Stockbrokers and Investment Advisers Association
Serving the interests of investors

10 June 2022

By email: AdviceReview@treasury.gov.au

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

Dear Ms Levy

QUALITY OF ADVICE REVIEW: ISSUES PAPER

The Stockbrokers and Investment Advisers Association (SIAA) (formerly the Stockbrokers and Financial Advisers Association) 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 members represent the full range of advice providers from online providers providing execution-only services to full-service stockbroking.

SIAA welcomes the opportunity to provide feedback on the Quality of Advice Review.

Executive summary

State of the advice industry

- SIAA's members have been caught up in a regulatory regime in which regulators and policy makers have often applied a financial planning lens to the financial advice process, to the disadvantage of stockbrokers and investment advice firms and their clients.
- The current regulatory regime takes a 'one-size-fits-all' approach, which has been shown to be ill-suited to specialisations. Consumers want different advice for different needs and the regulatory environment must accommodate consumer preferences and requirements.
- The precipitous decline in adviser numbers is impacting the number of clients able to access financial advice with less than 10% of the Australian population currently having access.
- The approach taken by policy makers towards the education and exam standards are a key reason for the decline in adviser numbers and this is important context for this review, as it illustrates why a 'one-size-fits-all' model can have disastrous consequences for the financial advice industry.
- It is important to have professional associations as part of the system of encouraging professional obligations, with the regulatory framework moving to co-regulation rather than

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the current system of mandating all aspects of professionalism.

- Individual licensing is not a proposal that works for stockbrokers or investment advisers. The investment required for such firms is very different to the investment required for financial planning firms, as are the significant and complex capital adequacy requirements.
- SIAA cautions against any move to upend the regulatory framework of the Corporations Act to dismantle the AFSL system and force individual licensing upon all participants in the financial advice industry.

Types of advice

- SIAA is opposed to any moves to rename general advice as 'information', 'product sales information' or 'general information'. Re-labelling general advice as 'information' does not take account of the fact that general advice must contain a recommendation or opinion to fall within in the term. General advice is an important part of the overall advice spectrum.
- Further clarity in the law is needed on the line between both personal and general advice on the one hand and what constitutes factual information on the other.
- Advice laws should be technology-neutral and consistent between digital advice and advice provided by a financial adviser.

Best interests and related obligations

- The issue of whether to remove the safe harbour steps is a complex one and requires a consideration of the benefits of certainty and prescription against the benefits of a principles-based approach.
- 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.
- If the safe harbour test is to be repealed:
  - clarity must be provided by ASIC 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 must be removed, and
  - the scope of what is required to satisfy the bests interest duty would need to be clarified and refined.
- If the safe harbour test is retained, in addition to the above recommendations, the 'catch all' provision contained in section 961 B (2) (g) must be removed.

Conflicted Remuneration

- Removing the brokerage fee exemption would impact the traditional remuneration arrangements of employee brokers without conferring any benefit on the client and would have a significant impact on the ability of stockbroking firms to provide their services.
- SIAA strongly opposes removing the exemption on stamping fees for listed products and disagrees with the repeal of the exemption for LICs and LITs. Stamping fees are the traditional way in which brokers have been compensated for analysing new offers and advising clients on them.

- Without the stamping fee exemption, stockbrokers and investment advisers are not reimbursed for that work and are less likely to involve retail clients in capital raising. Reducing retail client access to primary capital raisings means that they pay more for that product on the secondary market.

Charging arrangements

- The requirements around ongoing fee arrangements have imposed a significant and unnecessary burden upon advisers, licensees and clients with no benefit to the consumer.
- They can be streamlined, simplified and made more principles-based to reduce compliance costs by removing prescriptive detail.

Disclosure Documents

- Regulatory requirements around the content of SOAs are prescriptive and result in long and dense documents that are not at all consumer-friendly. While the bests interests duty and safe harbour steps remain unchanged, any changes to regulations regarding SOAs will only result in tinkering at the edges of the issue.
- A sticking point for simpler and shorter documents is the level of enquiry regulators expect to be conducted when providing scaled advice.

Consent arrangements for Wholesale Clients and Sophisticated Investor Classification

- There is no evidence that there is a market failure in relation to financial advice servicing the higher end of the income and asset distribution, particularly when such individuals have taken deliberate steps to opt out of the retail investor regime.
- A requirement for the client to provide their consent to being categorised as a wholesale client and for the licensee to provide an explanation of the consequences of becoming a wholesale client would not be out of step with the practice of many of our members.

Introduction

The stockbroking profession has existed for many centuries and is highly regulated, governed by the ASIC Market Integrity Rules, the operating rules of the various market operators such as ASX, Cboe, SSX and NSX and the Corporations Act. The profession has made an incredible contribution to Australia's economic strength, not only in terms of personal wealth creation, but also in the all-important equity formation for Australian companies, ranging from CSL, BHP and CBA down to the smallest and smartest technology and science successes. The industry has an exemplary record in relation to complaints received by AFCA and found in favour of the firm, and our industry was not called before the Royal Commission. Yet our members have been caught up in a regulatory regime in which regulators and the government have often applied a financial planning lens to the financial advice process, to the disadvantage of stockbrokers and investment advice firms and their clients, as well as other specialised advice services. That is, the current regulatory regime takes a 'one-size-fits-all' approach, which has been shown to be ill-suited to specialisations. We consider that it is vital that the review consider the full range of financial advice services when undertaking its work so that the problems caused by the current myopic approach to financial advice are not repeated.

Consumers want different advice for different needs and the regulatory environment must accommodate consumer preferences and requirements.

State of the advice industry

It is important that regulators and the government understand the way the stockbroking and investment advice industry works and do not seek to shoehorn all consumers into the one advice service. We consider that the review needs to take account of the state of the advice industry and, in particular:

- the role of stockbrokers and investment advisers and what sets this industry apart from other advice providers such as financial planners
- the precipitous decline in adviser numbers and the 'one-size-fits-all' approach to education taken by government and regulators that is causing this
- the important role that SIAA plays in professionalism
- how the AFSL regime works for our members compared to other advice service providers, and
- the changing investor landscape.

What do stockbrokers and investment advisers do?

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

Stockbrokers raise public capital for the Australian economy by means of the listing and trading of the securities of corporate entities on Australia's securities exchanges. They evaluate such securities and identify the investment opportunities they present to institutional, wholesale and retail investors. On the other hand, financial planners provide a holistic general financial advice service covering an individual's superannuation, life insurance, welfare entitlements and aged care arrangements, with the provision of investment advice in relation to the securities markets largely contracted out to specialists in the form of fund managers (managed funds) and stockbrokers (personal and SMSF portfolios).

'Stockbroker' is a defined term in the Corporations Act, as is 'Financial Planner', which clearly distinguishes them. Stockbrokers are subject to the Market, Clearing and Settlement Operating Rules of the ASX and Cboe markets of which they are a Participant and to ASIC's Market Integrity Rules, neither of which apply to financial planners. The Market Integrity Rules cover the operation of Market Participants and their representatives, client relationships, trading and capital requirements. ASIC has a dedicated ASX Participant Market Supervisory Division. Stockbrokers are also required to

fund the National Guarantee Fund (NGF) to compensate clients for failures by stockbrokers. The NGF holds in the order of $100 million. The Anti-Money Laundering and Counter Terrorism Financing Act also distinguishes stockbrokers from financial planners.

Stockbrokers and investment advisers provide scaled advice. It is very common for clients of stockbrokers and investment advisers to seek advice on particular investments to buy or sell. This does not require 'holistic' or 'comprehensive' advice on the client's full financial situation, but discreet advice in relation to a client's portfolio of investments. Where stockbrokers and investment advisers provide personal advice to retail clients, this advice is limited advice: it is scaled and specific to the client's needs. The advice is client-centric, focused and scaled as to the information received from the client. It is also often episodic.

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

Stockbroking is a fast-paced, time-sensitive service. That is why the Corporations Act was amended in 2003 to insert section 946B providing for further advice for market-traded products where clients required the advice to be provided promptly[1]. Scaled advice can be delivered as further advice and a Statement of Advice is not required in the case of further advice. A simplified process of providing advice to the client then arises.

This approach can be contrasted with the financial planning advice model where advice is provided on all aspects of a client's financial circumstances and a full financial plan prepared. An advantage to clients of scaled advice is that they do not have to pay for the time-consuming preparation of a financial plan and this reduces the overall costs of advice and allows advice to be provided in a more timely or immediate fashion. Many stockbroking firms employ financial planners and provide financial planning services and clients are informed of this so they can avail themselves of this service if they require it. The firms understand that clients have differing needs at different times and so provide access to the relevant financial advice service. They understand that those differing services provide specialist advice as required by the client.

ASIC's research highlights that many consumers prefer receiving piece-by-piece or limited advice, rather than comprehensive advice[2] and that in terms of topics of interest, 45% of consumers had either received advice on or were interested in receiving advice on investments such as shares and managed funds[3].

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

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

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[1] Subsequently replaced by regulation 7.7.10AE

[2] Australian Securities and Investments Commission, *Report 224 Access to financial advice in Australia*, December 2010

[3] Australian Securities and Investments Commission, *Report 627 Financial advice: What consumers really think*, August 2019

A scaled investment advice model should allow clients to access research and investment advice at a reasonable cost. It should be able to be provided without the need for the provision of extensive personal information or for a comprehensive needs analysis to be performed, which is generally of limited relevance to the advice sought by the client and significantly adds to the time and cost of the advice process.

Unfortunately, there is a lack of recognition that stockbroking and investment advice differs significantly from financial planning in the current regulatory regime.

For example, at our conference in May 2021 the then Minister for Women's Economic Security, Minister for Superannuation, Financial Services and the Digital Economy, the Hon Senator Jane Hume stated in her speech to delegates that because stockbroking and investment advice firms promote the offer of holistic advice, this requires stockbrokers and investment advisers to become financial planners. This completely misunderstands that the holistic advice is provided at a firm level rather than an individual level. Generally, stockbrokers and investment advisers will work with a financial planner within their firm if holistic advice services are required.

