

7 May, 2015

Financial Services Unit
Financial System and Services Division
Markets Group
The Treasury
Langton Crescent
PARKES ACT 2600

By email: ProfessionalStandards@treasury.gov.au

Dear Sir/Madam

**CONSULTATION PAPER – LIFTING THE PROFESSIONAL, ETHICAL AND
EDUCATIONAL STANDARDS IN THE FINANCIAL SERVICES INDUSTRY
-SUBMISSION BY STOCKBROKERS ASSOCIATION OF AUSTRALIA**

The Stockbrokers Association of Australia Limited (“the Stockbrokers Association”) appreciates the opportunity to provide these comments to Treasury in respect of the Professional Standards Model (the “PJC Model”) proposed by the Parliamentary Joint Committee on Corporations and Financial Services (“PJC”) and set out in the Consultation Paper “Lifting the Professional Ethical and Educational Standards in the Financial Service Industry” released in March 2015 (“the Consultation Paper”).

The Stockbrokers Association represents the whole stockbroking industry, ranging from large investment banks with a predominantly wholesale client base, to large retail firms and right down to small firms. Not surprisingly, it is not uncommon for member firms to hold a range of views regarding regulatory proposals, and this Consultation Paper is no exception.

There is broad but not unanimous support for the PJC Model put forward in the Consultation Paper, subject to certain qualifications. The views of our members are more fully explained below in this Submission.

EXECUTIVE SUMMARY

- The stockbroking industry has been caught up in the proposals to reshape the financial advice industry, despite the fact that there have been no problems in this sector; stockbrokers are already subject to a high standard of regulation under the Corporations Act, Market Integrity Rules, National Guarantee Fund and common law duties; and complaints against stockbrokers are at a low level and falling consistently.
- The Stockbrokers Association nevertheless understands the practical reasons why the Government is proposing a standard regime applying across the financial advice industry.
- There is broad but not unanimous support for regulatory proposal along the lines of the PJC Model with suitable modifications. Minority members say that the existing regime has suitable powers and should be made to work, without the added cost of the PJC proposal.
- The Stockbrokers Association is ready and willing to take the step for PSC accreditation, but there is a crucial initial decision on the cap on professional indemnity insurance that is an element of the PSC scheme that needs to be resolved at the outset.
- Possible problems with PSC powers makes the reliance by the PJC model on the PSC potentially flawed.
- An alternative approach is a PSC based approval regime that is appropriately established under Federal Corporations Law powers and suitably tailored to financial advice.
- The Stockbrokers Association is supportive of the remaining elements of the PJC model, namely:
 - Mandatory membership of an approved professional association.
 - Higher education standards – university degree, Professional Year, supervision and mandated Continuous Professional Development.
 - A Finance Professional Education Council to set education standards.
- Transparent and consistent standards need to be applied to the approval of professional association across the financial advice spectrum. There should be no incentive for regulatory arbitrage.
- Membership of a professional body needs to be mandated for the proposals to work. If not, advisers will have the scope to opt out, devaluing the proposals. This would enable “fringe” advisers to operate in an unregulated way, as is currently the case.
- There are sound reasons why the PSC would be a sensible choice as the body to approve professional associations, given its existing framework and experience relating to professional bodies across the community spectrum. The Stockbrokers Association favours PSC carrying out this function rather than ASIC.
- The model adopted should have some flexibility so as to keep implementation and ongoing costs down and avoid adverse consequences.

I. PRELIMINARY COMMENTS

The Stockbrokers Association has a strong commitment to raising professional standards, enhancing investor protection and maintaining the integrity and high standing of Australia’s financial markets. Stockbrokers rely on the trust of their clients and on the integrity of the markets for their livelihood. Without these, investors would not be so willing to participate in the markets, invest in new issues of capital and trade in shares, options and other listed financial products.

It was this reputation for integrity that enabled Australia to raise much needed capital during and immediately post-the Global Financial Crisis, including a record \$106 billion raised in calendar 2009¹. This helped Australian companies to recapitalize and to avoid the worst effects of the crisis.

The Stockbroking industry has been largely immune from the extensively reported financial advice issues that have arisen since the GFC. There are very good reasons for this, which we would like to note as a preliminary matter before addressing the specific questions in the Consultation Paper:

- **Higher Management and Supervision Standards:** while they hold Australian Financial Services Licences (AFSLs), as Market Participants under the ASIC market integrity rules², Stockbrokers also have much more defined and stringent management and supervision requirements than those which apply to AFSLs. Responsible Executives must be appointed, which reinforces the firm’s liability to comply with the applicable laws and rules. These requirements are separately enforced by ASIC under the Market Integrity Rules. Breaches of the management and supervision requirements under the Market Integrity Rules can render firms liable to serious penalties not applicable to the rest of the financial advice industry, including fines of up to \$1,000,000.
- **Prohibition on Unprofessional Conduct:** Market Participants must comply with Market Integrity Rules which prohibit Unprofessional Conduct (as defined), and which require firms to ensure that employees are of good fame and character

¹ ASX Information Paper *Capital Raising in Australia: Experiences and Lessons from the Global Financial Crisis* 29 January 2010 page 7

