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7 May 2015

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

Submitted electronically

Response to Treasury Consultation Paper – Lifting the professional, ethical and education standards in the financial services industry

The following response is provided by Pajeska Group Pty Ltd. The director Marija Pajeska has been involved in the field of compliance for over 15 years and has worked with many financial service providers and advisers in the broking, advisory and dealing sector.

We acknowledge that the minimum educational requirements should increase, especially for a financial planner, however we do not believe that a Bachelor degree is the level that should be adopted across the industry, for Tier 1 products, for all types of financial product advisers, as proposed in the consultation paper. We are of the view that a more appropriate standard would be AQF Level 6 (Advanced Diploma/ Associate Degree) for financial advisers in the broking, advisory and dealing sector and AQF Level 7 (Bachelor Degree) for financial planners.

The reason we are differentiating between a financial planner and essentially a financial adviser, is that a client's expectation from their financial planner is generally higher than their expectation from a financial adviser in the broking, advisory and dealing sector. Also in the financial planning sector, clients are generally more reliant on the knowledge of the financial planner and financial planners generally deal with more complex issues ranging from structuring the clients affairs, tax issues, investment requirements, retirement saving, etc.

We also acknowledge that by differentiating between the two professions adds another layer of complexity which may not be warranted and it may be more appropriate to reduce the minimum standard to AQF Level 6.

Our specific comments to the questions included in the Consultation Paper are detailed in Annexure A of this letter. If you would like to discuss any of the comments made, please do not hesitate to contact me.

Yours Sincerely

Marija Pajeska
Director

Section 1.1 - The PJC Model

Question		Response
1.1	What impact would the introduction of the PJC model have on the structure of the financial advice industry?	<u>Education and Training Standards</u> Many financial advisers that work in the Advisory and Dealing sector that provide personal advice to clients are not degree qualified. Many of these older advisers (more specifically) entered the industry through on the job training or by completing the training courses that were recommended by the Exchanges at the time or listed by ASIC in the ASIC Training Register (which met the requirements of RG146). These new standards are certainly feasible for new advisers to the industry however appropriate transitional arrangements/ grandfathering provisions for existing advisers should be adopted. <u>Structure and role of a standard setting body</u> At the moment the PJC model indicates that the Professional Standards Council (PSC) is responsible for approving a professional association and that professional associations are responsible for establishing the Financial Professional Education Council (FPEC). It would make more sense that the FPEC is a council established and formed by the PSC as this will ensure that it is independent and reflects the entire industry as opposed to the bigger associations which may not represent the majority of advisors or business models. It would also mitigate the potential for the FPEC to become too big and in-effective. <u>Ongoing professional development</u> The minimum requirements should be set by the FPEC and what standards each professional association implements to ensure its members meet those minimum requirements should be approved by the FPEC. This will ensure that there is a minimum standard across the industry. <u>Registration</u> Adding advisers to the register once they have completed the FPEC approved professional year and passed the registration exam is acceptable for new advisers however the issue arises in terms of financial advisers already in the Financial Advisers Register as the register is already up and running and transitional arrangements/ grandfathering provisions (refer to first point above) should be considered. Also as each financial adviser will need to complete ongoing professional development, the completion of the ongoing professional development should be part of an annual re-registration process at the professional association level and such information should be reflected in the Financial Adviser Register. <u>Exam</u> We have no objections with regards to new advisers however see the need for transitional arrangements/ grandfathering provisions discussed above to cater for existing advisers. <u>General comment</u> Further clarity is required as to whether the PJC model applies to personal advice provided by an adviser to retail clients only or whether it extends to the provision of advice (which is personal advice in its nature) to wholesale clients.
1.2	What are the practical implications of the PJC model applying to advisers from all sizes and types of firms?	Some industry sectors are not represented by any of the Associations currently in operation. In relation to the Advisory and Dealing sector (ie. those AFS Licensees that are not members of an Exchange) have no association that represents them. In making decisions on the standards that need to defined due consideration should be given to acceptable transitional periods to allow the various industry sector to setup an Association that represents them.
1.3	Are the lines of responsibility clear under the PJC model?	The lines of responsibility are clear however as mentioned previously the FPEC should be established and formed by the PSC to ensure that it is independent and reflects the entire industry as opposed to the bigger associations which may not represent the majority of advisors or business models.