We note that in Consultation Paper 332: *Promoting access to affordable advice for consumers*, ASIC stated that it considered that a great deal of uncertainty remained regarding the provision of scaled advice within Australia. We consider that a key cause of this uncertainty is ASIC's inconsistent approach when issuing policy guidance and undertaking advice reviews.

At the same time that ASIC was conducting its consultation on scaled advice, our members received reports from ASIC relating to personal advice reviews conducted by it in 2018 and 2019 that conflicted with the law on scaled advice.

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

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

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

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

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

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

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

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

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

Recommendations

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

We consider that this view conflicts with the provision of scaled advice and evidences a complete misunderstanding of how stockbroking and investment advisers provide limited advice, as permitted by law and expected by the client. Rather, ASIC assumes that in the advice process:

- stockbrokers and investment advisers must provide full-scale financial planning style advice and conduct a full fact find
- to provide compliant advice, an adviser is required to conduct a comprehensive analysis of the client’s personal circumstances and needs, even when the client is expressly seeking limited advice on market-traded securities
- clients who contact their stockbroker or investment advisers for advice do not understand the services they are receiving, notwithstanding the disclosure stockbrokers are required to make to clients before providing services to them and the complete lack of any evidence by ASIC that clients of stockbrokers are in fact confused.

Our members advise us that they have never received a complaint from a client who was aggrieved about being provided with stockbroking and investment advice instead of financial planning advice and that clients understand that they are seeking specialist stockbroking and investment advice when they contact their stockbroker. Our members note that their clients are generally in the market because they follow the market and want to generate wealth.

While ASIC persists in its view that full fact finds are required when providing limited or scoped advice, the provision of this advice will be more complex and costly and will result in lengthier disclosure documents. It will also defeat any attempt to meet client expectations of being able to seek limited advice.

Precipitous decline in adviser numbers

An important factor impacting on the ability of consumers to access affordable quality advice is their ability to access a financial adviser. As noted in the Issues Paper, adviser numbers have been

trending down since 2019 when registrations peaked. The decline in numbers is precipitous. Adviser numbers have fallen from **25, 484 in 2017** to **16,545 as of 10 June 2022**[4]. **There has been a loss of just under 1000 advisers since the release of the Issues Paper earlier this year and we have had to update this section of the submission numerous times with ever lower numbers to take this exodus of advisers into account.**

The number of financial advisers has reduced to the headcount in place over seven years ago in December 2014. The large banks have exited wealth management (including financial planning), and now have zero advisers providing personal advice on the FAR. SIAA considers that there will be another exodus of advisers on 1 October 2022, with experienced advisers who have failed the exam exiting the provision of personal advice to retail clients. There are estimates that adviser numbers will go as low as 14,000 when the full range of educational standards come into force on 1 January 2026[5].

The decline in adviser numbers is impacting the number of clients able to access advice. The latest Adviser Ratings' Landscape Report has found there are 100,000 fewer clients than existed 12 months ago. This means the number of advised Australians has fallen below two million for the first time since Adviser Rating has tracked the data. Therefore, less than 10% of the Australian population has access to financial advice.

The Issues Paper notes that there are 'concerns' that the number of new advisers entering the industry is not sufficient to replace those advisers exiting. The statistics show that these are not merely 'concerns', but reality. In a survey of SIAA members conducted in 2021, we found nine Professional Year candidates in the stockbroking and investment industry with only 20 expected to enter in 2022. Discussions with our members show that in 2022 that number has not increased.

There is recognition by both major political parties that the current state of the financial advice industry is not sustainable. We are losing more advisers than gaining new entrants and losing the experience and knowledge that sustains the industry. Importantly, a dearth of advisers means that fewer Australians can access financial advice.

'One-size-fits-all' approach to education

It is impossible to understand the current state of the advice industry without an appreciation of how the education and exam standards have been mishandled by FASEA and the impact this has had on adviser numbers.

We acknowledge that the Quality of Advice Review will not be making recommendations on the professional standards for financial advisers. However, the approach taken by policy makers towards the education and exam standards is a key reason for the decline in adviser numbers and this is important context for this review, as it illustrates why a 'one-size-fits-all' model can have disastrous consequences. It is also important to understand because we disagree with the reasons the Issues Paper gives for the decline in adviser numbers and the lack of new entrants. We consider that the

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[4] Data released by ASIC as at 10 June 2022.

[5] We note the commitment made by the Assistant Treasurer and Minister for Financial Services, the Hon Stephen Jones MP that the Albanese Government will implement an experience pathway for advisers with 10 years' experience and an unblemished record, which should assist greatly in retaining experienced advisers.

view put forward in the Issues Paper that the decline in adviser numbers could be attributed to:[6]

- *advisers bringing forward their authorisations in advance of the professional standards reforms in 2019*
- *the professional standards reforms creating a higher bar and potential barrier to new entrants and triggering advisers closer to retirement to transition out of the industry early*

does not fully reflect the impact that the educational standards have had on both existing advisers and those wanting to join the stockbroking and investment advice profession. Therefore, understanding this impact is key to assessing any changes that may be recommended to the regulatory framework.

Educational qualifications

Damage caused by FASEA through application of a narrow lens

The current legislation does not require financial advisers to complete a financial planning degree. The education standards contained in section 921B of the Corporations Act require advisers to complete a **bachelor or higher degree or equivalent qualification approved by the standards body**. It is not the will of Parliament as set out in the Corporations Act provisions, but the manner in which those provisions were implemented by FASEA – a bureaucracy averse to stakeholder engagement — that has caused enormous problems and discriminated against stockbrokers and investment advisers and, in turn, discriminated against retail investors' access to investment advice.

Currently all approved degrees are in financial planning or with financial planning majors (with one exception, being a wealth management degree from UNSW), notwithstanding that the Corporations Act does not require financial planning qualifications to be the only approved courses for financial advisers. FASEA's board, which included financial planning academics who had compiled the curriculum for the Financial Planning Association, simply adopted the same curriculum for FASEA, thus narrowing the scope of the approved qualification. The issuers of those degrees did not have to apply to FASEA for their courses to be approved. With FASEA viewing all degrees through the narrow lens of financial planning, its process of approving degrees was deeply flawed from the beginning as it was skewed towards only one form of financial advice. FASEA rigidly applied this template to compile lists of degrees that fitted a financial-planning-centric approach.

Degrees in economics, finance, commerce and business from all Australian universities, particularly those from universities rated in the top 100 – qualifications which until now have been considered most suitable to a profession in investing –were never approved by FASEA. They were only considered to be 'relevant' degrees, the individual units of which count towards an approved degree equivalent. FASEA consistently refused to approve these degrees and stated that the universities must apply to FASEA for their degree to be considered as an approved course, despite the fact that the universities with degrees included in the FPA curriculum did not need to apply for approval.

Degrees undertaken after 1 January 2019 are on the approved list, but not degrees from before that time. This is unlikely to be helpful for a stockbroker or investment adviser who has been working in the industry for 30 years and has a Bachelor of Commerce from the same university awarded in the

[6] Treasury, *Quality of Advice Review: Issues Paper*, March 2022, page 6

1980's. It would be inconceivable, for example, to propose that High Court judges were unqualified because their degrees date from the 1980's, yet FASEA made such a determination in relation to degrees relevant to the investment profession.

Ironically, a degree in financial planning is a specialist degree, while a degree in commerce, economics, finance or business is a generalist degree. FASEA managed to reverse the will of Parliament that sought to ensure that financial advisers would complete a generalist degree before specialising.

Financial planning degrees and postgraduate diplomas are not the foundation education for the entire financial advice industry. We support financial planners and the educational qualifications suited to their specialised financial advice service. Our members work hand-in-hand with financial planners. But the financial advice industry is comprised of those who provide advice on:

- securities and derivatives
- managed funds
- insurance
- superannuation
- taxation
- estate planning.

Financial planning is just one of many specialised areas of advice.

Therefore, despite what the Issues Paper states, it is not just advisers transitioning to retirement who are impacted by the educational requirements of the professional standards. The reality is that a significant number of experienced advisers who have never had a complaint lodged against them, and with longstanding, happy clients, made a choice to retire from providing personal advice to retail clients by the end of 2026 when faced with the prospect of years of tertiary study. This was not because 'the bar was too high', but because the study required is focused on financial planning, which is not the financial advice service our members provide.

The discriminatory approach from FASEA has another serious consequence, which is that top graduate talent is being deterred from entering the stockbroking and investment advice profession, to the detriment of investors. A graduate with a finance, economics, commerce or business degree from a top globally ranked university will essentially have to 'start from scratch', that is they will have to complete an unrelated second degree or graduate diploma in financial planning before they can remain in or enter the stockbroking or investment advice industry. Our industry has traditionally attracted the brightest and the best, but a graduate with a finance, economics, commerce or business degree will currently have to complete eight units of a financial planning graduate diploma before they can start the Professional Year.

The lack of current Professional Year provisional advisers in the stockbroking and investment advice sector clearly demonstrates this.

Announcement by Minister for Financial Services to address the problems caused by FASEA

The Assistant Treasurer and Minister for Financial Services, the Hon Stephen Jones MP has recognised the problems caused by the narrow lens applied by FASEA. He has commented that:

> *'If you've been working for a decade as a financial adviser with a good record, a Labor government will not ask you to take that bachelor's degree to keep your qualifications. We're going to assume that the 10 years-plus experience is worth at least a degree. We're*

going to treat you like professionals.'[7]

'There's more than one stream in the industry to date and there should be more than one stream in terms of qualifications.'[8]

The Minister announced on 7 June 2022 that he has instructed Treasury to advise him on the process that needs to take place to implement:

- the experience pathway (10 years' experience and a clean record is the equivalent of a degree)
- an expanded education qualification pathway.

The Minister has advised that he wants changes made to the education standards as a matter of urgency, in order to keep experienced advisers and to recognise specialisations in the education pathway as the 'one-size-fits-all' model does not work.