² As noted in the Consultation Paper at page 11 paragraph 32. In this Submission, *Market Integrity Rules* principally refers to the *ASIC Market Integrity Rules (ASX Market) 2010*. However, it is noted that there is a set of MIRs for each market, e.g. Chi-X, and that the Competition MIRs (*ASIC Market Integrity Rules (Competition in Exchange Markets) 2011*) also apply where securities are traded on more than one exchange. The Competition MIRs themselves impose additional requirements on Market Participants, including the duty of best execution.

and high business integrity³. Breaches of these rules carry a maximum penalty of **\$1,000,000**. The concept of **Unprofessional Conduct** sets high standards of conduct for Market Participants and their advisers in their dealings with clients. Under Rule 1.4.3, Unprofessional Conduct includes:

- (a) conduct which amounts to impropriety affecting professional character and which is indicative of a failure either to understand or to practise the precepts of honesty or fair dealing in relation to other Market Participants, clients or the public;
- (b) unsatisfactory professional conduct, where the conduct involves a substantial or consistent failure to reach reasonable standards of competence and diligence; and
- (c) conduct which is, or could reasonably be considered as likely to be, prejudicial to the interests of the Market Operator or Market Participants, by a Market Participant, or an Employee, whether in the conduct of the Market Participant's business as a Market Participant or in the conduct of any other business, and need not involve a contravention of these Rules or any law.

No other sector of the retail financial advice industry is subject to such rules.

- **Market Supervision Fees:** Market Participants pay a market supervision cost recovery contribution of around \$15,000,000 per annum to ASIC for its regulation of the sector. No other sector pays such fees. However, we note the recent recommendations of the FSI⁴, which if implemented may lead to a broader and more equitable model of ASIC Cost Recovery across the financial services sector.
- **MDP Supervision:** there is a dedicated disciplinary regime for the Market Integrity Rules which does not apply to other sectors. ASIC addresses matters in the first instance through its **Markets Disciplinary Panel**, a body of senior industry practitioners built on the peer review model. Since 2011, the MDP has issued Infringement Notices for over \$2,000,000 in penalties. If a market participant does not comply with an MDP Infringement Notice, ASIC has the power to take the matter to Court as a Civil Penalty action.

³ ASIC Market Integrity Rules (ASX Market) 2010 Rule 2.1.5 and Rule 2.1.4

⁴ Financial System Inquiry Final Report 7 December 2014 Recommendation 29

- **Capital Standards:** More detailed and rigorous capital adequacy standards apply to Market Participants than other financial advisers.
- **NGF:** The National Guarantee Fund stands behind market transactions and broker defalcations to protect clients and their assets.

FOS data: One of the indicators of the healthy state of the retail stockbroking industry is the trend of lower complaints against Stockbrokers. According to figures released by the **Financial Ombudsman Service**⁵, for the 2014 Financial Year complaints against Stockbrokers fell 17% to 42, with only 8 of those relating to Advice. This was not an extraordinary result: complaints to FOS against Stockbrokers have consistently fallen over the last 5 years, to be less than half they were for 2010.

ASIC Surveys: a survey by ASIC in 2010 of Stockbroking Advice found a *very positive* response on the question of clients' attitude toward their stockbrokers. In the seemingly endless flood of bad news on financial advice in the last few years, it was somewhat disappointing that this positive news was never released by ASIC.

The result of the rigorous compliance structure and good ethical background is an environment where clients' interests are paramount. If issues arise, they are normally addressed in the client's best interests, which is one reason for the low rate of complaints to the external complaints resolution scheme.

Being financial product advisers, stockbrokers have been caught up in the various findings and recommendations of the recent reviews, including the PJC and the Financial System Inquiry ("FSI"), notwithstanding that the problems that gave rise to these reviews, and to the significant public debate, have occurred in the financial planning/wealth management areas, and not in relation to stockbroking.

Many of the proposals now under consideration will require major changes to stockbroking, and the potential for significant additional cost to the industry, without this sector having caused the problem. It is clear from the framing of many of the various proposals in the PJC Report and FSI Final Report that they have been drafted with the financial planning industry in mind, and it does not seem that much thought has been given to their application in relation to stockbroking.

The Stockbrokers Association acknowledges the importance that the Government attaches to taking appropriate action to address perceived problems in relation to financial advice. In this Submission, the SAA is adopting an approach of supporting the Government's objectives, notwithstanding the absence of any significant issues in our

⁵ Financial Ombudsman Service [2013-2014 Annual Review](#) released 9 October 2014

industry, because of complications that would arise if there were differing levels of regulation across the financial advice spectrum.

However, the SAA does seek that the implementation of any proposals that are adopted have regard to the specific circumstances in the stockbroking industry, and that there be appropriate **flexibility** to reflect the nature of stockbroking. A single one-size fits all approach, occasioned by failures that have occurred in other sectors, should not result in unfairness to the stockbroking industry.

II. SUMMARY OF STOCKBROKERS' POSITION ON PJC PROPOSALS

The majority of our Members accept the thrust of the PJC's proposals as a way of ridding the financial services industry of a stain that is adversely affecting everyone in the industry, notwithstanding that it is not the fault of stockbrokers.

There is **broad although not unanimous support** for the model of raising standards by mandating advisers to join a professional association that will be an agent for raising professional and ethical standards. They are supportive of the model, subject to some modifications, in the hope of addressing the issues root and branch.