Section 2 – Key aspects of the current regulatory framework

Question		Response
2.1	What are the practical implications of this overlapping of responsibilities? Would this shift have flow-on implications for other provisions in the Corporations Act, or any other parts of the licensing regime?	Running two separate standards will lead to confusion amongst industry participants. ASIC is responsible for administering and maintaining the Financial Adviser Register which details the qualifications held by a financial adviser and the authorization granted to a financial adviser by an AFS Licensee. It would be more appropriate for the FPEC to maintain a financial adviser register which shows which financial advisers have met the educational requirements however it is just as important for ASIC to maintain the current Financial Adviser Register as the authorization held by a financial adviser is also important information for the consumer. The PJC model seems to address the provision of personal advice only so further consideration needs to be given to the provision of general advice (eg. market related general advice, research material, etc), which still can influence the decisions made by clients.
2.2	Should licensees maintain a legal obligation to ensure advisers meet relevant training and competency standards?	The PJC model places the onus on the adviser to be registered with a professional association. For the model to work with the current regulatory regime RG146 should be amended to address the standards that an AFS Licensee must meet when authorizing a representative to operate under its licence. Those standards would include the requirement that only persons that meet the requirements set out in point 13 of this consultation paper can be authorised to provide personal advice.

Section 3 – Education and Training Standards of Financial Advisers

Question		Response
3.1	How would the PJC model interact with existing regulatory regimes for specific types of advisers, for example stockbrokers and tax advisers?	Not very well because in the Advisory and Dealing sector (which is similar to the stockbroking industry but the AFS Licensees are not members/ participants of an Exchange, and their advisers provide advice across securities, derivatives and foreign exchange contracts) a person may become an advisor using many avenues, including but not limited to: • Becoming an Experienced trader (proprietary account traders or personal account traders) and completing their RG146 accreditation; • On the job training and completing their RG146 accreditation; and • Degree qualified and worked in financial services industry in the back office and wishes to transition to an adviser type role. For the PJC model to work the FPEC will need to work with the universities to ensure that the degrees available cater for the industry and are applicable to the industry.
3.2	Is holding a relevant Bachelor Degree the appropriate minimum education requirement? What is a “relevant” Bachelor Degree? Would this requirement limit the ability of other degree-qualified Individuals to become financial advisers?	What is a relevant Bachelor Degree would essentially be determined by what bachelor degrees are available for consideration? It may also be more appropriate to consider AQF Level 6 qualifications meaning that a person that has obtained their qualifications at TAFE by completing an Associate degree or Advanced Diploma can become a financial adviser. The benefits of considering TAFE courses is that these courses involve more professional training than what is offered with a university degree and to the large extent on the job training plays a key role in becoming a good financial adviser.
3.3	What are the practical implications of requiring advisers to hold a relevant Bachelor Degree?	Not all existing advisers hold a bachelor degree so due consideration needs to be given to grandfathering provisions and transitional arrangements.
3.4	What are the practical implications of requiring new advisers to undertake a structured professional year at the outset of their careers as financial advisers, as a way to develop on-the-job skills?	Availability of positions and supervision of activities. Reality is that the industry expects financial advisers to perform and sets performance standards based on an adviser’s ability to generate income. Some of these issues have been addressed by the conflicted remuneration provisions introduced under FOFA however the pressure to perform versus the responsibility to educate and supervise will be a new challenge for industry to address.

Section 4 – Structure and role of a standard-setting body

<table>
<tr><th colspan="2">Question</th><th>Response</th></tr>
<tr><td>4.1</td><td>What are the practical implications of FPEC performing this role? For example:
• how would FPEC interact with regulators and government agencies, such as ASIC, and education bodies?
• would FPEC need to be supported by legislation in order to perform its role?
• is the recommended FPEC membership appropriate?</td><td>The establishment of the FPEC is a positive step however the FPEC should be established by an independent body (ie. the PSC) not by the professional associations. The professional associations should have input as to who can be a member by allowing them to cast nominations but the formation and terms of membership should be determined independently to ensure that the FPEC represents the industry appropriately by including academics, industry professionals, representatives from the regulatory sector and ethicists.
Another issue is that the FPEC runs the risk of having too many members because a member of every professional association would be represented on the FPEC. This gives rise to the question as to how effective will the FPEC be if it becomes a large council?</td></tr>
<tr><td>4.2</td><td>Are there alternative arrangements that would be more appropriate or effective?</td><td>The FPEC could be a sub-council of the PSC. The benefit is that all professional associations need to be approved by the PSC and as such the PSC could impose as a condition of approval the requirement that all members of a professional association and the professional association itself are required to meet the standards set by the FPEC.
From a regulatory point of view a similar requirement could be included in the AFS Licence conditions by ASIC along with Regulatory Guide RG146.</td></tr>
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Section 5 - Registration