We have welcomed this announcement as a vital step towards resuscitating the advice industry and stemming the out-flow of experienced advisers.

The exam

The current exam that existing financial advisers are required to pass by 30 September 2022 (if they have qualified for the extension) is also tailored to financial planning and discriminates against stockbrokers and investment advisers as the majority of the questions are on insurance, Centrelink benefits and aged care – matters on which stockbrokers and investment advisers do not provide advice. SIAA has asked for the exam to be recalibrated to the spectrum of advice services so that it is relevant for our members.

If the exam is not changed from its current form, we are concerned that adviser numbers on the FAR will suffer another decline, as those advisers who fail the exam retire from providing personal advice to retail clients as at 1 October 2022.

In a recent report on a mental health survey conducted of financial advisers, the FASEA exam was rated as one of the highest causes of stress and anxiety for 84% of the respondents[9].

The Minister has announced that he will look at the exam and SIAA is advocating strongly for changes to be made to it.

Importance and role of SIAA

SIAA is a professional association that sets and enforces high educational, ethical and professional requirements on its members. The aim of these standards is to give investors confidence that, when they deal with a SIAA member, they are dealing with a person who exhibits the highest level of professionalism and integrity, and the services that they receive will be of a high quality.

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[7] Aleks Vickovich, 'Labor dumps uni degree for advisers with 10 years of experience', *Australian Financial Review*, 9 December 2021

[8] Chris Dastoor, 'ALP '100 pc committed' to professionalism', *Professional Planner*, 2 May 2022

[9] Philippa Hunt and Steve Prendeville, *Mental health survey: mental health and emotional wellbeing of the financial services industry*, May 2022.

SIAA's members are professionals and SIAA takes a strong leadership role in setting and enforcing strong ethical standards.

SIAA's professional, ethical and education standards are contained in:

- SIAA's Code of Ethical Conduct
- SIAA's Constitution and Rules.

In order to ensure that its standards are met, SIAA has established a Complaints Handling Process and a Conduct Review and Disciplinary System to investigate and determine complaints against members as well as any other referral involving the conduct of a member. By becoming a member of SIAA, the member agrees to be bound by SIAA's Complaints Handling Process and the Conduct Review and Disciplinary System.

SIAA also maintains high professional standards by offering industry education.

SIAA supports its members with a high calibre program of continuing professional development (CPD) designed to enhance their knowledge and skills and meet their ongoing CPD requirements.

Presented by leading experts, SIAA offers:

- industry accreditation in relevant aspects of operating in equity markets and abiding by the Market Integrity Rules and training programs
- accredited Derivatives Adviser training
- an annual conference—the flagship event to equip stockbrokers and investment advisers to embrace technological, social and regulatory change
- an accredited tax (financial) adviser Association for the purposes of the Tax Agents Services Act 2009
- member access to free CPD webinars.

SIAA maintains a CPD store for members with details of the many thousands of education and training courses undertaken by them, going back to 2001. This assists SIAA members to comply with their CPD obligations.

SIAA advocates for its members by engaging with government, treasury, regulators and other stakeholders.

With members we also work on best practice standards on various matters, with working groups formed to progress these. By way of example, we developed a template Target Market Determination for options, providing for consistency across the industry and had it reviewed by ASIC, and developed a bulk off-market form for CHESS sponsors to ensure consistent practice across the industry.

We consider that it is important to have professional associations as part of the system of encouraging professional obligations, with the regulatory framework moving to co-regulation rather than the current system of mandating all aspects of professionalism. We advocated for the retention on the FAR of the field that shows membership of a professional association. This is an important signal to consumers, who can assess if an adviser is a member of a professional association. We have urged previous governments to move to mandating membership of a professional association for financial advisers to fulfil its pledge to embed professionalism in the sector, noting that mandatory

membership of a professional association is a cornerstone in other professions such as law, accounting and medicine

We consider that these actions improve the quality, accessibility and affordability of advice.

AFSL regime

We acknowledge that the review is interested in what specific aspects of the AFSL regime uniquely affect financial advisers. We agree that the industry is in the process of restructuring with all the major banks selling or closing their financial planning businesses. This has resulted in the market for financial planning becoming more fragmented with a larger number of smaller licensees relative to 2017. This has led to the rise of small, boutique financial planning firms. There have also been calls from some financial advice associations for an individual licensing regime to be introduced in place of the existing one.

However, financial planning is just one area of advice. Individual licensing is not a proposal that works for stockbrokers or investment advisers. The AFSL regime is a core component of the financial services regulatory ecosystem and has a wide scope, covering, inter alia, brokers, dealers, market makers, underwriters, financial advisers, credit rating agencies, custodians and depositories, crowd-sourced funding platform operators, margin lenders, responsible entities of registered managed investment schemes and operators of direct distribution foreign passport funds, issuers of exchange traded funds, derivatives and structured products and litigation funders. Unlike other professions such as law and medicine, the licensing regime for financial services has always applied at an organisational level.

Prior to the current AFSL regime, licensing requirements under the Corporations Act applied to securities dealers, investment advisers, futures brokers and futures advisers and their proper authority holders. Individual licensing applies a financial planning lens to financial services legislation and would require our members to squeeze into a framework that does not suit them or their clients. While an increasing number of financial planning businesses are small businesses or SMEs, stockbroking and investment advice firms, on the other hand, are large businesses and becoming larger, given they operate in global markets and provide time-related advice, including reaching out to thousands of clients instantly for capital raisings and rights issues. The investment required for such firms is very different to the investment required for financial planning firms providing advice on taxation and superannuation law. Amalgamations are underway to provide scale in the stockbroking and investment advice industry to meet those investment requirements.

Stockbrokers that are Market Participants must also comply with significant and complex capital adequacy requirements including:

- minimum capital obligations imposed on them by the Market Integrity Rules
- the requirement to manage and lodge margin each day with ASX as part of their daily settlement requirements
- provision of a monthly liquidity return to ASX
- notification to ASX and ASIC of significant professional indemnity claims
- cash flow forecasting to ensure they have sufficient cash to manage their obligations into the future.

This sets Market Participants apart from other financial advice providers who are not subject to these requirements. No individual person is capable of complying with these.

Efficiency in larger firms is generated through active oversight by compliance departments. We note that the understanding by all those operating within an AFLS that any misconduct by an individual within that entity has a detrimental impact on the reputation of all as well as the entity itself is an important factor in creating a culture whereby individuals promote ethical and law-abiding practices. If individual licensing were introduced, any misconduct would be the responsibility of an individual alone and would have no bearing on the reputation of others operating within the AFSL or the entity itself. There would therefore be no incentive for others to support a culture promoting ethical and law-abiding practices.

As regards the financial services industry more generally, AFSL holders are required to have adequate resources to hold their license and are more likely to have the resources to remediate consumers and viable models for supervising, monitoring and equipping advisers. Licensees are required to hold Professional Indemnity insurance.

The disadvantages of individual licensing include:

- ASIC and the Single Disciplinary Body would otherwise have to supervise and monitor over 16,000 individual advisers.
- Individual licensing could create a moral risk for clients if individual advisers exit the industry leaving clients orphaned and unremediated for misconduct.
- The requirement to have and maintain an AFSL at an individual level lacks economies of scale and has high monetary and time costs. These costs will be ultimately passed onto the consumer.
- Self-licensing would mean that individual advisers are required to source their own Professional Indemnity insurance to cover individual risk.
- The financial services industry is highly regulated with complex and onerous regulatory requirements that are difficult for individuals to manage.

SIAA members advise that they are having to source their Professional Indemnity insurance cover from the London market as they are unable to source cover in Australia. Their insurance brokers have advised them that underwriters view the Australian market has having high regulatory risk. Those renewing cover are experiencing a significant increase in premiums and excess amounts as well as the imposition of exclusions on certain risks. With no other underwriters providing cover there is no competition in the market. Members with high excesses and exclusions are essentially self-insuring for client claims. This highlights an important issue SIAA has with individual licensing of financial advisers – either they will be unable to source affordable Professional Indemnity cover or insurers will not insure individual licensees at all.

SIAA therefore cautions against any move to upend the regulatory framework of the Corporations Act to dismantle the AFSL system and force individual licensing upon all participants in the financial advice industry.

We do not consider that any of the arguments put forward in favour of individual licensing improve consumer protection.

The changing investor landscape

The retail trading landscape is complex and changing. The following trends, that have been accelerated by the COVID-19 pandemic, have been identified across many jurisdictions[10]:

- Increased retail participation in capital markets
- Increased volumes of retail trading
- Increasing use of online trading platforms and mobile apps to interact with financial services and products
- Retail investors are increasingly engaged in self-directed trading
- An increase in numbers of young investors
- The increasing influence of social media on retail trading behaviour and decisions.

Australia has an ageing population that is approaching retirement when they will access their superannuation — funds intended to support their retirement over an extended period of time. Across the wealth spectrum, estimates of $3.5 trillion or an average of about $175 billion per year is expected to transfer between generations in the next two decades [11].

In order to cater to this changing investor landscape, the government and regulators need to move away from a 'one-size-fits-all' approach to the provision of advice to retail clients. As we have stated previously in this submission, consumers want different advice for different needs. The regulatory environment needs to accommodate consumer preferences and requirements and not seek to shoehorn all consumers into one advice service.

Conclusion

SIAA stands ready to assist the review to improve the regulatory environment to provide for consumers being able to access the advice they want.

Our feedback to the questions contained in the Issues Paper is set out in Appendix A. Rather than respond to the broader questions on how to assess the quality, affordability and accessibility of financial advice, this submission will focus on the structural issues of the regulatory framework that are causing our members day to day problems in providing such advice.

We have responded to questions on:

- General and personal advice
- Limited scope advice
- Digital advice
- Best interests and related obligations
- Conflicted remuneration
- Charging arrangements
- Disclosure documents
- Consent arrangements for Wholesale Client and Sophisticated Investor classification.