The Stockbrokers Association is **ready and willing** to apply for accreditation by the Professional Standards Council ("PSC"), as mooted by the Consultation Paper. In fact, the Association has previously done so, and expended considerable time and resources in progressing an application right through to the final stage. The previous application was, however, refused at the final hurdle because there was a reluctance by Treasury to support the cap on liability that is an important aspect of an approved PSC Scheme.

The Association is prepared to support the PSC component of the PJC Model provided that the question of a cap on liability is resolved at the outset. The cap on liability is one of the key features of the PSC regime. Obtaining PSC approval requires a great degree of work to achieve, and the elements of the PSC scheme are such as would significantly reduce the risks to clients of dealing with those professions who operate under an Approved PSC Scheme. The cap on liability is granted in recognition of these reduced risks, and of the cost of restructuring the Association's affairs in order to meet the requisite higher professional standards.

It is difficult to see the logic in not creating a level playing field between professions, and permitting lawyers, accountants, barristers and other professions, all of which operate under an approved scheme, to enjoy a cap on liability, but to deprive financial services professions from being granted the same.

Therefore, there is a **critical initial decision** that needs to be made with respect to the PJC Model. If there continues to be a reluctance to agree to the cap on liability, then this casts a serious question mark over whether the PJC Model is flawed from the outset in its reliance on PSC approval for Professional Associations.

In addition, if there is a reluctance to support a cap on liability, then this should be the same for all professions within the financial advice industry. There needs to be a level playing field, and there should not be a different approach to, for example, financial planners, as compared to stockbrokers.

(a) Alternatives to PSC

If the result of analysis is that PSC Scheme accreditation is not feasible as the basis for the PJC Model, then the Stockbrokers Association would be supportive of some other suitable form of approval regime for professional associations, subject to a number of provisos:-

1. The requisite standards for obtaining approval as a professional association need to be high; consistent; and transparent. It would be a poor outcome if there were different professional standards between associations. This could lead to regulatory arbitrage. There could be the potential for a race to the bottom.
2. The Association would be happy with the PSC being granted the authority to approve schemes for the purposes of the PJC Model (as opposed to under the PSC regime). There is no reason why the PSC would not be equipped to carry out this function. There would need to be appropriate legislation conferring this authority on the PSC, subject to any issues arising under Federal powers under the Constitution.

The Association would also be open to the power to approve associations being conferred on ASIC, but subject to our reservations expressed below.

3. In order to make the scheme work, membership of a professional association would need to be mandatory. We note that this is a requisite for registration on the ASIC Register under the PJC Model. We stress that the requirement must be mandated to ensure that advisers simply do not choose to conduct their businesses outside the scope of the scheme.

(b) PSC or ASIC?

In the Association's view, there are some reasons that would favour the PSC being given the function of approving professional associations.

The PSC has the framework and background that would equip it well for the task. The PSC would be in a good position to export knowledge and information about what is happening in other professions, not just financial industry professions, in its approach to raising standards and in determining the demands of the wider community.

The Association has some reservations about ASIC being given the role of approval authority. In our experience, ASIC has demonstrated a lack of capacity or desire to engage with professions in the past in relation to raising professional standards, outside of its role of enforcing breaches of the law.

For example, the Association has developed Professional Accreditation programs for stockbrokers; for Derivatives advisers; and for Designated Trading Representatives (DTR's), to provide an industry standard, and has requested ASIC to mandate these but without success. The Association has also sought that ASIC raise standards in the shadow broking sector, but there is no evidence that this has occurred. This does not give us much comfort as to the way that ASIC might perform the accreditation role that is fundamental to the PJC Model. There is the possibility that ASIC's enforcement perspective will dominate in its thinking.

We note that the Government has indicated that the new measures will be in place by around the middle of 2015⁶. From prior experience, we doubt whether this timeframe could be met, if ASIC were given the role of approving professional associations. In April 2011, ASIC proposed a comprehensive system of training and supervision standards for financial advisers, including a National Examination⁷. After much work by ASIC and industry over some 2 years in considering the proposals, the proposals were put on hold. While ASIC has obviously spent much time and resources on this area, it is doubtful whether it could be in a position to deliver the new measures in the short term.

The Association's other reservation about ASIC is on the question of cost. We are not convinced about the cost controls being applied within ASIC, particularly in the climate where the stockbroking industry already pays the lion's share of ASIC's annual market supervisions budget, and in the knowledge that there is a high probability that ASIC will shortly be moved to full cost recovery for its entire budget and be freed from public

⁶ *Frydenberg finishes advice reform* Australian Financial Review 30 April 2015 page 56 (Chanticleer)

⁷ ASIC Consultation Paper 153 *Licensing: Assessment and professional development framework for financial advisers* April 2011

sector employment restrictions. We are concerned that if ASIC were granted the approval function, whether it would be able to do so in a low cost environment.

(c) Financial Profession Education Council

The Stockbrokers Association is supportive of the concept of a FPEC as a significant component of the PJC Model.

The membership structure of the FPEC is critical. ASIC has a place on FPEC, and investors should be entitled to nominate a representative. One or more academic representatives would make sense, for the purposes of ensuring relevant Australian standards relating to education are met.

The Association would expect that a majority of the FPEC should be made up of representatives appointed by the approved Professional Associations. First and foremost, **professional education should be industry relevant** and should have **gravitas**. The Association believes that the plethora of commercial education offerings lacking meaningful content that emerged around RG 146 should be avoided this time around.

