



25 January 2021

Australian Securities and Investments Commission
Level 5, 100 Market Street
NSW 2000

Email: accesstoadviceconsultation@asic.gov.au
CC: Treasury

Dear Mr Choi

Re: Affordable Advice

Introduction

AFMA welcomes the opportunity to comment on the topic of promoting access to affordable advice for consumers. AFMA represents a number of firms that continue to provide advice to investors and many firms that have left the space following the FOFA and subsequent reforms or have substantially reduced the size of their advice businesses.

AFMA agrees with ASIC that the many reforms beginning with FOFA have failed to deliver affordable advice for the great majority of Australians. As the paper notes the cost of advice is at least five times the most that people are willing to pay. The unfortunate result is that while investors are of course free to purchase any number of higher risk investments, managing these potential risks through professional advice has been made unaffordable and inconvenient for investors and expensive and high risk for providers.

Key recommendation

We commend ASIC for looking to understand in detail why the current regime has failed investors. As we note in our comments below there are significant issues with the advice regime. These are unlikely to be able to be addressed solely through adjustments to the guidance and examples around the regime and require policy making to ensure they are properly addressed. This may preclude a comprehensive solution at the ASIC level given recent positioning by ASIC that it would no longer be engaging in policy making.

As such AFMA's main recommendation is that a more holistic review of the regulatory framework is undertaken through a Treasury or Ministerial level review.

Drivers of increased costs and risks

Below we outline some of the drivers of increased costs and risks. We note for completeness that, as ASIC recognises, it is the difficult-to-estimate cost of advice forgone that is the largest cost to the community within the current arrangements.

A general theme that emerges below is that the move to shift risks to the providers has increased the work required and risks, and thereby costs which are then passed on to those that can still afford the advice. Placing more control in the hands of consumers, at a minimum those consumers that wish to exercise the control (for example those that wish to limit the scope of their advice), should provide a path back towards lower costs and greater accessibility.

Requirements for data collection that themselves create risks

FASEA also created Catch-22 like requirements for extensive personal data collection before scaled advice could be provided (see *inter alia* Standards 2, 5 and 6). The very collection of this data could, based on the case law, preclude the provision of scaled advice, see *Australian Securities and Investment Commission v Westpac Securities Administration Limited* [2019] FCAFC 187.

Similar risks emerge as a result of the requirement in Table 2 in RG 244.64 which states ‘Use your judgement and training to decide whether, by limiting the scope of the advice, you can provide scaled advice that meets your legal obligations.’ To make an informed decision requires data collection which may preclude limited advice. This makes limited advice a high-risk option for firms in any but the most straightforward circumstances. Customers should be able to opt-out of comprehensive advice and this should not place additional risks on providers in order to make limited advice a practical option.

We suggest that where it is clear that the client understands and actively chooses limited advice or that providers should be free to provide such advice without the risk of a suggestion by the FASEA or ASIC Guidance that this could be in error.

Increased regulatory requirements

There have been many regulatory reforms around the provision of advice that directly increase costs for providers and thereby investors including: Forward fee disclosure, design and distribution obligations, and FASEA obligations.

Increased training requirements can be an important contributor to improved outcomes for investors when they are efficient and well targeted. However, they do come with increased costs for advisors and investors. In AFMA’s experience some of the current requirements are less than well targeted. For example, for many existing stockbrokers, the training is not relevant as it is targeted at financial advisors. In addition for senior stockbrokers their often decades of experience are not recognised. Rather than complete an irrelevant course to meet the regulatory requirements many prefer to retire early. This has decreased advisor numbers significantly. While at the same time the extensive requirements (in many cases not directly relevant) for new entrants creates delays and difficulties in replacing those that have left.

For providers of simple products such as Forward FX services the FASEA designed requirements are similarly irrelevant and only serve to add to the costs of service provision.

The compliance costs associated with the increased requirements and the overlapping regulatory requirements also ultimately result in increased costs for investors.

Risks and therefore costs are also increased by the erroneous approach of FASEA Code of Conduct Standard 3. This Standard is incompatible with the standard legal understandings of conflict of interest and creates uncertainty and risk for provider firms and this can only increase costs.

Potential response - increased tiering of advice

AFMA welcomes the contribution of the Rice Warner *Future of Advice Report* to the discussion but does not at this time support a further stratification of advice. While there are a range of views in the industry, our consensus view is that there are many issues with the existing delineation of personal and general advice and there is a risk that introducing another regulated division in advice between simple and complex advice could introduce more of these types of issues.

Proposed responses

As noted above our main recommendation is for a wider ranging review of the failures of the regulatory regime that has made advice unaffordable with a view to reducing regulatory burdens and interventions.

As part of such a holistic review AFMA would support the following:

- Comprehensive recognition of roles other than financial planner including brokers and other limited advice providers.
- Exclusion of certain simple products from the advice framework including FX forwards.
- The creation of an accreditation pathway that is appropriate for roles in the financial markets such as stockbrokers that are not financial planning focussed.
- Simplification and streamlining of the regulatory framework and requirements to reduce the administrative and risk burden on providers.

For more information or if you have questions in relation to our letter please do not hesitate to contact me at djeffree@afma.com.au or 02 9776 7993.

Yours sincerely



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