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[10] IOSCO's Retail Market Conduct Task Force, *Consultation Report*, March 2022.
[11] Productivity Commission, *Wealth transfers and their economic effects: Research paper*, November 2021

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.

Kind regards

Judith Fox
Chief Executive Officer

QUALITY OF ADVICE REVIEW: ISSUES PAPER
APPENDIX A

Regulatory framework

Types of Advice

General and Personal Advice

1. **Is there a practical difference between financial advice and financial product advice and should they be treated in the same way by the regulatory framework?**

2. **Are there any impediments to a financial adviser providing financial advice more broadly, eg about budgeting, home ownership or Centrelink pensions? If so, what?**

3. **What types of financial advice should be regulated and to what extent?**

4. **Should there be different categories of financial advice and financial product advice and if so for what purpose?**

5. **How should the different categories of advice be labelled?**

6. **Should advice provided to groups of consumers who share some common circumstances or characteristics of the cohort (such as targeted advertising) be regulated differently from advice provided only to an individual?**

7. **How should alternative advice providers, such as financial coaches or influencers, be regulated, if at all?**

8. **How does applying and considering the distinction between general and personal advice add to the cost of providing advice?**

Our comments in this section are limited to the issue of whether financial advice and financial product advice are different, general advice, personal advice and factual information.

Financial advice and financial product advice

SIAA's members provide financial product advice to clients on a universe of listed products that are not tied to a product issuer. They do not provide financial advice on budgeting, home ownership or Centrelink pensions.

While we recognise that other financial advice services, for example, financial planning, seek to differentiate between financial advice and financial product advice, in stockbroking and investment advice there is no differentiation. Treating them differently in the regulatory framework would see stockbrokers and investment advisers subject to two regulatory frameworks for the one service. This

would constitute regulatory unfairness and single out one cohort of financial advice providers as being subject to more regulation than others even though their advice service remains unchanged.

Notwithstanding this, we recognise the desire of a cohort within the industry to introduce a category potentially titled 'strategic advice', which would be separate from financial product advice, to accommodate a reduced risk of consumer detriment associated with this type of advice. This would provide for advice on budgeting, home ownership or Centrelink pensions, for example, or for advice to small businesses in relation to business strategy that by its nature includes financial strategic advice. This would also not introduce regulatory unfairness in relation to those providing stockbroking and investment advice.

General advice

The Issues Paper refers to the recommendation made by the Financial Services Council that general advice be re-labelled as 'general information'. The argument for this change is that general advice is not based on the client's personal circumstances.

SIAA is opposed to any moves to rename general advice as 'information', 'product sales information' or 'general information'. Re-labelling general advice as 'information' does not take account of the fact that general advice must contain a recommendation or opinion to fall within in the term.

General advice remains an important advice category for SIAA's members. The law makes it clear that the provision of general advice is different to the provision of factual information. Research reports on listed securities relevantly comprise general advice. They are not sales or advertising information, but valuable intellectual property. They contain a recommendation to 'buy', 'sell' or 'hold' a security, so comprise a recommendation. Reclassifying general advice would have significant implications for the provision of research reports on listed securities. Investors are unlikely to ascribe value to material that is defined as 'information' as they would consider that they can obtain that themselves on the internet.

Calls for a change to general advice is one example of where a 'one-size-fits-all' approach to financial services regulation does not take into account what stockbrokers and investment advisers do and how this is a different financial advice service than financial planning or accountants providing strategic advice to clients.

SIAA considers that it is increasingly important that consumers can access good quality general advice. There will be a cohort of consumers that either don't want or can't afford personal advice. However, they may wish to access general advice. There will also be a cohort of consumers who are happy to receive general advice or no advice for a certain period of time and then 'jump in' and receive episodic, personal advice when it suits them. General advice is therefore an important part of the overall advice spectrum.

Provision of factual information is another important part of the spectrum. SIAA members want to be able to provide clients with information that increases their financial literacy and empowers them to invest as a self-directed client. For example, online brokers provide a service for self-directed investors, and to assist them they provide extensive market reports and tools. Such brokers have an

important role to play in offering new investors an easy way to start getting involved in the share market and in some instances have been assisting Australians to invest for some decades.

Further clarity in the law is needed on the line between both personal and general advice on the one hand and what constitutes factual information on the other. This would enable the right kind of advice/information to be obtained by consumers, in a way that suits them and at a cost that is not prohibitive. Our members consider that while general advice is dealt with in Guidance Note 244, there is very little information on how to delineate between general advice and factual information.

We note that such clarity would also assist those providing financial coaching or financial literacy information on social media ('finfluencers') to understand the boundary between the provision of personal and general advice, which requires a licence, and factual information which has an educational function that should be supported. Increasing the financial literacy of Australians is important, but those doing so on social media require clarity as to the line between both personal and general advice on the one hand (and why such advice requires licensing, qualifications in the case of personal advice and ongoing CPD) and factual information on the other. Such clarity will inevitably enhance consumer protection.

Another challenge for our members is the provision of general advice and factual information in circumstances where the firm holds a large amount of information about the client. It should be possible for a firm to provide a client with either general advice or factual information in circumstances where the firm holds personal financial information on that client. In other words, information that the firm holds on the client should not be attributed to them when they and the client have determined that the client wants either factual information or general advice. Clarity on the law would be useful on this point to support a simpler, clearer regulatory regime that is based on the service that a client wants, rather than the one the law imposes upon them.

Intra-Fund Advice

SIAA will not be providing feedback on intra-fund advice.

Limited Scope Advice

32. Do you think that limited scope advice can be valuable for consumers?

We deal with limited scope advice in more detail in our answers to questions 43 to 47 on the best interests duty. We consider that essentially all advice is limited in some way. Even comprehensive financial planning advice is likely to be limited to exclude, say, general insurance products. Stockbrokers and investment advisers provide limited scoped advice hundreds of times a day. ASIC research shows that clients increasingly want scoped, 'bite-sized', episodic advice.

33. What legislative changes are necessary to facilitate the delivery of limited scope advice?

We set out our views on what legislative changes are necessary to facilitate the delivery of limited scope advice in our answers to questions 43 to 47.

34. Other than uncertainty about legal obligations, are there other factors that might encourage financial advisers to provide comprehensive advice rather than limited scope advice?

As we have stated before, clients increasingly want scoped, 'bite-sized', episodic advice, rather than a whole life plan. Most consumers end up receiving no advice at all.

Digital Advice

35. Do you agree that digital advice can make financial advice more accessible and affordable?

We refer to valuable research conducted recently in the US about digital versus face-to-face advice[12]. The key findings of the report were:

- **Advice adds value across the board**. Regardless of the method of delivery, investors believe advice provides higher incremental portfolio value than going it alone. The perceived value-add to annual performance was 5% for human advice and 3% for digital-only advice.
- **The loyalty to human advisers is enduring.** While more than 90% of human-advised clients say they would not consider switching to digital, 88% of robo-advised clients would consider switching to a human adviser in the future.
- **Clients prefer emotional support from human advisers.** Investors using human advisers estimate being $160,000 closer to achieving their financial goals. Three times as many investors report having strong peace of mind when working with a human adviser compared to going it alone.
- **Digital advice also serves a role.** Investors prefer digital advice for certain portfolio-management services such as diversification and tax optimisation.
- **The preference for advice delivery type is not dictated by client age or wealth**. Across the board, clients suggest that human advisers should consider automating their portfolio management services, leveraging technology to scale their business while strengthening their uniquely human value.

These findings accord with the experience of our members that:

- while technology can be used to automate the advice process and compliance, consumers continue to seek human interactions with a financial adviser,
- relationships are still considered by consumers as essential for trust.

This is consistent with the responses to ASIC consultation 332 *Promoting access to affordable advice for consumers* where most respondents said that they did not intend to provide digital advice in the

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[12] Vanguard and Escalent, *Quantifying the investor's view on the value of human and robo-advice*, February 2022.

future citing lack of demand, compliance concerns and consumer preference for a human adviser as key issues of concern.

It is important to recognise that stockbrokers and investment advisers have always been at the forefront of technological change. Digital general advice is already offered by online brokers.

We agree that digital advice has the potential to make personal financial advice more accessible and affordable. Digital advice removes human biases from advice, so in that regard, digital advice can be superior to advice provided by a human. Currently in Australia there is a low take-up of a personal digital advice model. We understand that personal digital advice offered by large US firms is proving to be popular with consumers.

We also note the influx of retail investors to online trading platforms that took place with the onset of COVID, suggesting that although the investors may not differentiate between trading and investing, they were comfortable engaging with markets in digital form. The Age/SMH reports that 1.2 million Australians are investing via new entrant share trading apps (Stake, Superhero, Pearler) — that's not counting users of the first generation of online trading providers like CommSec and nabtrade.

While online trading is not the same as digital advice, it shows that a digital offering is welcomed by the next generation of investors. According to Investment Trends *2021 Financial Advice Report*, two in five Australians say advice is out of affordable reach, with 53% of investors on the ASX saying they want a level of assistance but don't want to use the service offerings available largely today. Clearly, there is a market of Australians who would like to receive some form of investment advice. It must, of course, be delivered on personalised best interests basis if it is personal advice.

Stockbroking and investment advice firms will want to reach this generation of investors where they are now, engage with them digitally at first and progress to human interaction with a financial adviser as their wealth increases and they have more complex financial needs. Australian consumers currently priced out of traditional one-to-one forms of financial advice will seek digital advice, but we need to ensure that they can move to human interactions with a financial adviser as their needs progress without such access being available only to the wealthy.

36. Are there any types of advice that might be better suited to digital advice than other types of advice, for example limited scope advice about specific topics?

We consider that general investment advice and scoped or limited personal advice is well suited to digital advice. One example of a type of advice that is well suited would be a client with $20,00 to invest in the market who wants access to a model portfolio. Another example is a young investor commencing their investment journey with as little as $2,000 who can gain access via robo advice – a service using a mix of algorithms and experts - to cost-effective, globally diversified, exchange-traded funds tailored to their risk profile.