The Association is concerned that the costs of a body such as FPEC need to be kept under tight rein. The issue of the need for a FPEC “Secretariat” to organize its business raises a red flag on the question of additional costs, in our view.

The Stockbrokers Association already devotes a considerable amount of members’ funds in maintaining a range of Professional Development and accreditation programs for the stockbroking industry. These programs are regarded as the industry standard. It would be unfair to add significant additional cost to the stockbroking industry to pay for what it effectively already does.

One way for costs to be kept low would be for the Government to carry the cost of the FPEC, in recognition of the savings that will ultimately accrue down the line in enforcement costs, and in the benefits that would accrue to investor wealth and to Australia’s economic standing through the higher competency that the FPEC should ultimately deliver across the whole financial advice industry.

An alternative funding model would be to **fund FPEC from fines raised from enforcement activity**. Previously, in relation to stockbroking, ASX fines were all placed in a fund that was used solely to fund education and other activities that served to enhance the integrity of the markets. Following the transfer of market supervision to ASIC, fines all now go either to Government revenue, or on occasions, to fund programs identified by ASIC (where the amounts have been paid to ASIC as a result of agreements to settle proceedings).

It would be entirely in keeping with previous philosophy if the Government were to make an appropriate allocation of funds to cover the costs of FPEC out of the funds generated for consolidated revenue from enforcement activity carried out by ASIC across the spectrum of its activity. There is a degree of appropriateness, in our view, that financial penalties paid by parties who have failed to act appropriately should pay the costs of FPEC and not parties who have met high professional standards.

(c) Registration Exam

The Stockbrokers Association has not been supportive of the concept of a single national exam as proposed by ASIC in recent years.

In our view, having a single exam that covered the whole spectrum of financial advisers, from insurance brokers, financial advisers, stockbrokers, CFD advisers, and so on, would need to be so general as to be of limited value as a true test of professional standards.

We note with interest that the Final Report of the Financial System Inquiry stated that it also did not favour the national exam either.

The Association would however support a registration exam if there was a separate version dedicated to each distinct area of financial advice – one for financial planners, one for stockbrokers, and so on. Each relevant industry body is best placed to set the exam for their sector. It would be better to use industry skills to set the exam rather than a body who has no industry experience and has to buy in those.

Nominating distinct Associations to conduct the exam for their relevant industry sector also deepens and strengthens their educational and training ability. Removing education from the offering provided by the Stockbrokers Association's would erode this connection and would emaciate the Association (and similarly, the other associations). Education currently draws together some of the best and brightest minds in the industry.

The different versions of the registration exam would need to be of equivalent standard, so that it would not be possible for advisers to enter the market in one area with a distinctly lower professional standards as compared to others. This is a matter that the FPEC would be expected to deal with to ensure the exam meets standards and is a credible test.

(e) Enforcement of Codes of Conduct

One of the concerns expressed is the increased costs that will be necessitated if professional associations are each required to maintain an expensive department to handle complaints against members and conduct disciplinary proceedings and the enforcement of codes of conduct.

There is a tension Professional Associations between, on the one hand, maintaining control over professional and ethical standards within their respective professions, and not ceding this function to an entity that may have no background or understanding of the particular features of each of the industry sectors, and on the other hand, keeping a lid on burgeoning costs.

Every additional cost ultimately gets passed on in some form, and becomes an added cost to investors and/or an additional drag on efficiency that will reduce the ability of Australia's markets to build investor wealth and to compete effectively with other financial markets in our region.

One potential solution to this would be a form of outsourcing of the complaints and code disciplinary function to a body, which would carry out those functions on behalf of all of the professional associations if they sign up to the service. This could result in shared costs and efficiencies.

If the approved Professional Association model succeeds as hoped, then it could be expected that complaints would fall significantly. (This is supported by the evidence pointed out earlier, that complaints against stockbrokers have fallen significantly and consistently over time to a low level). In those circumstances, the cost of each Association maintaining its own disciplinary infrastructure would be not only duplication but wasteful.

It would be important however that the outsourced body should be managed by a council comprising representatives of the Associations, to avoid the problem of the Associations losing control over the professional standards in their industry. The tribunals conducting hearings into Code breaches should be made up of senior industry professionals nominated by the relevant Professional Association.

(f) Contrary view of some stockbroking firms to PJC Model

As mentioned earlier, support for the PJC Proposal is not unanimous. There is a body of members that argue that stockbrokers are already subject to strong levels of regulation (as we have outlined in detail above). ASIC has satisfactory powers to police the financial advice industry, and should do so. Those members see no reason why stockbrokers

should incur additional costs and regulatory burdens when the industry is already under acute financial pressures to duplicate functions that ought to already be performed, and when the risks to investors based on all current indicia are low.

III. SPECIFIC QUESTIONS IN CONSULTATION PAPER

Following the above explanation of the Associations views on the PJC Model, we set out in the following section our submissions on each of the Specific questions posed in the Consultation Paper, adopting the Recommendation numbering and page references from the Consultation Paper for ease of cross reference.

Section 1

Feedback sought — the PJC model

The introduction of the model recommended by the PJC would represent a substantial change to the current regulatory environment for financial advisers.

Question 1.1

What impact would the introduction of the PJC model have on the structure of the financial advice industry?

The structure of the financial advice industry will be driven first and foremost by economics, technology, by client needs and changing relationships and investor behavior. Regulatory frameworks are an important consideration, but ultimately not the main driver.

