

26 September 2022

By email: AdviceReview@Treasury.gov.au

Ms Michelle Levy
C/O Secretariat, Quality of Advice Review
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Ms Levy

PROPOSAL PAPER: QUALITY OF ADVICE REVIEW

The Stockbrokers and Investment Advisers Association (SIAA) 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.

SIAA welcomes the opportunity to provide feedback to the Proposal Paper for the Quality of Advice Review. We agree that the current regulatory framework is a significant impediment to consumers accessing financial advice and that simply ‘tinkering around the edges’ of the Corporations Act will not deliver worthwhile regulatory reform. We therefore welcome the proposals and the engagement we have already had with the review team.

Executive summary

- To be successful, proposals will need to result in a reduction of the cost of providing personal advice and the regulatory complexity of doing so.
- We are concerned about possible unintended consequences of removing general advice and highlight areas that will require further consideration to ensure consumers are not disadvantaged.
- The capture of broker research by the personal advice definition would result in a number of unintended and undesirable consequences that will negatively impact consumers.
- It will be important that the review provides additional examples that ‘flesh out’ how licensees and advisers will develop and assess advice that satisfies the new best interests duty alongside the new ‘good advice’ duty.
- In order to deliver cost-effective limited or scaled advice that meets the needs of clients:
 - clarity will be needed that the information that is obtained from the client must relate to the scope of the advice to be given rather than a full needs analysis

- Standard 6 of the Code of Ethics will need to be removed, and
- the scope of what is required to satisfy the best interests duty under the Code of Ethics will need to be clarified and refined.
- A consultation process with all professions will be necessary to determine what 'good advice' will look like.
- There will need to be a 'bright line' between the circumstances in which a relevant provider provides advice that is subject to the best interests duty and one in which a call-centre operator provides 'good advice'.
- We welcome the proposals that:
 - remove the requirement for SOAs
 - enable FSGs to be made available on a provider's website
 - amend the reporting requirements under the DDO.
- There should be a transition period for implementing the proposals that gives licensees, regulators, advisers and clients sufficient time to get used to the changes.

Our feedback is provided in the response template which we are providing as a separate document.

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

Yours sincerely

A handwritten signature in black ink, appearing to be 'JF' with a large flourish and 'x' below it.

Judith Fox
Chief Executive Officer

Appendix 1: Consultation template

Name/Organisation:

Questions**Intended outcomes**

1. Do you agree that advisers and product issuers should be able to provide to personal advice to their customers without having to comply with all of the obligations that currently apply to the provision of personal advice?

SIAA agrees with the proposed intended outcome; that advisers and product issuers should be able to provide personal advice to their customers or clients without having to comply with all of the obligations that currently apply to the provision of personal advice. However, to be successful, any proposals would need to result in a reduction to the cost of providing such advice and the regulatory complexity of doing so. There also needs to be an acknowledgement of the differences between advice providers and product issuers in any new advice framework.

What should be regulated?

2. In your view, are the proposed changes to the definition of 'personal advice' likely to:
 - a) reduce regulatory uncertainty?
 - b) facilitate the provision of more personal advice to consumers?
 - c) improve the ability of financial institutions to help their clients?

We note that the proposals intend to increase the regulatory perimeter of what constitutes personal advice. We understand the reasoning behind such a proposal. SIAA agrees that the proposals encourage the provision of personal advice. If the red-tape burden can be reduced, it may in fact enable more clients to receive personal advice. By way of example, if an adviser has a 50/50 split in their client book between personal and general advice clients, and there is a reduction in red-tape that leads to cost and time savings, they may be able to provide personal advice to 100% of their clients under the proposals.

We highlight the following issues that will need resolution for such a proposal to achieve the intended outcomes:

Research reports

We are concerned about possible unintended consequences of removing general advice, particularly for stockbrokers and investment advisers. General advice is an important advice category for SIAA's members. The provision of general information or advice enables an adviser to educate or provide research to clients who may express an interest in certain investments. Research reports on listed securities comprise general advice as they include an opinion or recommendation to 'buy', 'sell' or 'hold' a security. Stockbrokers and investment advisers, including online brokers who currently provide only general advice or no advice, hold information about their clients. Firms increasingly utilise CRM systems to tailor and personalise client communications. Under the proposals, it appears that broker research circulated to clients may fall within the category of personal advice. This should not be an intended outcome of the proposals. We consider that any reform of advice definitions and obligations must reflect the current policy setting that does not include the circulation of broker research within the definition of personal advice. The capture of broker research by the personal advice definition would result in a number of unintended and undesirable consequences that will negatively impact consumers.

