



Stockbrokers

Association of Australia

Incorporating SDIA

Consultation Paper 212 Licensing: Training of financial product advisers – update to RG146;
Consultation Paper 215 Assessment and approval of training courses for financial product advisers: Update to RG146

Submission

10 October 2013

The Stockbrokers Association of Australia would like to make the following comments on the proposals contained in ASIC Consultation Paper 212 *Licensing: Training of financial product advisers – update to RG146 (CP212)* and Consultation Paper 215 *Assessment and approval of training courses for financial product advisers: Update to RG146 (CP215)*.

In **CP212**, ASIC proposes the following changes to the training regime for retail advisers:

- *Regime A*: retains the current training standards in RG146 as ‘base level’ standards until 2015. These are Australian Qualification Framework (**AQF**) Level 5 qualifications (equivalent to a Diploma);
- *Regime B*: effective 1 January 2015, this new regime includes increased generic knowledge requirements, specialist knowledge requirements in a range of product areas including securities and superannuation, and increased skill requirements for personal advice. The educational level is increased to AQF Level 6 (equivalent to an Advanced Diploma or Associate Degree);
- *Regime C*: effective 1 January 2019, this regime builds on Regime B, increasing the educational level to AQF Level 7 (equivalent to a Bachelors Degree).

Grandfathering: we note that the new requirements will only apply to new advisers. Advisers qualified under the current standards will not require additional qualifications unless they need additional accreditation for new products or services to be offered by the licensee. In other words, existing advisers qualified under Regime A (the status quo) at the commencement of Regime B, will not need additional qualifications unless the licensee’s business changes: e.g. if

the licensee offers a new product or service requiring additional accreditation after 1 January 2015.

In **CP215**, ASIC proposes to –

- replace the RG146 training register with the requirement for financial advisers to complete a qualification that is approved by an authorised assessor. (An authorised assessor is a Registered Training Organisation or self-assessing organisation like a University, both of which are separately regulated under State or Federal law);
- archive and retain the RG146 register for the period up to 24 September 2012;
- provide further guidance on certification by authorised assessors; and
- remove recognition of foreign courses, with the exception of New Zealand.

Part A of this submission contains our comments on CP212. **Part B** sets out our brief comments on CP215.

A. CP212: Update to RG146

In relation to CP212, we would like to make comments on seven matters:

1. Rationale for the Proposals
2. Uncertainty over previous Proposals
3. Timing
4. Generic Knowledge & Skill Requirements
5. The Need for post-FOFA review
6. Developments in National Skills Standards Council Standards, and
7. Cost

1. Rationale for the Proposals

It would appear that clients' perceptions have been very important to ASIC in framing these proposals. Appendix B of CP 212 sets out the research that ASIC has undertaken, including Cognitive Task Analysis, Shadow Shopping reviews and focus group interviews.

No Rationale for Changes in Stockbroking: from this limited research, our Members do not see any failure of adviser skills such as would justify these changes. The document refers to the

Ripoll Report¹, which dates from 2009 and the events leading up to the GFC, particularly the collapse of Storm Financial. However, Storm was a failure of a business model, not adviser knowledge. ASIC's Shadow Shopping Report 279 is on Retirement Advice, which has little to do with knowledge levels that are typically required for stockbrokers. There does not appear to be significant evidence of that there are systemic problems with the current accreditation system.

We would like now to present some statistics which cast advice to stockbrokers' clients in a somewhat more favourable light, both from the point of view of clients' perception and actual claims data.

In 2009, *Colmar Brunton* conducted a study for ASIC of the **perceptions** of retail clients of market participants. In its report dated November 2009, Colmar Brunton stated that:

- **87% of clients surveyed were satisfied with their broker** (9% were neither satisfied nor dissatisfied, and 4% were dissatisfied); and
- **84% were confident in participating in the market** (10% were neither confident nor unconfident, and 6% were unconfident).

However, the *Colmar Brunton* report was never released by ASIC, and these positive perceptions do not appear to have been taken into account in framing ASIC policy since that time.