Question		Response
5.1	What are the practical implications of requiring individuals to be registered in order to provide financial advice?	The educational standards that apply to the provision of personal advice only apply to financial advisers that provide advice to retail clients. The requirement to be registered on the financial adviser register applies to the provision of advice to retail clients. The proposal put forward by the PJC needs to be clarified to the extent of whether the registration requirements will equally apply to the provision of personal advice to retail clients and wholesale clients. The registration process and the register described by the PJC should be administered by the FPEC not ASIC. Currently the financial adviser register is administered by ASIC and some AFS Licensee have effectively been penalized for having financial advisers as they had to pay a fee to register an authorized representative initially and then pay an additional fee to register a financial adviser. As a per adviser fee it is not a large expense but applied across many advisers it can be a large expense and for the standard to be changed once again would give rise to the question at whose expense? Also how will ASIC recover its costs if the professional association is the one notifying ASIC and the purpose of the register is changed.
5.2	Should it be the role of professional associations to notify ASIC that all requirements have been met for an adviser's registration, and of factors which affect their subsequent fitness for registration?	It should be the role of the professional association to notify the FPEC that an adviser has met all the requirements and the FPEC should maintain the Register that lists the name of all persons who have met the requirements to practice as a financial adviser. This information should then feed directly into ASIC's financial adviser register which continues to serve its current purpose.
5.3	What are the practical implications of having these criteria listed on a public adviser register?	Availability of information and accuracy of information.
5.4	Are there alternative or additional criteria that should be listed on the Register?	What information will be provided to give comfort to consumers, associations, regulators, the public, etc that a financial adviser has met their ongoing professional development requirements?
5.5	What are the practical implications of having professional associations perform this role? For example, are professional associations sufficiently resourced and how would they interact with ASIC in relation to these requirements? Does this approach dilute the responsibility of licensees?	More importantly by shifting the responsibility from the licensee to the professional association a consumer or interested party will be able to establish whether or not a financial adviser is qualified but they won't be able to establish whether they are authorized. These are two different concepts as a condition of becoming qualified is not whether or not you are authorised to provide advice by an AFS Licensee. There are people who can easily complete a university degree, the professional year and the registration exam because they are good at studying but does that mean they will be a good adviser, no. Reality is that it takes more than study to be a good financial adviser and for a consumer it is important to know whether your financial adviser is qualified. The ASIC financial adviser register, as it currently stands, is important as it tells the consumer whether or not the financial advisor is authorized and what financial products they are authorized to advise.
5.6	Is legislative protection of the titles 'financial adviser' and 'financial planner' necessary?	Legislative protection for the term 'financial planner' is necessary as a higher degree of care is associated with performing the duties of a financial planner. However, the term 'financial adviser' currently also refers to those professionals who provide market related general advice, economist that write newspaper articles and research. These services are just as important to consumers as those services provided by a financial adviser that provides personal advice and for the industry to degrade those professions by disallowing them to refer to themselves as financial advisers is irrational.