In the first instance, clients of online brokers have chosen a model of investing that does not include personal advice. The price of the service reflects the self-directed nature of the service they receive. Currently, these clients receive information and general advice. If that general advice is re-categorised as personal advice, and personal advice obligations are activated, two outcomes are possible. Either the cost of providing personal advice will need to be included in the online broker service, thus driving up the cost of the service for clients, or online brokers will be forced to halt the provision of research recommendations to online clients due to the concern that the provision of such research will be considered to be personal advice. The reformulation of personal advice to 'good advice' would still result in a cost increase. Neither alternative is in the interests of clients, and in the latter case reduces the amount of useful research and education that clients receive.

Research conducted in March 2021 by Investment Trends put the total number of **active** online investors in Australia at 1.25 million¹. The research found that although lower fees were the primary form of support new investors wanted from their online brokers, 27 per cent indicated they wanted additional education on the platform about investing strategies, and 20 per cent desired a formal daily newsletter. Clearly any change in the definition of personal advice that impacts on

¹ Aleks Vickovich, *First-time traders hit 400,000 during pandemic*, Australian Financial Review, 11 March 2021.

the ability of brokers to provide research to their clients will impact a large number of self-directed investors (there are many more online investors than those in the 'active' cohort identified in the Investment Trends research) and, if it results in research no longer being provided, go against what they want.

The perimeters of personal advice

It is not only online brokers who will find the new definition of personal advice challenging. Full-service stockbroking and investment advice firms also provide general advice to their clients and may find that they are providing personal advice under the proposals when previously they would be providing general advice. This could result in general advice clients no longer being able to receive advice. By way of example, a client may have two accounts; under one account they receive personal advice on the securities in their self-managed super fund; under another account they may receive general advice on some resource stocks they have picked up due to their personal interest in the sector. Under the proposals, will they receive personal advice on both accounts or will they be required to move their account containing the resource stocks to an online broker and receive no advice?

It is important that any proposals consider the following issues concerning the new definition of personal advice:

- What will constitute the boundary between the provision of information and education on the one hand and the new definition of personal advice?
- How much client information will an organisation need to hold for their interactions to fall within the new definition of personal advice? How will an organisation deal with the accumulation of client information over time as that client transitions from an execution only client to one receiving more services?
- Will personal advice clients be able to be provided with one-off, limited advice with a good advice outcome, or will all advice provided by a relevant provider be personal advice?
- How will an organisation determine if an opinion or recommendation has been provided?
- How much information will need to be collected to provide scoped advice?
- Under the DDO regime product distributors are required to collect a lot of information about their clients. How will that information be treated for the purposes of deciding whether personal advice has been provided?
- How does an organisation determine if they are charging for advice?
- Providers who give once-off personal advice with no ongoing relationship are only required to meet the good advice standard. One-off, limited advice will be cheaper to provide than personal advice provided by full-service stockbrokers and investment advisers who will be required to meet the best interests

duty. Organisations will therefore be incentivised to provide one-off advice. What will constitute one-off, limited advice? What will determine the boundary between one-off advice and an advice relationship?

- Will there be impacts on the cost and availability of PI insurance for those firms whose general advice clients are considered to be personal advice clients under the proposals?

One unintended consequence of the proposals may be the impact that the education standards will have on advisers who previously provided general advice only. If, as a result of the proposals they will be providing personal and not general advice to their clients, they will be subject to the education standards for financial advisers. Advisers who have not satisfied these requirements and who would be subject to the personal advice regime through the expansion of the perimeters of advice would be treated as new entrants and required to satisfy certain educational requirements and to complete a professional year.

What constitutes good advice?

We note that the new test for personal advice will be that the client has received good advice. Licensees will need to know how to determine what constitutes good advice. We appreciate that the aim is to have licensees determining their own framework to satisfy the best interests and good advice duties, with the outcome turning entirely on the advice provided. Notwithstanding this, there is a concern that the regulator will apply a retrospective determination of best interests (with the removal of the safe harbour as the current determination) and good advice. Again, we appreciate that the aim is to give licensees and advisers a choice as to how they operate, but their systems — and the response of the regulator and AFCA — are currently wired to a prescriptive model.