Already, our member firms are offering their own portfolios and associated content, in their branding, to investors, utilising digital investing solutions.

Some clients are utilising these offerings in conjunction with a relationship with a human adviser and others are commencing their investment journey solely by utilising these solutions.

We consider that, currently, digital advice has limitations for complex advice matters. For example, more complex personal advice, such as estate planning, is not well suited to be provided digitally.

37. Are the risks for consumers different when they receive digital advice and when they receive it from a financial adviser?

We consider that the risks of the advice not being in the client's best interests depend on the circumstances in which the advice is provided.

One risk of the digital advice model is that there is no adviser involved to ensure that the client has provided all relevant information. For example, a client may misunderstand what information is being elicited and as a result provide incorrect or insufficient data. The digital advice model may not pick this up and may fail to ask the next level of questions. If the law allows the advice provider to limit the scope of advice to, for example, an investment portfolio of $20,000, the risks of that advice not being in the client's best interests are reduced — the advice is not as complex and the information that needs to be collect is not as comprehensive.

38. Should different forms of advice be regulated differently, eg. advice provided by a digital advice tool from advice provided by a financial adviser?

No. Advice laws should be technology-neutral and consistent between digital advice and advice provided by a financial adviser. While digital advice has limitations for complex matters, it is developing quickly. Accordingly, regulation must be forward-flexible.

39. Are you concerned that the quality of advice might be compromised by digital advice?

The answer to this question must take into account the fact that currently the overwhelming majority of Australians are receiving no advice. A greater take-up of digital advice will result in more consumers gaining access to some form of advice, either general or personal, which is an improvement on the current situation. We consider it important that perfection is not made the enemy of the good – a piece of scaled advice provided digitally is better for a consumer than no advice at all. It is important to increase not just the quality, but also the quantity of advice that is available to Australian consumers.

40. Are any changes to the regulatory framework necessary to facilitate digital advice?

The comments we have made concerning the best interests duty and the 'safe harbour' steps in our answers to questions 43 to 47 are equally relevant to the barriers to improving the quality, accessibility and affordability of digital advice.

41. If technology is part of the solution to making advice more accessible, who should be responsible for the advice provided (for example, an AFS licensee)?

The AFSL holder is currently responsible for advice. We don't recommend any change to this position for digital advice.

42. In what ways can digital advice complement human-provided advice and when should it be a substitute?

The use of digital advice models should be driven by the client rather than by regulation. In the United States, digital advice is used as a source of leads for personal advice in some instances. A client that receives digital advice can chose to receive a piece of personal advice from a financial adviser for which they are charged an extra fee. This is proving to be a successful model of merging digital and face-to-face advice. Advice can therefore be provided across a spectrum.

Other examples include Vanguard, the world's second-largest asset manager, which has attracted over $200bn into its US digital investing service and Goldman Sachs, which has 'an aspirational brand in the wealth space'. In the US, a consumer only needs $1,000 to commence with Goldman Sach's digital wealth management offering. It currently has 13 million digital retail customers.[13] Every major US broker/wealth manager now has their own digital investing solution: JPMorgan, Merrill Lynch, UBS and Morgan Stanley, as well as Goldman Sachs.

With large global brands such as this offering personalised portfolio management at industrial scale in the US, it is to be expected that similar offerings will be introduced in Australia as part of the solution of fixing the 'advice gap'. Vanguard has launched in the UK and is at an early stage in Australia, while Goldman Sachs has also announced plans to take its digital investing solution to international markets.

In Australia, robo advice services offer model investment portfolios that are highly automated and digitally-led from entities such as SixPark and Stockspot, while Open Invest offers access to leading investment management companies through an online marketplace as well as configuring its technology to underpin managed portfolio services offered by its partners, including wealth managers and stockbrokers. These entities frequently clarify that they see such digital advice offerings as a complement to engagement with a human adviser rather than a replacement, with the client choosing when to engage with either service.

This is the most important point about digital advice. The client should be the one to decide if they wish digital advice to complement human-provided advice or wish to use it as a substitute. How this decision is taken should not be mandated.

[13] That is for both the retail banking and/or wealth offerings, with the digital retail bank launched in 2016.

Best Interests and Related Obligations

43. Do you consider that the statutory safe harbour for the best interests duty provides any benefit to consumers or advisers and would there be any prejudice to either of them if it was removed?

The issue of whether to remove the safe harbour steps is a complex one and requires a consideration of the benefits of certainty and prescription against the benefits of a principles-based approach.

The safe harbour steps provide a measure that enables licensees and financial advisers to determine how to act in the client's best interest and provide appropriate advice. Removing them would remove the protection conferred on a financial adviser who satisfies each of the steps set out in section 961B (2). While SIAA appreciates the call for a less prescriptive and more principles-based approach to regulation, removing the safe harbour steps may make the test for whether an adviser has satisfied the best interests duty more subjective and open to legal interpretation.

As our members point out, seven advisers will give the same client seven different forms of advice, but all of those pieces of advice may satisfy the best interests test. A removal of the safe harbour would need to be accompanied by clarification of how an adviser can ensure they have provided advice that is in the best interests of their client. Otherwise, advisers will lose the benefit of the safe harbour protection without gaining the benefit of regulatory certainty. Advisers and licensees would be forced to obtain their own legal advice on what steps are required. They would also be reliant on ASIC guidance on how it interprets the duty. This would be problematic as ASIC frequently has expectations of conduct that are broader than the law. A lack of regulatory certainty would also provide AFCA with greater discretion in its determinations which would have negative consequences for the advice industry.

The regulatory regime is onerous and the safe harbour provides valuable protection. A financial adviser may contravene a civil penalty provision if they fail to comply with the best interests duty. A breach can also give rise to civil action for loss or damage and be the basis of an action against the licensee for breach of its licence conditions. The maximum penalties available for a breach of section 912A(1) are now the greatest of:

- $10.5 million
- three times the benefit obtained, or
- 10% of annual turnover (capped at $525 million).

The adviser may be subject to a banning order or referred to the Single Disciplinary Body.

Notwithstanding this, while the safe harbour steps may be appropriate for the provision of comprehensive advice, they make it difficult and more costly to provide scaled advice while providing zero value to the client. The safe harbour steps require an adviser to undertake a lot of work to give a limited service and prevents them from defining a scaled advice process. They have also been interpreted too widely by regulators and AFCA, both of which apply a financial planning lens.

For example, section 961 B(2) (g) provides that the adviser has to prove they have:

> *Taken any other step that, at the time the advice is provided, would reasonably be regarded as being in the best interests of the client, given the client's relevant circumstances.*

This 'catch-all' requirement that an adviser take into account '*any other step'* is challenging due to the open-ended nature of the enquiry that would be required to satisfy it and calls into question whether the safe harbour steps provide any useful protection to advisers at all.

As discussed in the introduction to this submission, ASIC has made it clear to the industry that to satisfy the safe harbour steps it considers that an adviser must conduct a full fact-find even when providing scaled advice. This makes the provision of scaled advice complex and costly as it requires the adviser to do a full fact find before they can provide the advice, even where the client wants advice on a limited or scoped basis.

For the removal of the safe harbour steps to provide any benefit, there would need to be a narrowing of the scope of the duty and the level of enquiry required to satisfy it as well as clarity from both ASIC and AFCA on these matters.

Standard 6 of the Code of Ethics must also be removed. SIAA has long argued that Standard 6 of the Code is an impediment to the provision of scaled or limited advice, is inconsistent with section 961B of the Corporations Act and should be removed. We consider that continuation of Standard 6 in its current form will also defeat any efforts by ASIC to provide meaningful guidance on scaled advice.

We note that Standard 6 assumes that all financial advisers are financial planners — a consequence of the 'one-size-fits-all' approach set out earlier. Stockbroking involves the provision of scaled advice hundreds of times a day. A client may want to purchase 1000 BHP shares at a particular price, irrespective of whether it fits the weighting of the portfolio, or a client may want to trade in speculative stocks, or Exchange Traded Options, seeking short-term profits. They do not want consideration of their broader, long-term interests or likely circumstances. Standard 6 is tailored to the need to consider a client's long-term interests and circumstances as required in financial planning, but does not accommodate clients wanting to access scaled advice.

While this standard remains unchanged, advisers providing scaled advice risk being found to be in breach of the standard by failing to take into account a client's broader, long-term interests and likely circumstances. This issue has greater urgency as a result of the introduction of the Single Disciplinary Body on 1 January 2022.

We consider that the information an adviser obtains from their client should relate to the scope of the advice to be given. Currently, the regulator's approach means that adviser can scale their advice, but not their enquiries. This means they have to conduct a full-needs analysis even though their client may only want advice on their share portfolio. In our members' experience, clients don't understand why they have to provide all their details for scoped advice. Collecting all that information from the clients is time-consuming, costly and confusing for the client. It also overlooks the fact that clients often have other advisers such as accountants and financial planners from whom they receive other types of advice.

The framework for determining the best interests of the client should be based on the stated needs of the client, not every need they have. The client should be able to seek specific advice and provide their information that is relevant to that advice service only. The adviser should be able to exercise professional judgement to assess if:

- a client's stated needs suggest they do indeed require more comprehensive advice, in which case they can conduct a full fact find, or
- a client is capable of knowing they want scoped or limited advice and the adviser can then provide that without collecting all the information from the client.

If the safe harbour test is to be repealed:

- clarity must be provided by ASIC 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 must be removed, and
- the scope of what is required to satisfy the bests interest duty would need to be clarified and refined.

If the safe harbour test is retained, in addition to the above recommendations, the 'catch all' provision contained in section 961 B (2) (g) must be removed.

44. If at all, how does complying with the safe harbour add to the cost of advice and to what extent?

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.

45. If the safe harbour was removed, what would change about how you would provide personal advice or how you would require your representatives to provide personal advice?

When providing scaled advice, licensees and advisers would be able to better define a client's requirements and tailor the advice to meet the client's specific advice needs. The benefit of a more streamlined approach would be that stockbrokers and investment advisers could provide an advice service to more clients and at a lower cost. These comments are based on our recommendations contained in our answer to question 43.

