample SOA and the other can involve a longstanding client seeking to buy or sell shares or participate in a capital raising and include a sample SOA.

Scaled advice can be delivered as further advice. We are of the view that a sample Record of Advice (ROA) would also be helpful to clarify how the information contained in a ROA differs from that in a SOA for scaled advice.

B3 Q1 Questions about terminology in RG 244

Of the terms referred to in the consultation paper, SAFAA considers that the term ‘limited advice’ makes the most sense as it best represents the features of the advice and is the easiest option for clients to understand.

B4 Q1 Questions about ASIC guidance and examples on SOAs

ASIC did not provide a sample SOA for the stockbroking example in RG 244 as the scenario provided for the requirements of section 946B (1) of the Corporations Act to have been met and the stockbroker was not required to provide one.

The sample SOA attached to RG 90 *Example Statement of Advice: Scaled advice for a new client* is an insurance scenario and is not directly relevant to stockbrokers.

In our answer to B2 Q2 above we recommend that ASIC provide two additional examples of a stockbroker providing advice in the appendix to RG 244 and tailor the examples so that an SOA must be provided. This will provide an opportunity for ASIC to provide guidance on limited advice as provided by a stockbroker and how that differs from comprehensive advice. The example SOA attached to RG 90 was developed in consultation with stakeholders and SAFAA would welcome the opportunity to provide input to the ASIC sample documents.

C1Q2 Questions about affordability and availability of advice

The regulatory 'blizzard' that has impacted those of our members providing personal advice to retail clients has increased the cost of business and resulted in a fall in the numbers of financial advisers providing advice to retail clients. This fall in adviser numbers is expected to accelerate. The falling numbers of advisers providing advice to retail clients impacts on both the affordability and availability of advice at a point in time when it is acknowledged by government that advice is vital for retail clients.

The impact of the FASEA educational requirements

The FASEA educational requirements are impacting on adviser numbers in the stockbroking and investment advice industry.

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 sit an exam geared to financial planning and 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.

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.

As noted earlier, adviser numbers have declined to 20,791 at the end of 2020. Adviser Ratings expects another 4,000 advisers to quit by the end of 2021. In an article appearing in the Independent Financial Adviser daily newsletter on 7 January 2021, the Chief Executive Officer of Countplus, Matthew Rowe predicted 15,000 to 17,000 advisers remaining in the financial advice industry once the FASEA exam deadline expires on 1 January 2022. Madison Financial Group CEO, Annick Donat is quoted in the same article as stating that adviser numbers could dwindle to as low as 14,000 when the full range of FASEA educational standards come into force in 2026.

While the education and training standards that advisers providing personal advice to retail clients are required to satisfy are contained in section 921B of the Corporations Act, it is the manner in which those standards have been implemented by FASEA that has caused enormous problems. The first standard requires advisers to complete a bachelor or higher degree or equivalent qualification approved by FASEA. It is the approval process undertaken by FASEA that has discriminated against stockbrokers and investment advisers.

Currently, all FASEA-approved degrees are in financial planning or with financial planning majors, notwithstanding that the Corporations Act does not require financial planning qualifications to be the only approved courses for financial advisers. The legislation says 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, that included financial planning 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.

The decision is an 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, but 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 count towards a FASEA-approved degree equivalent. FASEA is refusing to approve degrees other than those in financial planning 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) must at a minimum do three additional subjects as they only receive four credits, when all ‘approved’ financial planning degrees receive seven credits.

We have 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 because their qualifications are not recognised 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. This has not yet occurred.

This 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 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. 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.

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 provide advice to retail clients.

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.

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. In the November exam, two-thirds of the questions were on insurance, an area in which most stockbrokers do not provide advice. While the questions are geared to applying an ethical lens, an exam that includes a majority of questions on matters such as insurance, Centrelink benefits and aged care discriminates against stockbrokers and investment advisers. SAFAA has asked for the exam content to be recalibrated to the spectrum of advice services so that it is relevant for stockbrokers and investment advisers. This has not yet occurred.

The time, cost and stress caused by the exam requirement is a further disincentive for advisers to provide advice to retail clients and as noted above we anticipate a fall in adviser numbers once the exam deadline has passed.

Moreover, only 50% of financial advisers have currently sat the exam. There are only six exam sittings scheduled for 2021. However, 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, that means there are only three opportunities to sit the exam before the deadline of the end of 2021.

FASEA has not released any information on the number or percentage of stockbroking advisers who have failed the exam, but SAFAA hears from its members that experienced stockbrokers who have sat the exam 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. FASEA does not provide any feedback on which questions the adviser failed and so these stockbrokers have no idea what they need to study in order to achieve success in a second exam sitting.