Having said that, PJC model would have a number of significant impacts on the industry.

Better regulation but at a higher cost to industry

Obviously, retail advisers will be required to align with one or more professional associations in an individual capacity, when currently they might not be. Membership of an association is at present not mandatory, and whilst many advisers are members, many others rely on their firm being an organizational member of the relevant professional body.

Professional bodies in many cases will be required to significantly increase the scale of their operations. The PJC model would require a professional body to engage in far more work across a range of areas:

- Vetting new members

- Ensuring all existing members satisfy all ongoing membership criteria
- A greater role in establishing educational standards and training (although in our case, the Stockbrokers Association already plays a significant role in Professional Accreditation and the delivery of high quality training and Continuous Professional Development)
- Undertaking enquiries about advisers on matters of conduct e.g. if a complaint is received from member of public.
- Carrying out a greater disciplinary role in cases of failure to meet professional and ethical standards.

A practical implication will be the additional cost burden that will apply. None of these functions will be cheap to implement. Advisers will carry a significant additional cost in becoming qualified, through the fees for attaining tertiary qualifications. Advisers will also carry the cost of annual membership fees and additional CPD obligations, to the extent that these are new. (In the case of stockbroking, there is a de facto standard of 20 hours CPD already).

Better regulation of shadow brokers

One significant impact on financial structure that the PJC Model would have would be the raising of standards in the “shadow broking”/securities dealer sector.

The Stockbrokers Association has been on record in warning of the failure of regulation to match the growth of securities advisers who operate outside of the stockbroking industry. ASIC has the ability through the Australian Financial Service License (AFSL) Regime to properly regulate these dealers, but whether through lack of resources or lack of focus, ASIC has not, in the opinion of the Stockbrokers Association, sufficiently carried out this function.

The PJC model would in part address this regulatory gap by bringing those advisers under the umbrella of a Professional Association and bring them within the professional and ethical standards applicable to membership of such an Association.

The PJC model would apply equally to advisers working in different size firms and under different licensee structures.

Question 1.2

What are the practical implications of the PJC model applying to advisers from all sizes and types of firms?

Cost of Implementation an Issue for Small firms

The cost of implementation of the PJC model is likely to be an issue for smaller advisory firms.

For example, large financial institutions will have the resources to implement comprehensive and detailed Professional Year programs, and many already do so. However, a smaller firm may struggle to match that level of resource commitment. Smaller firms already face the difficulty of rapidly increasing regulatory costs in recent years in a tough economic and trading environment.

Smaller firms house some of the best and most trusted stockbrokers, who prefer to work in a smaller group rather than a larger network. It is important that this sector be supported, and that regulatory costs do not render the sector economic.

For this reason, there needs to be flexibility in the way in which the PJC is implemented so that standards can be met in substance, without excessive black letter detail.

Under the PJC model, ASIC, licensees, the PSC, FPEC and the professional associations will have a role in raising standards and ensuring these are met on an ongoing basis.

Question 1.3

Are the lines of responsibility clear under the PJC model?

Potential for lack of clarity

More work needs to be done to clearly delineate the inter-relationship between ASIC, PSC, FPEC and Professional Associations.

Presumably, the PJC Model will not mean that ASIC does not have a major say in what would amount to satisfaction of the statutory obligations on licensees to appropriately manage their businesses, to ensure their staff are appropriately trained and qualified, and what amounts to professional misconduct. That is part of the regulatory regime, and ASIC's role in that regard should not be diminished.

Therefore, how ASIC would interact with the PSC in determining the standards necessary for a Professional Association to receive PSC accreditation needs to be set out more clearly.

As we have set out earlier, there are sound reasons supporting the PSC being the body that accredits a Professional Association for the purposes of making the PJC model to work, however it could also be ASIC.

Section 2

Feedback sought — current regulatory framework

Under the current regulatory arrangements, the legal obligation to ensure advisers meet the relevant training and competency standards falls on licensees. ASIC is responsible for ensuring that licensees comply with the conditions of their AFS licence.

Under the PJC model, responsibility for meeting (and ensuring compliance with) training and competency standards is expanded to individual advisers and professional associations.

Question 2.1

What are the practical implications of this overlapping of responsibilities? Would this shift have flow-on implications for other provisions in the Corporations Act, or any other parts of the licensing regime?

Question 2.2

Should licensees maintain a legal obligation to ensure advisers meet relevant training and competency standards?

We reiterate our submissions above. The Stockbroking industry already pays a significant amount of money each year to fund ASIC's costs of market supervision, and hence, does not support ASIC devolving its functions to professional bodies. Professional bodies will have limited funds available to them, even with membership fees being paid.

ASIC should continue to be responsible for AFS licensing including that licensees comply with licence conditions.

Professional Associations could perform the function of assessing compliance with training obligations by members including initial qualification and ongoing CPD obligations, and reporting these to ASIC for their attention.

The obligation on licensees to ensure that their advisers meet relevant training and competency standards is an important component of the management of the business of the licensee, and responsibility on the licensee and on management should remain.

Section 3

Feedback sought — education and training standards of financial advisers

Question 3.1

How would the PJC model interact with existing regulatory regimes for specific types of advisers, for example stockbrokers and tax advisers?

Under the PJC model, financial advisers providing personal advice on Tier 1 products would be required to hold a relevant Bachelor Degree.