46. To what extent can the best interests obligations (including the best interest duty, appropriate advice obligation and the conflicts priority rule) be streamlined to remove duplication?

We note the findings of the Australian Law Reform Commission in its review of financial services legislation that section 961J of the Corporations Act (the requirement to give priority to the client's interests when giving advice in the event of a conflict between the interests of the client and the adviser or licensee) appears to overlap entirely with the best interests obligation in section 9621B and it is unclear what additional purpose it serves.

We agree with the ALRC that if section 961J achieves no more than 961B, its existence serves only to add complexity. Our members are of the view that duplicative provisions increase complexity and cost of advice. We agree with the ARLC that section 961J should be repealed and to the extent there is expressive value in making it clear that a client's interests must be prioritised in the event of a conflict, this could be achieved by amending section 961B to add the requirement that if there is a conflict between the client's interests and the interests of the provider (as defined), the provider must give priority to the interests of the client.

We consider that regulatory obligations should be stated once – not multiple times and in slightly different ways.

47. Do you consider that financial advisers should be required to consider the target market determination for a financial product before providing personal advice about the product?

No. The obligation of an adviser to act in the best interests of the client is a higher standard that those applying under the DDO regime. Just because a client does not fit within the target market of a Target Market Determination for a particular product does not mean that an adviser who provides advice to a client to acquire that product is not acting in their client's best interest. Mandating the consideration of a Target Market Determination does not assist advisers to provide quality personal advice but adds another layer of regulation. It is also important to remember that for every buy in the market, there is a corresponding sell that represents a contrary view of that product.

Conflicted Remuneration

48. To what extent has the ban on conflicted remuneration assisted in aligning adviser and consumer interests?

SIAA's members supported the ban on conflicted remuneration arrangements introduced by the FOFA reforms subject to certain fit-for-purpose exclusions. We consider that it is impossible for advice to be in the client's best interests if the advice is guided more by what the adviser will earn by way of commission from the product issuer than what is suitable for the client. To that end, the ban on conflicted remuneration has removed the worst aspects of non-alignment between the interests of adviser and client in the wider financial services industry.

The ban on conflicted remuneration was targeted at removing conflicts of interest in financial advice due to payments from product providers to those providing advice. A typical charging model for stockbrokers involves a payment, commonly referred to as commission, from the client to the broker that is typically charged as a percentage of the value of a certain transaction or a fee per transaction. Treasury noted at the time the FOFA reforms were implemented that a transparent and product-neutral regime with a client-paid fee would not be subject to the ban.

The majority of our member firms that provide advice to retail clients have a remuneration structure for advisers which typically includes both of the following elements:

- a retainer (salary), and

- a share of the brokerage charged to clients (commission), either paid regularly or as an annual bonus.

This structure allows firms to keep their fixed costs relatively low, which is important especially in difficult markets where turnover is low. In more favourable times, firms earn more in brokerage, and advisers benefit commensurately from higher commissions. In bad times the adviser earns less. These arrangements are fully disclosed and understood by clients. These arrangements don't give rise to the types of conflicts that the FOFA reforms were seeking to address. The same commission-sharing arrangements apply between the firm and the individual adviser regardless of the particular shares that a client will buy or sell. An adviser does not benefit from steering a client into, say, buying BHP rather than ANZ, because his or her commission will not differ because of the particular security, nor will BHP or ANZ provide any incentives to the adviser to recommend its shares. This is the reason why regulations were passed to ensure that the traditional remuneration arrangements of brokers were not unduly impacted by the conflicted remuneration measures.

49. Has the ban contributed towards improving the quality of advice?

We consider that the ban has removed the worst aspects of non-alignment between the interests of adviser and client in the wider financial services industry. One downside of the ban is that it effectively discourages the manufacturing of product. Our members consider that quality products can help clients achieve quality financial outcomes.

50. Has the ban affected other outcomes in the financial advice industry, such as the profitability of advice firms, the structure of advice firms and the cost of providing advice?

For the reasons detailed in our answer to question 48, the ban did not significantly impact our members. The ban had a greater impact on financial planning firms that suffered from a decline in revenue due to the move away from vertical integration.

51. What would be the implications for consumers if the exemptions from the ban on conflicted remuneration were removed, including on the quality of financial advice and the affordability and accessibility of advice? Please indicate which exemption you are referring to in providing your feedback.

a) Monetary benefits for a brokerage fee given to a trading participant of a prescribed financial market (regulation 7.7A12D)

In launching the FOFA package in April 2010, then Minister for Human Services and Minister for Financial Services, Superannuation and Corporate Law the Hon Chris Bowen MP stated that the FOFA legislation would:

'…have the capacity to carve out specified payments if unintended payments are captured or unintended consequences occur'.[14]

This was the basis for the exemption in regulation 7.7A.12D. The exemption is entirely consistent with the FOFA principles, in particular, that the adviser must act in the client's best interests. It has allowed advice to be given to investors that is transparent and product-neutral, backed-up by the high standards, and management, supervision and compliance arrangements demanded of Market Participants.

Removing this exemption would impact the traditional remuneration arrangements of employee brokers without conferring any benefit on the client and would have a significant impact on the ability of stockbroking firms to provide their services. Removing the ability of firms to charge brokerage would require them to move those clients to a FUM-based model of charging. This would be administratively burdensome and costly for those clients as they would be required to provide annual consent which the firm would have to collect. In our members' experience, clients choose a brokerage model because they only want to be charged when they transact. A brokerage model of advice assists with the provision of episodic or scaled advice which is what many clients prefer.

b) Monetary benefits that are stamping fees to facilitate capital raising for certain listed companies, a listed infrastructure management investment scheme or a listed real estate investment trust (regulation 7.7A.12B)

SIAA strongly opposes removing the exemptions on stamping fees for listed products. Stamping fees are the traditional way in which brokers have been compensated for analysing new offers and advising clients on them. The stamping fee is compensation to spend the effort to undertake the analysis of new issues, whether they be company securities, hybrids, or listed real estate investment trusts so that clients do not miss appropriate opportunities. As we have stated previously, stockbrokers are remunerated on a transactional basis via brokerage on a trade. In the case of an IPO, there is no trade on which brokerage can be charged, so the stamping fee is the analogous remuneration charged for the service. A stamping fee is paid by the issuer and not by the investor. It is disclosed to clients. If there were no stamping fee, brokers would need to charge the client a fee directly. Clients prefer the issuer to pay the broker rather than the client themselves. If clients were required to pay the broker, there is a risk that many would invest in an offering without obtaining advice or would seek advice from the media or 'finfluencers'.

If companies could no longer pay distribution channels (like advisers) to take their offers to the retail market, it would impact access to capital. Access to capital is fundamental to any economy. Investors may avoid start-up companies that are not well known. This could include the top companies of the future – CSL certainly was not worth what is now when it first listed. Access to capital by small and mid-cap companies will most likely suffer, particularly because of the spread requirements in the Listing Rules. It would be difficult for small companies to satisfy the spread requirements if they could not attract capital from retail investors. Considering a product for clients, and then facilitating

[14] The Hon Chris Bowen MP Minister for Human Services and Minister for Financial Services, Superannuation and Corporate Law *The Future of Financial Advice Information Pack* 26 April 2010, page 5.

their purchase of that product, including managing the bid, allocation and settlement process requires work. Without the stamping fee exemption, advisers are not reimbursed for that work and are less likely to involve retail clients in capital raising. Reducing retail client access to primary capital raisings means that they pay more for that product on the secondary market. This reduces the participation of retail clients in markets overall and increases the cost of capital for industry. Not only would it impact on Australia's capital markets but also on the ability of investors to build wealth.

Accordingly, maintaining the exemption involves balancing a potential conflict of interest against the health of capital markets.

We note that the stamping fee exemption was repealed as of 1 July 2020 in relation to Listed Investment Companies (LICs) and Listed Investment Trusts (LITs). SIAA strongly disagrees with the repeal of the exemption for LICs and LITs. We consider that the decision to separate out some products from the stamping fee exemption confused the service and remuneration model of stockbroking with the service and remuneration model of financial planners. It also failed to give regard to:

- the importance of LICs and LITs to satisfy the demand from retail and high net worth clients for new and diversified classes of investments
- the potential that issuers will not develop and bring such issues to market in the Australian jurisdiction if there is no confidence that investors will have access to advice from their advisers on those products, or will limit the offering to wholesale clients only.

LICs and LITs have always been attractive to many investors and can be used as part of a client's portfolio construction where the client is looking for portfolio exposure that provides diversity in areas where the adviser believes the clients can be best served by outsourcing that investment management to an external fund manager. The best interests of individual clients is the key focal point (sector weightings, franked dividends, avoiding market risk in hot sectors). All these things come into play in the analysis period, which means that LICs and LITs are relevant for some investors some of the time.

The listed closed end investment structure exists because it has long-term benefits to investors and has stood the test of time. The structure has been around in Australia for almost a century and considerably longer in some other countries. Investors like the sector for a range of reasons, including the franked dividends (particularly relevant for retirees); the exposure to sectors for diversification in their portfolios; and that transparency of the company structure, which allows them a view of the governance of each entity and the capacity to attend and vote at AGMs.

Our members have provided us with instances of LIC and LIT offerings, since the ban on stamping fees has come into effect, that have been limited to wholesale clients. Retail clients have been prevented from investing on issuance and have been confined to the secondary market for these products. This evidences what happens when the stamping fee exemption is removed for certain products – retail investors are shut out of capital markets.

52. Are there alternatives to removing the exemptions to adjust adviser incentives, reduce conflicts of interest and promote better consumer outcomes?

SIAA does not support removing the exemptions for the reasons set out above and supports the return of the exemption on stamping fees to facilitate capital raising for listed investment companies and trusts.

53 – 54.

SIAA is not providing feedback on questions about life insurance commissions**.**

55. What other countervailing factors should the Review have regard to when deciding whether a particular exemption from the ban on conflicted remuneration should be retained?