Section 6 - Exam

Question		Response
6.1	Do you consider a registration exam should be a component of a framework to improve professional standards? Should the exam apply to both existing and new advisers?	Yes a registration exam should be a component of a framework to improve professional standards. The exam should apply to new adviser, however existing advisers should be able to complete the exam or an individual assessment.
6.2	What are the practical implications of the use of a registration exam?	The application of the registration of the exam to existing advisors may prove to be difficult if the exam incorporates information and knowledge that is obtained by completing a bachelor degree. Due consideration should be given to the fact that majority of existing advisors may not have completed a bachelor degree or completed it many years ago so the registration exam should be standardized but practical at the same time. Also an individual assessment should be an alternative to the exam that can be used by existing advisers.
6.3	What content should be covered in the exam?	Information relating to: • Core criteria that represents what it means to be an advisor within the financial services industry; • ethical standards that need to be adhered; • key elements that form a code of conduct; • key elements about the provision of personal advice (ie. fact find and assessment of personal information, etc); • key elements about the Australian Privacy principles; • key elements about the AMLCTF Act and how it applies to the provision of financial services to clients; • industry specific information which is governed by the professional association that the adviser is a member of.
6.4	Is FPEC the appropriate body to set the exam? Who should be responsible for invigilating the exam? Who should be responsible for marking the exams?	The FPEC is the appropriate body provided that it is a sub-council of the PSC thus ensuring it is run independently. It should be responsible for setting, invigilating and marking the exam to ensure consistency across the industry. Reality is that the FPEC can standardize the process but each professional association would potentially apply different standards as what is clearly evident in the current application of RG146 by various Registered Training Organisations which is approved under the National Training Framework.

Section 7 – Ongoing professional development

Question		Response
7.1	What are the practical implications of the proposed ongoing professional development requirements?	The proposal in relation to ongoing professional development requirements does not fix the issue relating to transparency. In other words how does a consumer know that after a financial adviser has qualified that they continue to meet their ongoing professional development requirements? This information is not recorded anywhere nor is it available to consumers for assessment.
7.2	Are professional associations well-placed to administer ongoing professional development requirements?	Yes, provided that the ongoing professional development requirements are applicable to their industry and that there is transparency for consumers.

Section 8 – Professional and Ethical Standards

Question		Response
8.1	What are the practical implications of having each professional association create its own code of ethics? For example, what are the implications of having multiple codes as opposed to a single code?	A code of ethics should be applicable to the industry that the professional association represents. So one would expect that there will be a slight variation between the code of ethics adopted by each professional association. However, one would also expect that the PSC define principles which should be incorporated/ adopted by each professional association when defining its code of ethics.
8.2	What are the practical implications of requiring that a code of ethics be approved by the PSC? Are there alternative approaches that would be more appropriate or effective?	The requirement for a professional association to seek approval for its code of ethics from the PSC is reasonable.
8.3	Is the PSC the appropriate body to drive improvements in professional standards in this industry? Are there alternative arrangements that would be more appropriate or effective?	It appears reasonable for the PSC to drive improvements in professional standards in this industry however there seems to be an anomaly in relation to the membership criteria. I refer to point 67 of the consultation paper which states: ‘Professional associations must: ensure that their members are able to improve their risk management practices; have appropriate continuing professional education requirements; and have complaints and disciplinary mechanisms in place.’ I also refer to point 65 which implies that members of a professional association must hold insurance (ie. professional indemnity insurance) or assets to an applicable cap. Currently, these criteria are met and or defined by the AFS Licensee that the financial adviser is authorised by. As the members of the professional association are the financial advisers themselves then an issue arises as to who needs to meet these criteria. It may be more appropriate that the AFS Licensee holds the membership on behalf of its financial advisers or alternatively an acknowledgement is included that such criteria are met by the financial adviser if the AFS Licensee it is authorized by meets the said criteria.
8.4	What are the practical implications of having the PSC perform this role? For example, how would the PSC interact with ASIC?	
8.5	What are the practical implications of requiring professional associations to hold a PSC-approved scheme?	
8.6	Is it appropriate that liability in relation to financial advice/services be limited at this time? Is limitation of liability a necessary element for the operation of the PJC model?	No it is not appropriate that liability in relation to financial advice/services be limited. This goes against the standards set by ASIC and all consumer rights. If a financial adviser has breached and clients have been affected as a result they deserve to be compensated and the amount of compensation should not be limited. By limiting a financial adviser’s liability not only disadvantages clients, it also potentially disadvantages an AFS Licensee who can become a victim of a financial adviser’s negligence as the financial adviser would know their liability is limited.
8.7	What are the practical implications of capping liability? For example, what changes to Commonwealth and/or state and territory legislation would be required?	
8.8	Would an alternative arrangement, under which a scheme’s approval would not limit liability, be practicable?	Yes, as the whole idea is to increase the standard of financial advice and by limiting liability won’t necessarily achieve the desired effect.
8.9	What are the practical implications of mandating membership of a professional association? Are there implications arising from the increased responsibility on professional associations rather than on the licensee?	Mandating membership to a professional association is a positive step for the industry however membership to a professional association should ensure that the standards imposed on an AFS Licensee by ASIC are recognized by the professional association and thus negating the need for a financial advisor to meet additional requirements (as discussed in the response to questions 8.3, 8.4 and 8.5)