Question 3.2

Is holding a relevant Bachelor Degree the appropriate minimum education requirement? What is a “relevant” Bachelor Degree? Would this requirement limit the ability of other degree-qualified individuals to become financial advisers?

Question 3.3

What are the practical implications of requiring advisers to hold a relevant Bachelor Degree?

Under the PJC model, financial advisers providing personal advice on Tier 1 products would be required to undertake a professional year and ongoing professional development.

Question 3.4

What are the practical implications of requiring new advisers to undertake a structured professional year at the outset of their careers as financial advisers, as a way to develop on-the-job skills?

Since the current standard under ASIC RG146 for adviser qualifications is at the Diploma level, it makes sense that if standards are to be raised, it should be to the level of a Bachelors Degree. However, a Bachelors Degree is no guarantee of high levels of product knowledge, service and ethics so as to ensure investor protection. Therefore, gaps will need to be filled, hopefully by additional ‘gap’ learning, and possibly through the Registration Exam – although no details of its content are yet known. Of course these additional qualifications will lead to additional costs.

There needs to be some flexibility as to what is considered to be a relevant Bachelor’s Degree. Included amongst top tier equities research analysts within stockbroking firms are people who were formerly geologists, chemists, scientists, engineers, accountants and teachers. This is an argument against being overly narrow or prescriptive about the range of Bachelor Degrees that could be considered relevant to being a good stockbroker. What is of as much significance is the further professional development and training undertaken on an ongoing basis throughout an adviser’s career.

An additional practical implication of requiring advisers to hold a particular degree is the cost of higher education. The cost of university degrees is now such that it will be a disincentive for a person who already holds one degree from switching careers if they must attain another degree that falls within the class of “relevant” degrees (not to mention the additional years that will be required to complete the further Bachelors Degree).

Valuing Age and Experience

These proposals are very much aimed at new starters. It is important that any new system incorporates sufficient flexibility to cater for experienced advisers. There needs to be acknowledgement that a trusted adviser of 20 years standing with an impeccable

record of service but no formal qualifications (apart from perhaps RG146), is much more valuable to clients than a new adviser fresh out of university with little or no experience.

Accordingly, through recognition of prior learning or some other mechanism to vouch for the senior adviser's knowledge and experience, there needs to be a way to allow these advisers to remain in the industry. Otherwise great experience and knowledge will be lost from the industry to the detriment of clients. Moreover, to impose the 'new starter' requirements on *all* advisers would run the risk of discriminating against experienced advisers on the basis of age.

As for the Professional Year, the system exists already, albeit unsupervised by any professional body. New or trainee advisers are supervised before they are allowed to speak to clients. If the new system is to be overseen by Professional Bodies, it needs to be flexible enough to take into account the arrangements already in place in stockbroking, which have served the industry well for over a century.

Section 4

Feedback sought — structure and role of a standard-setting body

The PJC model would establish an independent FPEC as the central body to set education standards, professional year requirements, registration exam content and ongoing professional development requirements.

Under the PJC's recommendations, FPEC would be funded by approved professional associations and would comprise representatives from those associations, academics, consumer advocates and an ethicist.

Question 4.1

What are the practical implications of FPEC performing this role? For example:

- how would FPEC interact with regulators and government agencies, such as ASIC, and education bodies?
- would FPEC need to be supported by legislation in order to perform its role?
- is the recommended FPEC membership appropriate?

Question 4.2

Are there alternative arrangements that would be more appropriate or effective?

We refer to our submissions at Section II (a), (b) and (c) above.

Section 5

Feedback sought — registration

Under the PJC model, individuals must be listed on the Register in order to practice.

Question 5.1

What are the practical implications of requiring individuals to be registered in order to provide financial advice?

Question 5.2

Should it be the role of professional associations to notify ASIC that all requirements have been met for an adviser's registration, and of factors which affect their subsequent fitness for registration?

The PJC recommends that, in addition to the information currently required to be listed on the Register, an adviser's completion of the relevant education requirements, professional year and registration exam, and their professional association membership, higher qualifications and any censure or ASIC action, also be listed.

Question 5.3

What are the practical implications of having these criteria listed on a public adviser register?

Question 5.4

Are there alternative or additional criteria that should be listed on the Register?

The current Register requires licensees to provide information to ASIC about individual advisers. Under the PJC model this responsibility would be shifted to professional associations.

Question 5.5

What are the practical implications of having professional associations perform this role? For example, are professional associations sufficiently resourced and how would they interact with ASIC in relation to these requirements? Does this approach dilute the responsibility of licensees?

Question 5.6

Is legislative protection of the titles 'financial adviser' and 'financial planner' necessary?

5.1 The Stockbrokers Association welcomed the launch of the new adviser register in March this year. The Association was part of the Government's advisory group that worked on the detailed requirements of the adviser register last year. For many years the Stockbrokers Association has sought a register which warns consumers and prospective employers about adverse findings or misconduct of advisers. This would provide a more effective mechanism to eradicate and prevent the movement of Bad Apples around the industry. There are some excellent models in operation elsewhere, and Australia is sadly lacking in this area. For example, the system in the United States provides for compulsory reporting of employee misconduct on termination and protection for employers in making and relying upon such reports. In particular, information regarding client complaints and circumstances of termination at previous employers can be very useful for future clients and employers.