Figures released by the **Financial Ombudsman Service** also cast stockbroking advice in a more favourable light. The last two reported financial years have seen a significant decrease in complaints against stockbrokers. In FY2011, complaints to FOS against stockbrokers fell by 36%, when others including financial planners rose. FY2012 continued the trend, with a further 5% fall. As the following table shows, in FY2012 only 63 out of 36,099 complaints – including 1626 relating to investments – were against stockbrokers:

FOS Statistics - Stockbrokers

Financial Year	2012	2011	2010
Total Disputes received (all categories)	36,099 (↑19%)	30,283 (↑27%)	23,845
Total Investments Disputes received	1626 (↓14%)	1886 (↑15%)	1639
Total Stockbroker Disputes received	63 (↓5%)	66 (↓36%)	103

Source: FOS Annual Reviews, 2010, 2011, 2012

While complaints against financial planners tend to be dominated by complaints about inappropriate advice, complaints against stockbrokers for inappropriate advice are relatively

¹ Parliamentary Joint Committee on Corporations and Financial Services (Cth) *Inquiry into financial products and services in Australia* - Report dated November 2009

rare. As the following table shows, complaints against stockbrokers tend to be more about instructions, transactions, service or disclosure.

Total Stockbroker Disputes by type of service:

Service Category	2012	2011	2010
Advice	7	4	13
Charges	1	1	2
Disclosure	10	9	7
Financial difficulty	0	0	1
FSP decision	1	7	17
Instructions	15	8	10
Non-TOR	1	0	0
Privacy & Confidentiality	1	2	0
Service	14	27	27
Transactions	13	8	26
Other	0	0	0
Total	63	66	103

The *Colmar Brunton* results and the FOS figures quoted above, show no systemic problems with stockbroking such as would justify wholesale changes to the training requirements of retail advisers. Stockbrokers are subject to higher standards and higher levels of regulation by ASIC under the *Market Integrity Rules*. Most problems have emerged from other, less regulated sectors. However, because of the one-size-fits-all structure of licensing post-FSR, Stockbrokers are regulated in the same way as all licensees, but specialise in demonstrably different in products, services, and regulation. While caught by the FOFA reforms, the stockbroking industry was not the cause of them.

2. Uncertainty over previous Proposals

CP153: In ASIC Consultation Paper 153 *Licensing: Assessment and professional development framework for financial advisers* (April 2011), ASIC proposed a number of changes including a national exam, knowledge update review and specific supervision requirements for new advisers. In CP212, ASIC states that work is continuing on the proposals outlined more than two years ago in CP153, and that '*...It is important to note that if a national examination is implemented, it may replace any obligation to do a training course approved in writing for advisers...'*: CP212.40. The development in parallel of the proposals outlined in CP153 and CP212 is therefore causing much confusion in the industry, especially if one may remove the need for the other. It is unclear whether and if so when CP153 will be launched. The further uncertainty over timeframes for the implementation of CP212 stretching out to at least 2019 (which may be ambitious) just adds to the confusion that surrounds this whole area. This state of limbo, especially in relation to CP153, makes it very difficult for businesses to plan, cost and devote adequate resources to implementation.

Professional Standards/Code of Conduct: in 2011, the Ministerial Advisory Panel on Standards and Ethics for Financial Advisers recommended that all advisers be subject to an enforceable code of ethics and professional conduct. This recommendation did not proceed. However, in amendments to the FOFA Bills in early 2012, an exception to the bi-annual opt-in requirement for on-going fee arrangements was introduced. This exception from opt-in applies where the licensee is subject to a Code of Conduct approved by ASIC. With the recent change in Government, there is now uncertainty in this area, since the Coalition has previously announced that it will be removing the opt-in requirement².

Specialist Accreditation under the Market Integrity Rules: We note that the specialist accreditation requirements which apply to Market Participants in relation to Responsible Executive and Derivatives Advisers under the *Market Integrity Rules* are not affected by these proposals. No other sector is subject to these enhanced supervision and accreditation requirements.

Training requirements should not be viewed in isolation. They must take into account professional standards, conduct and supervision requirements.