Disquiet about the exam, its emphasis on financial planning and the lack of feedback on results has also meant that many stockbrokers are yet to sit the exam. SAFAA is of the view that the majority of stockbrokers are yet to sit it. Many will choose not to, which means that the exodus of experienced stockbrokers will be even more evident at the end of 2021. The lack of experienced stockbrokers will lead to a further lack of access to quality investment advice.

An increase in regulatory burden

The financial services industry has been subjected to a significant increase in regulatory burden and stockbroking and financial advisory firms have been caught up in this regulatory blizzard.

The attached table at Appendix B sets out just a selection of recent legislation that is impacting on the legal and compliance costs of stockbrokers providing advice to retail clients. The costs calculated by government and detailed in the explanatory memoranda to the relevant legislation is also included. We consider that the costs to the industry of compliance in many cases to be underestimated. By way of example, the government has estimated that the recent amendments to the breach reporting regime to be nil. We understand from our members that compliance with the new regime will substantially increase the complexity and amount of breach reporting and will result in increased compliance costs.

Stockbrokers and financial advisers providing advice to retail clients are also subject to the AFCA dispute resolution regime. The law concerning the provision of scaled advice is impacted not only by the actions of ASIC and FASEA, but also by the decisions made by AFCA. This is essentially an added layer of regulation and a potential source of inconsistency and confusion.

In addition to the legal and compliance costs of implementing legal reforms our members are subject to:

- ASIC industry funding levies
- ASX fees
- AFCA membership levies
- National Guarantee Fund levies.

As of next year, stockbrokers will also be subject to levies imposed as a result of the proposed compensation scheme of last resort notwithstanding that they already contribute to the National Guarantee Fund.

Issues with Professional Indemnity Insurance

Unsurprisingly, this increase in regulation is impacting on the cost and availability of professional indemnity (PI) insurance our members are required to hold as part of their compensation arrangements for retail clients.

Our members advise that they are unable to source PI insurance cover in Australia and only one London underwriter is offering cover. Our members have been advised by their insurance brokers that overseas underwriters are declining cover as they view the Australian market as having a high regulatory risk. Stockbrokers renewing their cover are finding that their premiums and excesses have significantly increased and exclusions have been imposed on certain risks. With no other underwriters providing cover there is no competition in the market. Stockbrokers with high excesses and exclusions are essentially self-insuring for client claims.

The increase in AFCA's monetary limit to \$1 million has also increased the risk profile of stockbrokers with insurers, even though very few claims are made against them. Stockbrokers represented approximately 0.6% in number of all disputes received by AFCA in the period 1 October 2019 to 20 September 2020.⁴ We point to our submission to AFCA in June 2018 where we warned of significant increases in the cost of obtaining appropriate professional indemnity insurance and difficulties in obtaining cover as a result of AFCA's increased claim and compensation limits.⁵

Our members report that they are investigating ways to improve their ability to obtain more affordable cover and that removing retail client business may be an option they are required to take. This is expected to substantially reduce the availability of advice to retail clients. Those stockbrokers continuing to provide advice services to retail clients will continue to pay higher insurance premiums, increasing the costs of advice.

⁴ AFCA Complaint statistics: 1 October 2019 to 30 September 2020.

⁵ Letter from SAFAA to Mike D'Argaville, AFCA dated 29 June 2018, page 5.

Conclusion

SAFAA members successfully provide scaled advice to their clients hundreds of times a day while meeting their best interests duty and related obligations.

Increased regulation has increased the costs of providing advice and this is impacting the affordability and availability of advice.

While SAFAA does not consider that changes need to be made to the law concerning limited or scaled advice, we strongly urge ASIC and the government to revisit the regulatory settings around the provision of advice to retail clients.

We consider the following to be necessary first steps to be undertaken by ASIC to address the obstacles to providing affordable advice:

- ASIC reconsider its conflicting views on limited advice and ensure its reports to licensees are consistent with the provision of limited advice.
- ASIC develop educational material aimed at investors that discusses the distinctions between personal and general advice as well as what constitutes limited advice.
- ASIC provide additional guidance on the provision of limited advice for stockbrokers in RG 244 and develop examples that are simple, concise and effective and reflect how stockbrokers provide limited advice in practice.