The new register is a good first step and a big improvement on the previous situation where there was no register at all. However, we trust that it can be enhanced to include more meaningful information in the future. While this may involve interference with an adviser's right to privacy, it would be justified by increased consumer protection. The rights of consumers (and prospective employers) to be protected from Bad Apples ought to outweigh an adviser's right to hide an unfavourable past. Good advisers should have nothing to hide.

5.2 , 5.3 and 5.5 There should be a balance between the role of Associations and that of ASIC. This is needed so as to keep costs down. It would be appropriate for Associations to obtain the necessary information as to the completion of entry requirements and of annual CPD requirements. We would advocate for the use of technology so that this data can be fed to ASIC, for the purposes of the Adviser Register and ASIC's licensing function, which remain paramount. This would remove duplication and/or overlapping functions. Solutions for the ASIC register to communicate with Association membership data should be possible at a low cost and without the need for extra human resources to be applied to the task.

Section 6

Feedback sought — exam

The PJC model introduces a registration exam at the end of the structured year of professional development.

Question 6.1

Do you consider a registration exam should be a component of a framework to improve professional standards? Should the exam apply to both existing and new advisers?

Question 6.2

What are the practical implications of the use of a registration exam?

Question 6.3

What content should be covered in the exam?

Question 6.4

Is FPEC the appropriate body to set the exam? Who should be responsible for invigilating the exam? Who should be responsible for marking the exams?

We refer to our submissions at Section II (d) above.

Section 7

Feedback sought — ongoing professional development

The PJC model requires mandatory ongoing professional development for financial advisers.

Question 7.1

What are the practical implications of the proposed ongoing professional development requirements?

Question 7.2

Are professional associations well-placed to administer ongoing professional development requirements?

As far as the stockbroking industry is concerned, the practical implications of the proposed CPD requirements would not be significant. As previously noted, the Stockbrokers Association already mandates 20 hours CPD per annum as a standard for its members. This is consistent with the CPD requirements imposed under the Market Integrity Rules on the Responsible Executives of Market Participants.

For this reason, we would support retention of a 20 hour CPD requirement as being appropriate. A higher figure would not necessarily achieve anything more, in our view.

This standard at present does not have any mandatory application (other than that for RE's), so the proposed requirements would have an impact in that they standard would become compulsory. However, it is likely that the standard is already being complied with by a large proportion of the stockbroking industry.

Mandatory CPD hours should be consistent across the financial advice spectrum in terms of the number and breakup (between formal and informal). It should not be easier to complete mandatory CPD in one field as compared to another.

The Association sees no reason to interfere with the ability to rely on existing sources of CPD such as professional annual conferences, company presentations. There could be a set of separate sub-limits within the overall CPD requirement, so that there would be a maximum for presentations, reading journals etc.

Section 8

Feedback sought — professional and ethical standards

Code of ethics

The PJC recommended that professional associations be required to establish codes of ethics that are approved by the PSC.

Question 8.1

What are the practical implications of having each professional association create its own code of ethics? For example, what are the implications of having multiple codes as opposed to a single code?

Question 8.2

What are the practical implications of requiring that a code of ethics be approved by the PSC? Are there alternative approaches that would be more appropriate or effective?

Role of the PSC

The PJC model uses the PSC as a key mechanism to drive continuing improvements in the professional standards of the financial advice industry. Under the PJC model, a professional association will need to have schemes approved by the PSC in order for its members to be registered as financial advisers, and for the association to be a member of FPEC.

Question 8.3

Is the PSC the appropriate body to drive improvements in professional standards in this industry? Are there alternative arrangements that would be more appropriate or effective?

Question 8.4

What are the practical implications of having the PSC perform this role? For example, how would the PSC interact with ASIC?

Question 8.5

What are the practical implications of requiring professional associations to hold a PSC-approved scheme?

Approval of a scheme under the PSC has previously meant capped liability for participants.

Question 8.6

Is it appropriate that liability in relation to financial advice/services be limited at this time? Is limitation of liability a necessary element for the operation of the PJC model?

Question 8.7

What are the practical implications of capping liability? For example, what changes to Commonwealth and/or state and territory legislation would be required?

Question 8.8

Would an alternative arrangement, under which a scheme's approval would not limit liability, be practicable?

Role of professional associations

Question 8.9

What are the practical implications of mandating membership of a professional association? Are there implications arising from the increased responsibility on professional associations rather than on the licensee?

We refer to our submissions generally at Section II and the answers under Q1.1 and 1.2 above.

Section 9

Feedback sought — other issues for consideration

Advice on tier 2 products

Question 9.1

How could the PJC model interact with the existing Tier 2 adviser training and competency requirements?

Transitional arrangements

Question 9.2

Do you consider FPEC to be the best entity to determine transitional arrangements for existing advisers and advisers wishing to move within the industry?

Question 9.3

Do you consider Recognised Prior Learning a suitable transitional arrangement for existing advisers?

Question 9.4

What is an appropriate timeframe over which existing advisers should transition to the new system?

Question 9.5

Are there any alternative transitional arrangements that would be more appropriate or effective, for either new or existing advisers?

Timing

The PJC recommended an implementation timeline that would see FPEC establish education standards by June 2016, professional associations operating under a PSC approved scheme by 1 January 2017 and all advisers (new and existing) to be fully registered by 1 January 2019.

Question 9.6

Are there any particular elements of the PJC model that present timing challenges?