3. Timing

CP212 proposes a 1 January 2015 start date over two stages to 1 January 2019. It is obvious that it is overly optimistic to believe that industry would be in a position to start this in new regime in 15 months' time. General opinion of participants is that at least 2.5 years would be needed for implementation, including drafting and approving competencies/courses if necessary, industry feedback, operational matters, etc. Further, it is our understanding that preparing a 2yr Advanced Diploma (Level 6) would take the providers about 2 years and a 3yr Degree (Level 7) about 3 years. Allowing another year for implementation and preparation, if the scheme is finalised and launched by 1 Jan 2014, this means Regime B could be launched at best by 1 Jan 2017 (not 2015) and Regime C by 1 Jan 2018, so the first graduates of Regime B would come through 1 Jan 2019, and the first graduates of Regime C 1 Jan 2021. The start dates will be crucial since new advisers may be in limbo until at least 1 Jan 2019. The question arises whether they will be able to do **anything** until they are qualified in the firm except menial duties? CP153 provided for a 1 year supervision 'professional year' for new advisers, but this measure appears to be in limbo too. When PS146 commenced in the late 90's, ASIC took a flexible approach so that advisers could do certain things under supervision, recognizing 'on the job training' is critical.

The detailed arrangements for "grandfathered" advisers who want to increase their accreditation are unclear. Grandfathered advisers who are merely seeking to increase the number of financial products in which they are authorised to provide advice should not then be required to effectively complete a whole new course of study (which may require an additional

² Parliamentary Joint Committee on Corporations and Financial Services *Inquiry into the FOFA Bills - Dissenting (Coalition) Report* Recommendation 3, February 2012 (see further discussion below under 5. Scaled Advice)

degree equivalent), merely to extend their accreditation by as little as one financial product. If that were the case, it could be a disincentive to experienced advisers furthering their education and accreditation, which would ultimately not be in the best interests of clients. Ultimately, such an approach could drive some of the more experienced advisers (who are still providing good quality advice to their clients) **out of the industry**.

In addition, a fully qualified adviser who simply changes firms after any changes commence should not be forced to attain new qualifications, but his/her qualifications and accreditation should be portable across firms. This is justified as he/she is a fully qualified and experienced adviser, and should not be treated as a 'new' adviser at the time of joining the new firm. If this is an incorrect statement of ASIC policy, **please advise as a matter of urgency**.

There are serious concerns both at the length of time until the feasible launch of the new proposals, and at the position of old and new advisers in the meantime.

4. Generic Knowledge & Skills (Table 1A)

ASIC is planning a large increase in the number of generic topics, adding 12 to the existing 3 topics. ASIC has said Table 1A will just set high-level principles, and it will be up to the Universities to fill the gaps, along with the Training Regulators. Questions from our Members include:

- What are the actual behaviours advisers need to demonstrate?
- What is the knowledge underpinning that they need to have at the end of the training?
- The document discusses knowledge, but what about outcomes?
- What is it that advisers need to know?
- What is the depth of knowledge required?

Ethics Training is covered in Table A1. It would be better covered as part of increasing professional standards, which is central to the Best Interests Obligation in any case.

Risk assessment is also covered in Table A1. This is a responsibility of the firm according to its business model and supervision requirements as a licensee, and should remain so.

Overall, the increase in topics from 3 to 15 is seen as excessive and unjustified. In addition, it does not acknowledge different business models, including those offering scaled advice (see below).

Supervision is the key, but with CP153 not proceeding, it is very difficult for businesses to know how to plan for change when major proposals are flagged but not implemented, with no advice as to whether or not they are to proceed at some stage in the future.

5. The Need for a Post-FOFA Review

After all the measures implemented post-GFC – including FOFA, margin lending regulation, best interest duty, enhanced ASIC powers, wire taps, increased penalties etc. – there should be a review into whether these additional RG146 measures are needed, or would actually improve advice.

Scaled Advice: In ASIC Regulatory Guide 244 *Giving Information, general advice and scaled advice*, ASIC reported that many Australians wanted to get more scaled advice rather than full financial planning advice when they spoke to their adviser:

RG 244.6 Our research has found that many Australian consumers would like more information and advice about investment issues. ASIC's Report 224 Access to financial advice in Australia (REP 224), released in December 2010, found that a third of Australians 'are now expressing a preference for piece-by-piece advice rather than holistic or comprehensive advice'.

One of the aims of FOFA was to enhance and facilitate access to advice, including **scaled advice**.