Countervailing factors that need to be taken into account include:

- the administrative costs of removing the exemptions
- the impact on the affordability of advice
- the impact on the ability to raise capital.

Charging arrangements

56. Are consent requirements for charging non-ongoing fees to superannuation accounts working effectively? How could these requirements be streamlined or improved?

SIAA is not providing feedback on consent requirements for charging non-ongoing fees to superannuation accounts.

57. To what extent can the requirements around the ongoing fee arrangements be streamlined, simplified or made more principles-based to reduce compliance costs?

The requirements around ongoing fee arrangements have imposed a significant and unnecessary burden upon advisers, licensees and clients with no benefit to the consumer. The Hayne Royal Commission identified the charging of fees for financial advice services that had not been provided as an issue in the financial services industry. However, the Corporations Act at the relevant time already required financial advisers or their licensees to give clients a fee disclosure statement on an annual basis where they had an ongoing fee arrangement with a retail client. They were also required to give clients a renewal notice for an ongoing fee arrangement. Clients had to positively renew an ongoing fee arrangement every two years and in practice, the ongoing fee arrangement terminated unless the client positively opted in to renew the arrangement within 30 days of receiving a renewal notice. Firms engaged in fees for no service were in breach of the existing law (subject to the exemption for those who were clients before the commencement of the FOFA reforms on 1 July 2013) and it is arguable that, other than removing the grandfathering provisions, no changes to the law were necessary to ensure clients were not charged for services that were not provided.

Our members do not object to the principle that underpins the requirements – that clients are aware of and consent to the fees that are charged for the services they receive. However, the legislation as drafted is difficult to work with due to its lack of flexibility and complexity. Legislation that sets out administrative processes rather than the obligation is expensive and challenging to implement. Our members have been forced to undertake extensive system changes to comply with it. The requirements have increased red tape and administrative costs and created confusion and frustration for clients.

We set out below a sample of the issues that our members are experiencing with these provisions.

- **All account holders must sign —** Accounts with multiple account holders typically operate on an authority that enables one account holder to sign on behalf of all account holders. However, the consent provisions require all account holders to sign the consent form. If an account is held in the name of three trustees, all three of them have to sign the consent form every year. If an account is in the name of a company, both directors or the director and company secretary have to sign. The feedback that our members have received from their clients is that they don't understand why all account holders have to sign these documents, given they have expressly put in place the authority for one account holder to sign on behalf of all account holders.
- **Product issuers require their own consent forms —** Industry raised concerns in early 2021 that the advice fee consent rules would impose a huge administrative burden if product providers created their own consent forms. Advice associations raised the issue that if providers took it upon themselves to create their own forms, advisers and licensees would be forced to locate and complete a host of consent forms in different formats for each client, increasing dramatically the administrative burden. Despite industry associations calling for product providers to work with industry to come up with one form that all sides could use, this has not occurred and advisers and licensees have been forced to chase multiple forms for product providers. The issue of multiple consent forms from product issuers is the biggest challenge facing our members who have clients holding their investments on platforms. Platform providers require clients to sign their own consent forms and there is no consistency between platform providers in the format or content of the form. This creates duplication and confusion for clients who are receiving multiple fee consent forms; one from their stockbroker or investment adviser and one or more from their platform provider(s).
- **Overly prescriptive requirements regarding the anniversary date —** Each client account has its own anniversary date based on the date that the ongoing fee agreement is entered into. This impacts on the administrative systems of firms that would normally issue paperwork to clients in a batch on a financial-year basis. Firms are now required to issue ongoing fee agreements and consent forms on a daily basis for rolling anniversary dates, which results in the fee consent mail-out being out of cycle with other client documentation. Rather than one workflow to chase consents, consents are due all the time for different accounts. This results in more work for licensees and advisers and confusion for clients. For example, a client household with multiple accounts will have multiple anniversary dates and will receive their fee agreement for each account on different dates and will have different deadlines for the return of their consents. Clients expect their account documentation to be sent out in one batch aligned with the 30 June financial year end – that is a date they understand and it aligns with their financial reporting dates. No rationale was ever given why the legislation prescribed the anniversary date in such an inflexible way. Another result of the prescriptive

requirements for the anniversary date is that a client with a share account and a platform will have multiple anniversary dates as the platform and share account fee arrangements may not necessarily align. Clients are bombarded by paperwork sent by platforms and their stockbroker or investment adviser. Clients get confused and think they are being charged twice, which illustrates how there is no client benefit to these prescriptive requirements.

- **Time taken to explain the requirements to clients —** Our members advise that the time taken to explain the ongoing fee arrangements and consent requirements to clients has been significant and is impacting on the ability of advisers to provide advice services to their clients. Advisers are spending increasing amounts of time in administrative tasks. This impacts on the ability of clients to receive timely advice from their adviser. As one member has explained 'Once an adviser has dealt with 100 client queries about the consent form, they don't have much time for anything else'.
- **Increased complexity for superannuation accounts —** Currently, where a financial product or service is related to a superannuation product, a client who is otherwise considered a wholesale client will be a retail client, and caught by the ongoing fee arrangement and consent requirements. This results in administrative complexity and platform providers have imposed additional requirements on these accounts.
- **Doubling of administrative burden —** Account holders must now sign a consent firm every year rather than every two years. This has doubled the administrative burden.

All these issues have caused some members to move their clients to 12-month agreements as compliance with the ongoing fee arrangements and consent arrangements have become too administratively burdensome. Other members are reducing their platform offering to clients to reduce the red tape imposed by the different consent requirements of platform providers. This may not be in the best interest of clients.

The requirements around the ongoing fee arrangements can be streamlined, simplified and made more principles-based to reduce compliance costs by removing the prescriptive detail so that, amongst other things:

- firms can select an anniversary date that makes better sense for their clients and their administrative systems
- platforms and product providers are removed from the process of collecting consents.

58. How could these documents be improved for consumers?

The prescriptive wording requirements of the consent forms is overly complex for clients. This conflicts with a licensee's obligation to provide concise and effective communication.

59. Are there other ways that could more effectively provide accountability and transparency around ongoing fee arrangements and protect consumers from being charged a fee for no service?

As we stated in our answer to question 57, the provisions on ongoing fee arrangements and consents were a solution to an issue that was already the subject of regulation. Firms were already required to obtain their clients' consent, albeit every two years. Firms found by the Hayne Royal

Commission to be charging fees for no service were in breach of the existing rules. There was no need to introduce a completely new regime.

60. How much does meeting the ongoing fee arrangements, including the consent arrangements and FDS contribute to the cost of providing advice?

Complexity increases cost in a number of ways. The ongoing fee arrangements and consent requirements have forced firms to incur the costs of:

- significant system upgrades
- additional administrative and compliance staff hours in processing paperwork
- external legal fees.

Advisers have spent hundreds of hours explaining the documents to clients and chasing consent forms.

61. To what extent, if at all, do superannuation trustees (and other product issuers) impose obligations on advisers which are in addition to those imposed by the OFA and FDS requirements in the Corporations Act?

As recommended in answer to question 57, platform providers have imposed their own obligations on advisers and licensees regarding consent forms and are refusing to accept consent forms developed by licensees. This has resulted in a third party interposing themselves between the client and the advice firm. Clients are finding this confusing and confronting.

62. How do the superannuation trustee covenants, particularly the obligation to act in the best financial interests of members, affect a trustee's decision to deduct ongoing advice fees from a member's account?

SIAA members have experienced superannuation funds questioning fees and asking to be provided with statements of advice and records of advice. Advisers have had to redact these documents for client privacy reasons. Statements of advice for more complex advice matters can be 60 pages long and the exercise of redacting is time consuming. Advisers are spending more time on administration and less on providing advice.

We consider that it is inappropriate for superannuation funds to be asking for these documents. How can a staff member at a superannuation fund who is not the client's financial adviser decide whether the advice fee is appropriate for the advice provided?

Disclosure Documents

63. How successful have SOAs been in addressing information asymmetry?

64. How much does the requirement to prepare a SOA contribute to the cost of advice?

65. To what extent can the content requirements for SOAs and ROAs be streamlined, simplified or made more principles-based to reduce compliance costs while still ensuring that consumers have the information they need to make an informed decision?

66. To what extent is the length of the disclosure documents driven by regulatory requirements or existing practices and attitudes towards risk and compliance adopted within industry?

67. How could the regulatory regime be amended to facilitate the delivery of disclosure documents that are more engaging for consumers?

In our members' experience clients want shorter, simpler advice documents that are easier to understand. Our members have received the following feedback from their clients:

- SOAs are too long and detailed and clients don't gain any benefit from them.
- In many cases clients simply want to know that their portfolio has been reviewed and whether they need to make any changes.
- The majority of clients don't want to provide all their personal details. They generally view their stockbroker or investment adviser as covering one segment of their advice needs and have other advisers for issues such as tax, insurance, financial planning and accounting.

Our members want their clients to understand the services they are providing and importantly, what they are not providing. They also want to provide their clients with simpler and shorter advice documentation.

However, the regulatory requirements around the content of SOAs are prescriptive and result in long and dense documents that are not at all consumer-friendly. More importantly, the key feedback from our members is that while the best interests duty and safe harbour steps remain unchanged, any changes to regulations regarding SOAs will only result in tinkering at the edges of the issue. The length and complexity of SOAs is driven by the legislative framework.

Behavioural finance research has shown that more information is not helpful to clients when making decisions. ASIC itself, in its joint Report 632 with the Dutch Authority for the Financial Markets [15] identified limitations to disclosure and recommended that financial services (among other regulated sectors) should not rely on disclosure as the default option to protect consumers.