Question 9.7

What timing or phasing would most effectively balance the recognised need to raise standards and competency in the short-term against practicalities of implementing a new model to raise standards of new and existing advisers over the longer term?

We refer to our submissions at Section I above.

We would like to reiterate our earlier comments (at Question 3 above) that the system will need flexibility to accommodate experienced advisers and a sufficiently long transition period to allow for the implementation of what will be a significant structural change for the whole retail financial services sector.

Regulation Impact

Feedback sought – Regulation impact

To help inform the RIS process, which will consider a range of policy options (one of which would likely be the introduction of the PJC model), we are seeking information on the current structure and education of the industry.

Question 1

How many/what proportion of financial advisers are likely to be affected by the introduction of a new professional standards framework (such as that proposed by the PJC)? If you are a licensee, how many/what proportion of your advisers would likely be affected?

The Stockbrokers Association can only comment in relation to the stockbroking industry. By definition, the proposed framework for professional standards will not affect stockbrokers who only deal with institutional and wholesale clients. In addition, broking firms which operate an electronic model and only publish general advice without any personal recommendations do not appear to come within the proposals.

There are no figures for the total number of retail client stockbrokers in Australia. The best estimate of the Association is that there are likely to be in the order of 3000 retail stockbrokers who would be affected by the new framework.

Question 2

What proportion of financial advisers working in the industry are typically new entrants (for example, graduates and those coming from other professions) versus existing advisers who have been in the industry for a number of years? If you are a licensee, what proportion of your advisers are new entrants (versus existing advisers)?

We are not in a position to comment on this question.

Question 3

What is the typical education level of financial advisers? If you are a licensee, what proportion of your advisers hold a relevant tertiary degree?

We are not in a position to comment on this question.

Question 4

What proportion of advisers are currently members of a professional association(s)? If you are a licensee, what proportion of your advisers are members of a professional association(s)?

It is difficult to provide information on this question in relation to stockbrokers. The Stockbrokers Association operates a combined Principal (organizational) member and Practitioner (individual) member structure. Where a stockbroking firm is a Principal member, then all of its stockbroker staff enjoy membership benefits as a result without being required to join as individual members. Notwithstanding this, many individual staff also take out Practitioner Membership in their own right, as a sign of commitment to the stockbroking profession.

For the above reasons, and because membership of a profession has not been made mandatory, many individual stockbrokers are not themselves members of the Stockbrokers Association.

Stockbrokers may be members of other professional associations e.g. CPA, a Law Society, however we are not in a position to know how many to whom this applies.

The PJC model would represent a substantial change to current requirements.

Question 5:

What are the likely costs (labour and non-labour costs) associated with the various elements of the PJC model? These costs could include, for example, the direct costs to:

- individual financial advisers;
- professional associations; and
- licensees.

Are costs likely to vary between different size advice firms, different professional associations, etc? If so, how?

Costs will undoubtedly increase, both for the Association and our Members. Individual advisers would be required to pay membership fees to belong to an Association. The existing fee for a Master Stockbroking member is approximately \$420, and it could be expected that the individual membership fee under the PJC model would be in the order of this amount (although we have not carried out any detailed analysis of this).

The educational costs for advisers will also significantly increase. As mentioned earlier, the de facto industry CPD standard already exist in the stockbroking industry, and hence the cost of CPD should not change significantly other than for any advisers who might not be complying with the standard.

However, the cost of entry into the industry will undoubtedly rise significantly. The cost of a university degree is high, and the cost of studying for and undertaking the Registration exam will be new. It is difficult to estimate those costs without an understanding of the curriculum that will be prescribed for the exam.

Apart from our Members' additional costs, the Association would need to fund the additional administration costs under the PJC Model. This will depend on the final structure of the model, including costs of funding the FPEC, and the cost of an internal disciplinary function (if these are required). It would also depend on how many individuals choose to join the Association, as opposed to another professional body.

The Association's initial estimate of the additional cost is in the order of \$500,000 per annum, although the view has been expressed anecdotally that this is likely to be a conservative estimate.

As regards individual firms, we reiterate our comments earlier that the cost impact of the proposed model is likely to vary between firms, with smaller firms feeling the impact more heavily. For that reason, we have urged flexibility to be incorporated into the model as far as possible in order that the viability of smaller firms not be threatened.

The RIS will canvass various options and models for raising professional standards.

Question 6:

Are there alternative options (other than the PJC model) which would provide an enhanced cost-benefit outcome?

The Stockbrokers Association considers that the proposed model, is modified in the manner suggested in then submission, then we believe it will provide a suitable outcome. We therefore are not suggesting exploration of alternatives that might serve to slow down the introduction of the proposed reforms.

Post implementation Review

The Stockbrokers Association recommends that a post implementation review should be mandated, to be carried out after the passage of a sufficient period, say, 2 years, after the introduction of the new scheme, to identify and address any unforeseen issues or complications.

The Government should establish a review mechanism that involves that the parties who are participants in the new scheme.

CONCLUSION

The Stockbrokers Association appreciates the opportunity to provide this Submission to Treasury on these significant proposals. We would be happy to discuss any issues arising from our submissions on this issue, or to provide any further material that may assist. Should you require any further information, please contact Peter Stepek, Policy Executive, on (02) 8080 3200 or email pstepek@stockbrokers.org.au.

Yours sincerely,



Andrew Green
Chief Executive