Will professional associations have a role to play in determining good advice for their sector?

Best interests duty

SIAA has long argued that the safe harbour steps add to the cost of advice by not allowing stockbrokers and investment advisers to deliver cost-effective, scaled advice that meets the needs of clients. Removing the best interests duty, the safe harbour steps and the obligation to give appropriate advice from the Corporations Act and relying on the Code of Ethics, removes duplication and confusion. We consider that:

- clarity must be provided by the review that the information obtained from the client must relate to the scope of the advice to be given rather than a full needs analysis
- Standard 6 of the Code of Ethics must be removed, and
- the scope of what is required to satisfy the best interests duty under the Code of Ethics would need to be clarified and refined.

The industry would benefit from the review providing additional examples that ‘flesh out’ how licensees and advisers will develop and assess advice that satisfies the new best interests duty alongside the new ‘good advice’ duty. The legislation will also need to include examples that clarifies the parameters of these duties.

The role of ‘influencers’

We note that SIAA raised our members’ concerns about the role of ‘influencers’ at the Treasury roundtable. We are pleased that the review team confirmed that ‘influencers’ providing the new version of general advice will be unable to receive conflicted remuneration.

3. In relation to the proposed de-regulation of ‘general advice’ - are the general consumer protections (such as the prohibition against engaging in misleading or deceptive conduct) a sufficient safeguard for consumers?

a) If not, what additional safeguards do you think would be required?

Our comments in response to question 2 on the role of ‘influencers’ are relevant here. In addition to the general consumer protections such as the prohibition against engaging in misleading and deceptive conduct, the Corporations Act will need to be amended to prohibit ‘influencers’ who provide general advice from receiving conflicted remuneration. We also believe further consideration will need to be given to the fact that they may receive remuneration from non-conflicted sources, such as advertising on products outside the financial product sphere. Will the misleading and deceptive conduct provisions be sufficient to protect consumers in this instance?

How should personal advice be regulated?

4. In your view, what impact does the replacement of the best interest obligations with the obligation to provide ‘good advice’ have on:

- a) the quality of financial advice provided to consumers?**
- b) the time and cost required to produce advice?**

Those of SIAA’s members who are full-service stockbrokers will remain subject to the obligation to provide advice that is in the best interests of clients in accordance with the Code of Ethics as licensees are required to take reasonable steps to ensure their representatives comply with the financial services laws. For

this reason, the issue of whether the replacement of the best interests obligation will have an impact on the time and cost required to produce advice will mostly turn on questions concerning proposed changes to the statement of advice obligations.

However, with the removal of the statutory best interests duty and the safe harbour steps each licensee will need to work out how to ensure its advisers act in their clients' best interests. What constitutes acting in a client's best interests under the Code of Ethics has not been decided by a court as it is a relatively recent addition to the financial services legislative framework. One possibility is to leave the best interests duty in the Corporations Act, but remove the safe harbour steps, given this is primary legislation.

As we have stated in the answer to question 2, the industry would benefit from the review providing additional examples that 'flesh out' how licensees and advisers will develop and assess advice that satisfies the new best interests duty alongside the new 'good advice' duty. For example, which of the current safe harbour steps can be discarded and in what scenarios? SIAA's members would be concerned if the regulator started benchmarking frameworks that are developed by licensees to produce compliant advice. We would prefer examples from the review team over guidance provided by ASIC, particularly as currently, we consider the regulator takes a 'one-size-fits-all' approach based on the comprehensive advice model of financial planning that is ill-suited to stockbroking and investment advice. For this reason, we also recommend that the legislation contain examples that clarifies how the best interests and 'good advice' duties will operate.

An important issue to consider in the provision of 'good advice' is how banks, online brokers and product issuers are to fund it. Superannuation is compulsory and superannuation funds are in a stronger position to pay for the provision of 'good advice' (if the restriction on the collective charging of fees is removed) than online brokers which charge minimal brokerage. How will an online broker cover the cost of not only training call centre personnel, but allowing them to spend time on calls providing limited advice? Currently call centre staff spend no more than 15 minutes per call. If these staff are required to provide good personal advice they will need to undergo significant training and spend a longer period of time with each customer, thereby significantly increasing the costs of this service. Our online broker members are concerned about how they will commercially support training, compliance and longer call centre calls under the proposed regulatory framework of 'good advice'.

