

8 May 2015

Financial Services Unit, Financial System and Services Division
Markets Group, The Treasury
By email: ProfessionalStandards@treasury.gov.au

To the Financial Services Unit,

RE: Lifting the professional, ethical and educational standards in the financial services industry

CHOICE strongly supports the Federal Government's intention to build on the support from industry and consumer groups and establish a framework to increase professional, ethical and educational standards for financial advisers.

Current requirements have been recognised as inadequate for some time.¹ Decisive action is required that will raise standards quickly and effectively. CHOICE is broadly supportive of the framework proposed in the Parliamentary Joint Committee on Corporations and Financial Services' inquiry into proposals to lift the professional, ethical and educational standards in the financial services industry (the PJC report). However, CHOICE is opposed to professional association control of a standards-setting body and any change that would limit the liability of advisers. We have provided additional comments to assist in the establishment of an effective framework for industry and consumers.

Structure and role of a standards-setting body

As noted in the discussion paper, limited progress has been made to improve training standards under the current regulatory framework. This is in part due to the fragmented nature of industry professional associations which makes it difficult to secure agreement on even minor improvements. We consider it inappropriate for professional associations to control any standards-setting body as it would perpetuate the issues that have hindered progress to date.

¹ See Senate Standing Committee on Economics (June 2014), The Performance of the Australian Securities and Investments Commission and Parliamentary Joint Committee on Corporations and Financial Services (November 2009) Inquiry into financial products and services in Australia p 13, 129.

Some professional associations have a financial interest in providing education or training to financial advisers, risking a conflict should they govern or control a standards-setting body. An appropriate role for professional associations is to add value to their members by providing approved education or training options, and where appropriate, setting higher or sector-specific standards for their members on top of the minimum required by a formal standards-setting body.

Independence and balance is needed. CHOICE recommends that any new body is governed by a board that is comprised of half members with relevant consumer skills and experience, half members with relevant industry skills and experience, and an independent Chair. Members should be appointed based on their experience as opposed to representing any particular organisation. We are open to other models, as long as they have balanced representation between consumer and industry backgrounds.

Funding of a standards-setting body

The standards-setting body must be appropriately funded. A minimum requirement is establishment funds and a plan for sustainable, ongoing funding. The Board should be supported by an independent secretariat with an office separate from industry and professional associations.

Registration of professional associations and establishment of ethical codes

CHOICE does not support recommendations 11 or 12 of the PJC report, which call for professional associations to establish Professional Standards Schemes under the Professional Standards Councils (PSC) and establish codes of ethics compliant with PSC requirements.

As noted in the discussion paper, Professional Standards Schemes are legal instruments designed to cap to the occupational liability of professionals. Limiting liability will hinder not help efforts to increase consumer confidence in the financial advice profession. Financial advisers deal with large investments and major assets, making liability limits unfeasible. CHOICE opposes any limits on liability as they would reduce the already constrained ability for consumers to seek redress.

In addition, this proposal combined with other recommendations in the PJC report would require compulsory membership of a professional association for all financial advisers. Professional association membership should remain optional, as any compulsory membership requirement

would add unnecessary costs to advisers, and as a flow on effect, increase the costs of advice for consumers.

Instead, any professional association code can be registered with the Australian Securities and Investments Commission (ASIC). The process for this is already established and set out in Regulatory Guide RG 183, *Approval of financial services sector codes of conduct*. ASIC broadly requires that codes address stakeholder issues, are independently administered, are enforceable, that compliance is monitored and enforced, and that there are appropriate remedies, sanctions and review processes. To date, no professional association has presented a code that meets these basic requirements. CHOICE sees no compelling reason why the requirements in RG 183 should be lowered or altered.

Registration

As noted, CHOICE does not consider it necessary that all financial advisers are members of a professional association. Our preference is that responsibility for entering and maintaining the accuracy of data of ASIC's register of financial advisers (the Register) remains with the licensee. This model is optimal as it allows ASIC to take appropriate compliance or enforcement action if data is inaccurate

CHOICE notes the register has potential to be used as means of providing assurance to consumers that advisers have met certain standards. Funding for the standards setting body could be by way of a registration fee.

Exam

CHOICE supports the introduction of a registration exam. The exam should be taken by existing advisers as the industry transitions from the current framework to higher standards.

Implications of the professional year proposal

The PJC Report recommends that new advisers undertake a professional year and pass a registration exam before being listed as a financial adviser on the ASIC register. The proposal for a professional year could build the skills and experience of new advisers early in their career. However, further clarity is needed about an early-career adviser's interactions with clients and the timing of when they are listed of the ASIC register. The purpose of the register is to list "all

natural persons providing personal advice on more complex products to retail clients.”² If an adviser in their provisional year provides any personal advice on tier two products they should be listed on the register with a note indicating that they are yet to complete all training or the registration exam.

Timing

The timeframes recommended in the PJC report are achievable. If necessary, we believe educational standards should be prioritised.

For further information please contact CHOICE on eturner@choice.com.au.

Yours sincerely,



Alan Kirkland,
CEO

² Explanatory Memorandum, Corporations Amendment (Register of Relevant Providers) Regulation 2015
<http://www.comlaw.gov.au/Details/F2015L00152/Explanatory%20Statement/Text>