The report defined disclosure as 'Disclosure is information the law mandates must be provided to consumers by firms'. The content of SOAs is mandated by law and has resulted in precisely the overload of disclosure identified in the report, which stated that:

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[15] Australian Securities and Investments Commission and the Dutch Authority for the Financial Markets, *Disclosure: Why it shouldn't be the default*, Report 632, October 2019

'… *disclosure and warnings can be less effective than expected, or even ineffective, in influencing consumer behaviour. In some instances … disclosure and warnings can backfire, contributing to consumer harm*.'[16]

To the extent that SOAs contain an overlay of disclaimers and appendices that are not required by law, these are included to defend the firm from action brought by ASIC and decisions made by AFCA. It is a refusal of reality to think that the firm should delete these in order to shorten the document, given exposure to ASIC actions or AFCA decisions is omnipresent, no matter how careful advisers and their compliance teams are to ensure they meet the demands of the regulatory framework. SOAs have essentially become a compliance document that clients do not read.

We consider that a sticking point for simpler and shorter documents is the level of enquiry regulators expect to be conducted when providing scaled advice. Requiring a client to complete a full fact find when providing scaled advice on their portfolio is not only unnecessary and time-consuming, but also creates confusion for clients as to the service they are receiving. It also adds to the cost of providing advice.

We highlight a sample of disclosure requirements that add length and complexity to the SOA:

- Too much of the workings of the adviser have to be included. For example, the client does not need to know in writing details about why other options that have been considered have been rejected – if relevant this can be discussed but should not add length to an SOA. Information about switching of products is another requirement that adds volume to the SOA that is largely meaningless to the client as does pages of supporting research and detailed reasons justifying the advice.

- Disclosure of fees (for example, cash management fees, Foreign Exchange fees, off market transaction fees) can take up multiple pages of an SOA. These fees have already been disclosed in the Financial Services Guide. Firms should be able to incorporate by reference fees that have already been disclosed in the FSG rather than repeating them in the SOA. The SOA should contain details of fees that just relate to the advice given. Another issue is the requirement to disclose fees on multiple comparative products such as platforms.

- ASIC requires cash flow analysis to be provided for comprehensive advice. Some firms provide cash projections for up to 10 to 15 years. In today's volatile environment, it is difficult to provide cash projections further out than two years that will be useful or accurate.

- Conflicts of interest disclosure can be lengthy and largely reproduces what appears in the FSG. Again, firms should be able to incorporate matters by reference to the FSG and limit disclosures in the SOA to those relevant to the advice.

A consideration of how to streamline SOAs would involve taking into account the recommendations we have made concerning the safe harbour test and repeal of Standard 6 of the Code of Ethics (see pages 24—27).

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[16] Ibid, page 4

ASIC needs to provide clarity on the extent of disclosure that is required to be made in the SOA on matters such as fees and conflicts of interest where that information has already been disclosed to the client in the FSG and the extent to which information can be incorporated by way of reference. When firms are of the view that ASIC will take action against them for not providing full disclosure in the SOA of matters that have already been disclosed in the FSG, these disclosures will continue to be made to defend the firm.

68. Are there particular types of advice that are better suited to reduced disclosure documents? If so, why?

Scoped advice and further advice are better suited to reduced disclosure documents.

69. Has recent guidance assisted advisers in understanding where they are able to use ROAs rather than SOAs, and has this led to a greater provision of this simpler form of disclosure?

ASIC recently developed an example ROA based on a scenario involving a client who sought advice from their stockbroker. SIAA provided positive feedback on that scenario — our members were very pleased with how 'real life' it was and would like to see more examples like this. The guidance was helpful in providing clarity on how ASIC views the requirement that the client's relevant personal circumstances not be significantly different from their previous circumstances. However, we consider that the guidance will not necessarily increase the incidence of our members providing ROAs rather than SOAs. The limited circumstances in which a licensee can provide an ROA rather than an SOA are set out in section 946B of the Corporations Act and it is these circumstances that dictate whether our members can use an ROA.

70. Are there elements of the COVID-19 advice-related relief for disclosure obligations which should be permanently retained? If so, why?

Our members did not find the COVID-19 advice-related relief to be particularly useful. The relief was situation-specific, short-term and had to be related to the pandemic. It is hard to see how any elements of the relief could be useful if permanently retained.

Our members consider regulatory relief that facilitates a greater use of ROAs more generally would be beneficial to both clients and licensees as it would enable advice to be provided more cheaply and easily. This may require a rework of the further advice requirements in section 946B of the Corporations Act.

In particular, the requirement that:

> *(b) the client's relevant personal circumstances in relation to the further advice……are not* ***significantly different*** *from the client's relevant personal circumstances in relation to the previous advice; and*

*(c) so far as the basis on which advice is given relates to other matters – the basis on which the further advice is given is not **significantly different** from the basis on which the previous advice was given.*

limits the utility of the ROA provision and makes it dependent on ASIC's view of what circumstances fall within this category.

Accountants Providing Financial Advice

SIAA is not providing feedback on the questions on accountant's providing financial advice.

Consent Arrangements for Wholesale Client and Sophisticated Investor Classification

76. Should there be a requirement for a client to agree with the adviser in writing to being classified as a wholesale client?

77. Are any changes necessary to the regulatory framework to ensure consumers understand the consequences of being a sophisticated investor or wholesale client?

78. Should there be a requirement for a client to be informed by the adviser if they are being classified as a wholesale client and be given an explanation that this means the protections for retail clients will not apply?

SIAA recently issued a discussion paper examining the question of whether the wholesale investor test should change. We consider that given the significant implications for stockbrokers, investment advisers and their clients should any change to the wholesale investor test be introduced, it is important that any call for change be supported by evidence. It will also be important to seek the voice of the client and consider the views of wholesale clients who will be impacted by any change. Our paper (the link to which is here) addresses the issues of:

- whether there is evidence of harm to support calls for change
- how the test is applied in practice
- existing regulatory protections for wholesale investors and
- the consequences for advisers and investors of a change in the test

and concludes that calls for change to the wholesale investor test appear to be a solution looking for a problem. These calls appear to overlook other more pressing and practical issues currently facing the financial advice sector, such as a decline in the number of advisers, the increasing cost of advice and increased regulation adding to the cost of financial advice.

There is no evidence that there is a market failure in relation to financial advice servicing the higher end of the income and asset distribution, particularly when such individuals have taken deliberate

steps to opt out of the retail investor regime. Without evidence of harm or a market failure, SIAA does not consider that there are sufficient grounds to introduce law reform.

The test that is most frequently applied to categorise a client as wholesale is the 'high-net-worth' test that is based on the asset or income threshold. Such a test is easy to apply and transparent to clients. Investors do not automatically become wholesale clients by virtue of their wealth or income; they must actively request this classification by obtaining a certificate from an accountant which must be renewed every two years.

Unless they choose to become a wholesale investor and keep their certification up to date, investors who meet the income or asset threshold are subject to the same restrictions and protections as any other retail investor.

Wholesale investors therefore take deliberate steps to opt out of the retail investor regime and consciously sign away protections applied to retail investors by seeking the wholesale certification. Importantly, they must obtain a certificate from a qualified accountant who is required to certify that the investor satisfies either or both of the two limbs of the wealth test. Qualified accountants are required to be members of recognised professional accounting bodies to meet the definition.

As professionals, they are required to exercise their professional judgement and retain evidence in support of their certification.

Online brokers rely on this 'black and white' test as they are a high volume, no advice business.

In developing our paper, we discovered that in practice, licensees providing advice in our industry take a nuanced approach to categorising clients as wholesale. They rely on the asset or income threshold test as an objective measure while also taking into account the sophistication and financial knowledge of the client.

Licensees understand that a client's asset level is not always a reliable indicator of financial knowledge or sophistication. A client who is able to satisfy the asset threshold can be certified as a wholesale client, but this is often just the start of a journey, with the licensee going beyond the Corporations Act definition. Some licensees have a matrix test that is used to evaluate whether a client who satisfies the asset or income threshold should be treated as wholesale once their investment experience and knowledge is taken into account. Another approach that is taken is to have a sophisticated investor panel that solicits details of the investor's experience, which includes years of investing, qualifications and occupation and assesses whether they are to be categorised as wholesale. One example of an investor with a high level of financial literacy would be a director of a public company, given that they have a duty to be able to review and understand financial statements.

Licensees in our industry have in many instances developed robust processes for onboarding wholesale clients that ensure they are aware of the consequences of no longer being categorised as retail, with clients required to sign and return an acknowledgement letter. Clients are advised as part of this process that they can 'opt-in' to retail if they decide they no longer want to be classified as wholesale.

Importantly, under these processes, an adviser cannot simply categorise a client as wholesale — the application must be put before compliance personnel and a control process is applied. The licensee adds the client as a wholesale investor and the adviser cannot interfere in that process. Any queries are referred to compliance.

These processes form part of a licensee's overall compliance and risk management framework and ensure that decisions about wholesale clients are made by the licensee, not the adviser, and there is appropriate supervision and monitoring of the client's account and the risks involved.

Accordingly, a requirement for:

- the client to provide their consent to being categorised as a wholesale client; and
- the licensee to provide an explanation of the consequences of becoming a wholesale client

would not be out of step with the practice of many of our members.

We would recommend that any change to the wholesale investor test to introduce requirements regarding client consent should be at a high level to avoid the significant issues resulting from the over-prescriptive nature of the ongoing fee consent forms set out in our answers to question 56 to 62. Consent forms are best developed by licensees in a way that best suits their business and clients. Professional bodies can also play a useful role in developing consistent forms.

Otherwise we do not consider that any changes are necessary to the regulatory framework to ensure consumers understand the consequences of being a wholesale client.

Wholesale clients and superannuation

The currently regulatory wholesale framework is problematic in situations where regulation allows a client to be treated as wholesale for some elements of advice but then requires the same client to be treated as retail for other elements of advice. This situation is particularly relevant for our members in relation to self-managed superannuation funds that qualify as wholesale for the provision of investment advice but by virtue of s761G(6)(a) need to be treated as a retail client for the provision of superannuation product advice. This creates created unwanted outcomes for clients, complexity and cost in areas of statements of advice preparation, charging of fees and fee disclosure statements. SIAA advocates for the requirements of s761G(6)(a) to be removed to enable clients that qualify as wholesale to be treated as such for all aspects of advice.