

16 September 2022

Ms Mel Bray
Assistant Secretary
Advice and Investment Branch
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Ms Bray

Response to Financial Adviser Education Standards Consultation Paper

In responding to the proposal for the financial adviser education standards ("education standards") we are mindful of the makeup of our membership. It is our understanding that our members in the main hold at least a bachelor's degree qualification – the benchmark that the current standards propose for all financial advisers to achieve by 2026.

The main focus of our consideration of this proposal is whether ten years of work experience serves to take the place of this education requirement.

In considering this, we are also aware of the requirement that has been in place for financial advisers to complete ongoing education. While this was not quantified prior to 2020, under the terms of ASIC's Regulatory Guide 146, ongoing education was to be implemented for an adviser to equate with that of the various professional associations.

With this in mind, we do not object to the proposal as put forward in the education standards paper on the following bases:

- Since the Financial Services Reform in the early 2000's, there has been significant change within the financial services industry, both in terms of regulation and financial product offering. Keeping up with this change has been above and beyond any ongoing education requirement and has seen the opportunity for growth and development of the industry participants.
- The creation of a date by which the proposed 10-year exemption is to be applied will create a means by which the issue of education standards should not be raised again.

- For those who do not meet the proposed exemption time frame, the recommendation for completing a Graduate Diploma is both more realistic (8 units required rather than 24 for a bachelor's degree).
- The standards for new entrants that are required to hold a bachelor's degree prior to entry, then the completion of the "professional year" provides for an evolution to the industry that will see all participants have a minimum qualification of degree status.

Our more specific responses to the consultation paper are provided in our responses to the questions posed in that paper. These are provided below:

Questions – experienced pathway

10 years' experience

1. We believe that the window for determining the 10 years' experience should be extended from 1 January 2019 to 1 January 2020. To extend the additional year will align the period to the date of the introduction of the new educational standard requirements. We are comfortable with the commencement date as this coincides with the introduction of Financial Services Reform. Prior to this time, the industry operated significantly differently and any work experience prior to this time can bear little resemblance to what is required by the industry today.
2. If they have been an authorised representative during this period, an adviser has their history of authority already listed with ASIC. For those who were employees of financial services firms, but not authorised, a verified resume should be prepared and a statutory declaration provided by the applicant to confirm it is true and correct.

Clean record

3. We believe the sources recommended for demonstrating a "clean record" are appropriate but would question the use of maintaining CPD for this purpose. We believe that an allowance should be made in a single year for catching up uncompleted CPD where an adviser has a particular circumstance to explain their non-compliance. In such a situation, the loss of exemption status and the requirement that would follow (to commence ongoing studies) may be the cause of undue stress and lead to significant business losses. It is our position that the treatment of ongoing CPD compliance be allowed to be managed within a 21-month period during which time an adviser will catch up and meet their obligations. This requirement could include course enrolment or making adjustments to their business status.

4. Indication of a clean record should be the absence of any recording from any source. Instead, the following should be used as an indication of where a clean record does not exist:
 - AFCA complaints upheld against the adviser
 - Rulings against the adviser by the Financial Services and Credit Panel ("FSCP")
 - PI insurance claims paid
 - Complaints record showing systemic issues requiring adjudication
 - Non-reportable breaches reported to ASIC involving misleading and deceptive conduct and fraudulent behaviour
5. As per the previous question, a clean record should be the absence of those points listed above. Currently, the ASIC Financial Adviser Register ("FAR") states that an adviser has "no banning or disqualifications recorded". A similar statement could be placed on the register to include those sources noted above, with a requirement for licensees to record when there is evidence of systemic complaints issues, and when misleading and deceptive and fraudulent conduct has been reported to ASIC.
6. The threshold for adoption to identify as:
 - minor - where systemic issues have been identified through a complaint, then reconciled and action taken to ensure they will not continue
 - trivial - where monitoring and supervision has identified an issue for the adviser to be corrected without having experienced a complaint (perhaps through regular compliance audit)
 - isolated - an issue that has occurred as a "one off" situation (i.e., not systemic), that was not intentional and has not resulted in any loss to the client or affected the licensee's ability to operate their business.
7. We believe a time limit for reporting on a "clean record" is appropriate. An adviser will go through various stages of development through their career and any blemish to their record may not in years to come be an appropriate measure of the person nor their place in the industry at that time. We feel that any reporting on issues should be limited to the same period by which records are required to be kept, that being seven years.

Assessment of eligibility

8. A declaration of eligibility should be required if an exemption is to be given that will provide significant relief in terms of time and money. This declaration should be provided with any fraudulent misstatement to the effect of eligibility and be cause for referral to the FSCP.

Future misconduct

9. The establishment of the FSCP was for the purpose of dealing with issues that were not of significance and that would result in a banning order from ASIC. As noted in our response to point 8 above, we are of the belief that the scrutiny of the FSCP is the appropriate means by which any future misconduct should be dealt with. The FSCP has the ability to mandate that where the exemption was applied to an “experienced adviser”, who came under their scrutiny, if appropriate, the exemption can be lifted and an order to complete a course of study be undertaken with a deadline set for that study to be completed.

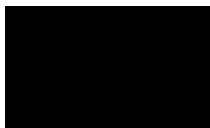
Other

10. For advisers with foreign qualifications, we would recommend that an assessment process be undertaken by an educational institution. Such a process is undertaken by Registered Training Organisations for the purpose of establishing Recognition of Prior Learning; the adviser in question could pay a fee for this assessment against requirements. The added benefits of this approach would be (a) that it removes the burden from the regulator to do so; and (b) this would remove any conflict of interest in terms of self-assessment or that of assessment by a licensee.
11. We expect that there will be upwards of 5,000 advisers seeking to access the experienced pathway. This is the equivalent of one third of the expected adviser numbers following the last sitting of the ethics exam; the remaining two thirds would be made up of those advisers who already hold an approved qualification and those who do not have 10 years’ experience in the industry. New entrants make up an insignificant part of the group but will grow in the future. We believe that a significant number of advisers requiring education have not commenced studies given the time frame over which debate has occurred on education requirements and whether changes to the legislated requirements will be made.
12. It is our contention that the role of Continuing Professional Development will in future take on a significant position in terms of meeting consumer protection, mainly through the requirement to update and develop knowledge already gained. Training plans will be significantly more detailed and targeted on requirements to be met to ensure that consumer protection bodies have confidence in the financial advice market and allow regulators to take on a more consultative role than that of policing.
13. Once determined how the pathway for education requirements for financial advisers is to be structured, consideration needs to be given for how this will be treated in the future. When FSR commenced a diploma level of study was deemed sufficient, then following the Future of Financial Advice (“FOFA”) reforms, it was determined a degree level of qualification was required. With a Graduate Diploma now deemed required if not having the exemption, thought must be given now as to how the future will be treated as

there are not many levels above which standards be raised from current. It is from this position we make the point above that ongoing education should become a more considered element of the education strategy, rather than the simplistic forty-hour requirement with four categories with minimum standards there should be development of this for a base common to all advisers then attention to specialisations and the exclusion of areas an adviser is neither accredited nor authorised for.

Many thanks for taking our comments into consideration.

Yours sincerely

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