5. Does the replacement of the best interest obligations with the obligation to provide 'good advice' make it easier for advisers and institutions to:

- a) provide limited advice to consumers?**
- b) provide advice to consumers using technological solutions (e.g. digital advice)?**

As we have stated in the answer to question 2 in order to deliver cost-effective, limited or scaled advice that meets the needs of clients:

- clarity will be needed that the information that is obtained from the client must relate to the scope of the advice to be given rather than a full needs analysis
- Standard 6 of the Code of Ethics will need to be removed, and
- the scope of what is required to satisfy the best interests duty under the Code of Ethics will need to be clarified and refined.

The proposals impact on the ability of licensees to provide general advice, so, as regards general advice clients, the proposals may increase the costs of advice as those clients fall within the personal advice category. By way of example, a client who completes a new client form and who has only \$20,000 to invest could currently be set up as a general advice client. Under the proposals, the client would become a personal advice client. How will the licensee and adviser deal with this client in the future? Will they be transitioned to a personal advice service or will they no longer be provided with any advice?

Initially, there may not be significant savings as organisations will need to implement new systems and processes to comply with the new provisions. The approach taken by AFCA and ASIC will be important in this regard.

We consider that a consultation process with all professions will be necessary to determine what 'good advice' will look like. There will be a need to have a 'bright line' between the circumstances in which a relevant provider provides advice that is subject to the best interests duty and one in which a call-centre operator provides 'good advice'. The 'bright line' will need to take into account the limitations inherent in advice provided by a call-centre operator who is not subject to the Code of Ethics, best interests duty and education and professional standards that apply to relevant providers.

6. What else (if anything) is required to better facilitate the provision of:

- a) limited advice?**
- b) digital advice?**

We refer to our answer to question 5.

7. In your view, what impact will the proposed changes to the application of the professional standards (the requirement to be a relevant provider) have on:

- a) the quality of financial advice?
- b) the affordability and accessibility of financial advice?

We have set out the impact of the proposed changes to the application of the professional standards in our answer to question 2.

8. In the absence of the professional standards, are the licensing obligations which require licensees to ensure that their representatives are adequately trained and competent to provide financial services sufficient to ensure the quality of advice provided to consumers?

- a) If not, what additional requirements should apply to providers of personal advice who are not required to be relevant providers?

We do not consider that requirements outside of the current licensing obligations should apply to providers of personal advice who are not required to be relevant providers. Licensing obligations are onerous.

That being said, we have concerns about bad faith operators who will attempt to push the boundaries of the proposals and engage in regulatory arbitrage. By way of example, operators may try to operate on a 'one-off, limited advice' model which in actuality involves an ongoing advice relationship. The boundary between 'good advice' providers and relevant providers will need to be well-policed to ensure that 'good advice' providers are not straying into an advice service which should be limited to relevant providers.

Superannuation funds and intra-fund advice

9. Will the proposed changes to superannuation trustee obligations (including the removal of the restriction on collective charging):

- a) make it easier for superannuation trustees to provide personal advice to their members?
- b) make it easier for members to access the advice they need at the time they need it?

We agree that the proposed changes to superannuation trustee obligations is likely to make it easier for superannuation trustees to provide personal advice to members and for members to access that advice. This is a cohort of consumer that is currently not receiving any advice. We support proposals that better enable this cohort to receive good quality, affordable personal advice. We consider that provisions that enable superannuation trustees to provide personal advice to the

standard of 'good advice' would need to ensure that such advice is limited to the member's interest in the fund. Advice that compared the features and benefits of a member's fund with another provider's fund would be conflicted advice and outside the scope of what should be provided.

Disclosure documents

10. Do the streamlined disclosure requirements for ongoing fee arrangements:

- a) **reduce regulatory burden and the cost of providing advice, and if so, to what extent?**
- b) **negatively impact consumers, and if so, how and to what extent?**

SIAA is pleased that the review recognises that the ongoing fee arrangements regime is not working well and could be much simpler. Providing clients with backward-facing and forward-facing fees is confusing for clients, time-consuming and costly for licensees, and administratively duplicative. We agree with what has been proposed; that a client should sign one standardised consent form with a fee estimate for the upcoming 12 months and that fee disclosure statements should not be required, provided that all prescription is removed from the requirements for the consent form and fee estimate. It was the prescriptive nature of the provisions that created complexity and confusion as well as the imposition by product issuers of different consent forms. The consent form obligations should remain with the adviser, not the product provider.