In late 2011 and early 2012, the Stockbrokers Association and other bodies argued before the parliamentary inquiries into the FOFA Bills to limit or remove the obligation to take '*...any other step that would reasonably be regarded as being in the best interests of the client*' when giving advice: s961B(2)(g). This was because it was so broad that it could limit the ability to give **scaled advice**. In the event, the Government did not change the wording of s961B(2)(g). However, in the final legislation, an explanatory note to subsection 961B(2) was added, which contemplates scaled advice, as follows:

*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.*

The new Federal Government has flagged some significant changes in this area. In relation to FOFA, prior to the election The Coalition's plan was announced. It is based on the 16 recommendations in the [Dissenting Report](#) of the Parliamentary Joint Committee Inquiry into the FOFA Bills in February 2012.

Of the 16 recommendations, in relation to scaled advice there are some significant changes planned, namely:

- Best interests duty - removal of catch-all duty in s.961B(2)(g) (recommendation no.6), and
- Scalable advice - provide explicit provisions on scaled or scalable advice (recommendation no.7).

Scaled Advice is very common in Stockbroking, and we would be very disappointed if more rigorous obligations were imposed through the new training requirements at a time when the new Government appears likely to make crucial changes to the law in this area. The training requirements need to recognise – as the law and other ASIC policy³ do – that service delivery models and business models vary. There should not be a presumption in the Generic Skills that firms deliver all services to everybody.

Therefore, before any significant changes in relation to financial advice training requirements are implemented by ASIC, following the recent change in Government it is necessary to pause and await the incoming Government's plans in this area, as well as the effect of the FOFA measures already in place on the standard of advice.

6. National Skills Standards Council Standards

It appears that the proposals in CP212 have been developed without reference to measures being taken by the National Skills Standards Council (**NSSC**), a subcommittee of the Standing Council on Tertiary Education, Skills and Employment, which reports to COAG. The NSSC recently conducted a review of Standards, focusing on issues of the quality of vocational education, specifically the concern that the inconsistent quality of training and assessment is undermining the integrity and value of vocational qualifications. As part of the review, the NSSC developed new standards, which will be introduced in 2014 and will address key areas such as training and assessment, education provider governance and accountability, capability of trainers and assessors and publication of performance data. These appear to be the same concerns being addressed by the proposals in CP 212.

There is wide agreement that RG146 requires updating. RTO regulation is very loose and not dependable. However, given that the new NSSC standards are expected to go a long way to address ASIC's concerns about the quality of training in the VET sector, we submit that the implementation of any new regime such as is proposed in CP212 should be postponed in order to allow the implementation of the new NSSC standards, and for their impact to be properly assessed.

7. Cost

While it is very difficult to calculate on the available information, it is obvious that there will be significant costs in the implementation of CP212, both to the **training providers** in updating courses and competencies, including RTOs which need to increase their accreditation to offer degree level courses, and to **licensees** in the cost of courses themselves, and the flow-on problems if they wish to employ someone who is experienced but not able to advise clients pre-qualification.

³ ASIC RG244 *Giving information, general advice and scaled advice*

B. CP215: Assessment and approval of training courses

We understand that ASIC does not want to be the gatekeeper of education standards. However in the future there will be no other third party able to assess the quality of courses. An alternative model warrants exploration. In 2011, ASIC approached industry with a proposal for a Self-Regulating Body to administer the proposed (CP153) National Examination. We are unsure if this proposal is to proceed, which leaves another uncertain aspect to the whole training and development environment. However, it may be that an industry-based solution is the best path, with such an SRO to prescribe and administer RG146 qualifications.

Concluding Remarks

Our Members support increased standards where necessary, and implemented in the appropriate manner. We agree that RG146 and its administration needs updating, but the elevation of requirements to university level standards will not guarantee increased skills. The standard of courses and their providers appear to have dropped. However, there is no evidence of a decline in adviser standards, especially in stockbroking, such as would justify the wholesale re-writing of RG146. The preferred course would be the postponement of RG212, pending the implementation of the new NSSC standards, a review of standards post-FOFA, and the consideration of a new industry-based solution.

We trust that ASIC will now take the opportunity to reconsider the next steps in its policy formation in this area.

Thank-you for the opportunity to comment on the proposed changes to the training requirements for retail advisers. Thank-you and other ASIC officers also for making time available to meet with us and our Members to discuss the proposals. We would be happy to discuss these matters further at your convenience. Should you require any further information, please contact me, Gillian Gilmore, Education Executive on ggilmore@stockbrokers.org.au or Doug Clark, Policy Executive on dclark@stockbrokers.org.au .

Yours sincerely,



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