Changes to the FASEA code and educational requirements are also necessary to improve advice affordability and availability. SAFAA recommends the following:

- Remove standard 6 of the FASEA code
- Redraft standard 3 of the FASEA code
- Include commerce, economics, business and finance degrees from established Australian universities to the FASEA list of approved courses — financial planning qualifications must not be the only approved courses for financial advisers
- Recalibrate the FASEA exam content to the spectrum of advice services so that it is relevant for stockbrokers and investment advisers.

SAFAA is happy to engage with ASIC and provide whatever assistance is needed to improve the regulatory environment for limited advice.

Yours sincerely

A handwritten signature in black ink, appearing to be 'JF' followed by a stylized 'x'.

Judith Fox
Chief Executive Officer

Appendix A

Table of compliance steps for giving scaled advice as further advice in stockbroking, pursuant to the further advice provisions (section 946B Corporations Act)

	A pre-existing client telephones their stockbroker and asks for advice on whether to buy BHP shares (further advice)	
1	If yes – has the stockbroking firm previously given the client a Statement of Advice (SOA) setting out the client’s relevant personal circumstances in relation to the advice and are the client’s circumstances substantially the same as when the previous SOA was given?	Refer RG175.170
2	If yes — are the client’s relevant personal circumstances in relation to the further advice significantly different from their relevant personal circumstances in relation to the previous advice?	
3	If no — so far as the basis on which advice is given relates to other matters — is the basis on which the further advice is given significantly different from the basis on which the previous advice was given?	
4	If yes — is the client being provided with the required disclosure on remuneration and commissions as per section 947B (2) (d) and 947C (2) (e)?	This must be captured in the Record of Advice (ROA) and disclosed to the client
5	If yes – will the broker keep a record of the further advice?	This must be captured and is able to be requested by the client for seven (7) years

Appendix B

Table of legislation and regulatory reform

2017 to 2020

Item	Date	Estimated compliance cost, as per Explanatory Memorandum
Independence disclosure Imposes a requirement upon a financial services licensee or authorised representative to give a written disclosure of lack of independence where they are authorised to provide personal advice to a retail client. (Recommendation 2.2 Hayne Royal Commission)	Legislation put before the Lower House 9 December 2020 Proposed implementation date: 1 July 2021	This measure results in low increases to compliance costs. <i>Note: Members advise SAFAA that documentation needs to be revised to accommodate the new disclosure, incurring costs</i>
Forward fee disclosure Imposes a requirement upon financial services providers that receive fees under an ongoing fee arrangement to provide clients with a single document each year which outlines the fees that will be charged and the services which the client will be entitled to in the following 12 months and which seeks annual renewal from clients for all ongoing fee arrangements; and obtain written consent before fees under an ongoing fee arrangement can be deducted from a client's account. (Recommendation 2.1 Hayne Royal Commission)	Legislation put before the Lower House 9 December 2020 Proposed implementation date: 1 July 2021	The Office of Best Practice Regulation has agreed to an estimated average annual compliance cost of \$28.4 million for the measures relating to recommendation 2.1. This includes \$11.7 million of upfront costs in the year of commencement, followed by an annual compliance cost of between \$21.2 million and \$33.7 million in subsequent years.
Breach reporting and remediation Clarifying and strengthening the breach reporting regime	Legislation passed 10 December 2020	The compliance cost impact for recommendation 2.8 is nil.

for Australian financial services licensees and requiring financial services licensees to report serious compliance concerns about financial advisers. Imposing a new obligation on Australian financial services licensees to investigate misconduct and promptly remediate affected clients. (Recommendation 2.8 Hayne Royal Commission)	Implementation date: 1 October 2021	<i>Note: See our comments on page 12 noting that there will be compliance costs attached to this new obligation.</i>
Reference checking and information sharing Imposing a new obligation on Australian financial services licensees to comply with a reference checking and information sharing obligation. (Recommendation 2.7 Hayne Royal Commission)	Legislation passed 10 December 2020 Implementation date: 1 October 2021	It was estimated that the increase in annual compliance costs for recommendation 2.7 will be \$1.08 million for financial services licensees.
Design and distribution obligations Introduction of the Design and Distribution Regime Recommendation of the Financial System Inquiry	Legislation passed 2019 Implementation date: 5 October 2021	It is estimated that the increase in annual compliance costs for the industry as a whole will amount to \$232.1 million.
FASEA obligations <i>Corporations Amendment (Professional Standards of Financial Advisers) Act 2017</i> Introduction of educational, training and ethical standards including the Financial Planners and Adviser Code of Ethics	Implementation date: 1 January 2020	The compliance costs associated with the amendments to the Act raising education, training and ethical standards of financial advisers was estimated in the explanatory memorandum to the bill at approximately \$165.1 million