We do not consider that the proposals negatively impact consumers. The current provisions provide little benefit to consumers as they are confusing and complex. A streamlined annual fee estimate and consent will be a much-needed improvement for this important consumer protection.

11. Will removing the requirement to give clients a statement of advice:

- a) **reduce the cost of providing advice, and if so, to what extent?**
- b) **negatively impact consumers, and if so, to what extent?**

SIAA welcomes the proposals to remove the requirements for SOAs. We are pleased that the review agrees with our position that the current regulatory and prescriptive requirements around the content of SOAs result in long and dense documents that are not at all consumer-friendly and provide no benefit to clients. It is heartening that the review has confirmed that clients do not want lengthy documents filled with templated text and information designed to demonstrate

advisers have complied with the safe harbour steps. We are pleased that, rather than tinker with the edges of the issue of SOAs, the review acknowledges that the length and complexity of the SOA is driven by the legislative framework, and that the SOA requirements should be completely removed.

The proposals may not initially reduce the cost of advice as licensees will need to undertake significant systems and process changes to implement them. Until those changes are implemented and bedded down, licensees are likely to continue using their existing SOAs and the processes behind their production. However, we consider that over time, licensees will use the opportunity to re-craft their documents and processes and improve the way in which they communicate their advice to clients. Our members' initial thoughts are that, if the proposals are adopted, they will continue to document the advice in some form, but not in the current format. Members would ideally like to reduce the advice to a document no more than 3 to 4 pages in length. While the proposals abolish the SOA, it will still be necessary to go through the necessary risk management steps and firms will need a structure to know what information to collect.

The proposed changes will not negatively impact consumers as currently many of them don't read and don't want to receive a SOA. As a result, we consider that the proposals will not result in any negative impacts on consumers. The SOA is currently a shield for the licensee and adviser against regulatory action rather than a document dealing with the advice sought by the client, that is, it is a compliance-driven document rather than one focused on client outcomes. The proposal to remove the requirement to provide an SOA aligns with the findings of behavioural finance research that shows that more information is not helpful to clients when making decisions. In that regard we refer to the findings of *ASIC Report 632: Disclosure: Why it shouldn't be the default* that ASIC developed with the Dutch Authority for Financial Markets.

We note that the proposals will require personal advice providers to maintain complete records of their advice and that a client will be able to request a written record of that advice. This will be an important consumer protection. It will also require a process that captures the advice and the reasoning behind it.

12. In your view, will the proposed change for giving a financial services guide:

- a) reduce regulatory burden for advisers and licensees, and if so, to what extent?**
- b) negatively impact consumers, and if so, to what extent?**

SIAA supports the proposal that will enable providers of personal advice to make information available to their clients on their website about their remuneration and other benefits they receive, internal dispute resolution procedures and AFCA. We agree that this proposal will provide advice providers with more flexibility on

the way they provide information to their clients. It will also ensure that an up-to-date version of the FSG is available to the client at the time the financial service is provided. We do not consider that there will be any negative impact on consumers.

Design and distribution obligations

13. What impact are the proposed amendments to the reporting requirements under the design and distribution obligations likely to have on:

- a) the design and development of financial products?
- b) target market determinations?

SIAA advocated strongly for the removal of the 'nil' complaints requirement and welcomes the proposed amendments to the reporting requirements under the DDO regime. Member feedback has been that some issuers have imposed unnecessary reporting requirements in their TMDs that have impacted our members. We consider that it is unhelpful for issuers to be required to step into the personal advice space.

Transition and enforcement

14. What transitional arrangements are necessary to implement these reforms?

We agree that there should be a transition period for implementing the proposals that gives licensees, regulators, advisers and clients sufficient time to get used to the changes.

In order to respond in more detail to this question, SIAA would like more detail on the transition and 'opt in' provisions. Would licensees be required to 'opt in' to all proposals at once or could they 'opt in' on a piecemeal basis?

We are of the view that it could be confusing if there are different timelines for implementation for different business models. If all have the same deadline, then ASIC could provide a facilitative approach to implementation for the industry, which would not be feasible under an early adoption model. The change in the regulatory framework needs to be considered as a whole, and we do not support different organisations opting in piecemeal to different obligations. However, we are of the view that 'early wins' could be implemented (eg, removal of SOAs and other changes to disclosure documents) with other changes staged.

General

15. Do you have any other comments or feedback?

No.