Section 9 – Other issues for consideration

Question		Response
9.1	How could the PJC model interact with the existing Tier 2 adviser training and competency requirements.	The PJC model could define a lower AQF Level that needs to be met by financial advisers that provide advice in relation to Tier 2 financial products.
9.2	Do you consider FPEC to be the best entity to determine transitional arrangements for existing advisers and advisers wishing to move within the industry?	The transitional arrangements should be developed in consultation with ASIC to ensure that the best outcome is achieve for the industry and to ensure that appropriate transitional arrangements are defined for AFS Licensees.
9.3	Do you consider Recognised Prior Learning a suitable transitional arrangement for existing advisers?	Yes, however this is dependent on what is determined to be Recognised Prior Learning. At this stage the view held by the PJC is positive for industry: 'The PJC was of the view that even if existing advisers do not hold formal tertiary qualifications, years of practice have equipped many of them with the knowledge and experience to provide effective and ethical advice to consumers.'
9.4	What is an appropriate timeframe over which existing advisers should transition to the new system?	The proposed timeframes detailed in Table 1 are reasonable (ie. conditional on implementation date of PJC proposals) because it gives those existing advisers and undergraduates sufficient time to transition to the new standards.
9.5	Are there any alternative transitional arrangements that would be more appropriate or effective, for either new or existing advisers?	For some existing advisers it may be warranted that indefinite grandfathering provisions be approved. This should be determined on a case by case basis and should allow for the financial adviser to be individually assessed by an authorized FPEC assessor rather than by completion of the recognised exam.
9.6	Are there any particular elements of the PJC model that present timing challenges?	The biggest challenge will be the approval of professional associations by the PSC and the establishment of the FPEC as under the current proposal the FPEC is to be established and formed by the professional associations and this can't happen until the professional associations are approved by the PSC. We note that some consideration has been given to this as an association is given 3 years to be approved by the PSC but this does not address those industries that need to form a new association.
9.7	What timing or phasing would most effectively balance the recognised need to raise standards and competency in the short-term against practicalities of implementing a new model to raise standards of new and existing advisers over the longer term?	The FPEC should be established and formed by the PSC as a sub-council of the PSC thus ensuring that the entire industry is represented.

Attachment A – Regulation Impact

Question		Response
1	How many/what proportion of financial advisers are likely to be affected by the introduction of a new professional standards framework (such as that proposed by the PJC)? If you are a licensee, how many/what proportion of your advisers would likely be affected?	A large number of AFS licensees would be affected and a large portion of its financial advisers would be affected especially if the PJC model applies to the provision of personal advice to both retail and wholesale clients.
2	What proportion of financial advisers working in the industry are typically new entrants (for example, graduates and those coming from other professions) versus existing advisers who have been in the industry for a number of years? If you are a licensee, what proportion of your advisers are new entrants (versus existing advisers)?	I am not privy to the statistics but would guess about 10 – 15 % of financial advisers are new entrants per year.
3	What is the typical education level of financial advisers? If you are a licensee, what proportion of your advisers hold a relevant tertiary degree?	Meeting the RG146 training standards is the typical education criteria assessed. Some are university qualified (however may not have completed a relevant tertiary degree) whilst others may have completed a relevant course at the diploma level. Some have not completed any specific qualification other than defined the RG146 accreditation.
4	What proportion of advisers are currently members of a professional association(s)? If you are a licensee, what proportion of your advisers are members of a professional association(s)?	In the advisory and dealing sector I estimate less than 50%.
5	What are the likely costs (labour and non-labour costs) associated with the various elements of the PJC model? These costs could include, for example, the direct costs to: • individual financial advisers; • professional associations; and • licensees. Are costs likely to vary between different size advice firms, different professional associations, etc? If so, how?	Costs will vary depending on the professional association the financial adviser becomes a member of. At this point in time it is difficult to define the costs as there is no association that completely represents the advisory and dealing sector.
6	Are there alternative options (other than the PJC model) which would provide an enhanced cost-benefit outcome?	A model sponsored and managed by ASIC.