

Australian Securities and Investments Commission

Answers to Questions On Notice

Public hearing: Parliamentary Joint Committee on Corporations and Financial Services

19 March 2021

Division/Agency: Australian Securities and Investment Commission

Question No: 007

Committee member: Mr Bert van Manen

Question:

Mr VAN MANEN: Can I go to a couple of your consultation papers. Consultation paper No. 332 is around the cost of advice. I believe submissions to that closed towards the end of January or thereabouts. How many submissions were received? What is the time line and process following the closure of submissions?

Ms Press: Consultation paper No. 332 was around access to affordable advice, as opposed to the cost. We had 469 submissions. Of those, 244 were from financial advisers and 106 were from other stakeholders—associations, superannuation funds and academics. There were 76 respondents who are both advisers and licensees, and there were 43 licensees. And I believe there were a number of accountants in there who act as financial planners as well. We had an extraordinarily strong response to the consultation. I would say that a lot of the issues that were raised were ones that we had heard already, but it's terrific to have them in one place and to now be able to address them. What are we doing to address them? We have given the industry associations a high-level briefing on what we found in the consultation and some of the things we're considering and hoping they can give us feedback on. That would be helpful.

Mr VAN MANEN: Is that something you can share with the committee?

Ms Press: The high-level briefing? Absolutely, I will take that on notice if I may. We've also provided that high-level briefing to Treasury. A number of things around law reform have come up in our consultation. That is not for us to comment on, but we have passed them through to the Treasury—and we will pass on our thoughts around those if the Treasury would like to see them. We will be conducting a number of roundtables in mid-April. We are inviting people who made submissions—the individual advisers, the licensees and the industry groups—to join different roundtables to get their views. We've identified a number of problems, particularly in the way our guidance is structured and set. We think there are some solutions to them, but we would like to talk to the industry about whether that is helpful or not. There is a lot of guidance that is quite complex, long and turgid in this industry. I think there are better ways to do some of that: shorter examples, shorter guidance and potentially using podcasts and video-type guidance, not compliance teams, to talk to the advisers. We think that's a really important shift in the way we're thinking about the way we're regulating the industry.

Answer:

1. This briefing provides a summary of the key issues that were raised in submissions to CP 332, along with ASIC's response to these issues.
2. We note that ASIC will be holding roundtables with adviser, industry association and licensee respondents to CP 332 to further explore these issues and potential solutions for addressing these issues.

Overview of submissions received

3. CP 332 received a total of 469 submissions from:
 - a. 244 financial advisers;
 - b. 110 Other stakeholders (17 industry associations, 8 super funds, 2 insurers, 2 academics);
 - c. 72 respondents who were both adviser and licensee; and
 - d. 43 licensees.

Limited Advice

Guidance on limited advice

4. In CP 332, we asked respondents about our guidance in [Regulatory Guide 244](#) *Giving information, general advice and scaled advice* (RG 244). 215 respondents submitted that they read RG 244.
5. Many respondents raised that RG 244 is difficult for users to understand.
6. To address this issue, we are proceeding with an initiative already underway which involves extracting the individual examples in RG 244, along with developing new examples and making these available to industry as simple and standalone webpage links on an online hub.
7. The hub will also contain a checklist of tips on complying with the BID when providing limited advice. We also plan to prepare training material for advisers and compliance staff on providing limited advice.

Barriers to providing limited advice

8. In CP 332, we asked respondents what the barriers are to provide this advice.
9. In summary, we are planning to address the following key barriers that were raised to providing limited advice:
 - a. **Regulatory requirements for (and therefore cost of) limited advice are the same as comprehensive advice.** To address this perceived barrier, we propose to develop examples of providing compliant limited advice. There are a number of options for what these examples could include:
 - i. An initiative already underway is to provide examples presented as case studies of 'exercising professional judgment' across three limited advice scenarios. These case studies will include key parts of the client file, and how the advice was scoped (but no SOA).
 - ii. A further option is to develop examples that contrast a 'limited' advice scenario with a 'comprehensive' advice scenario for the same client, clearly highlighting the additional enquiries and steps required and longer SOA likely to result from the comprehensive advice scenario.

We may also develop training material based on these scenarios for licensees to better understand the regulatory requirements that apply to limited advice.

- b. **Regulatory uncertainty about how to provide compliant limited advice:** Respondents noted that ASIC has placed guidance on providing personal advice in a several sources (e.g. RG 244, RG 175, REP 515). To address this barrier, we recommend creating a web page that provides direct links to all ASIC guidance on personal advice. We could also include some commentary to frame

the guidance and explain how we intend the guidance to be used. E.g. RG 244 provides specific guidance on limited advice and is consistent with the more general guidance in RG 175 about personal advice.

- c. **FASEA Code of Ethics (Code) does not allow limited advice.** We plan to pass on this feedback to Government. We will also update our limited advice examples, if required, once the new adviser standards are established by the Minister.
- d. **Licensees restrict the provision of limited advice.** This is a business decision for licensees. We will address this issue to the extent we can with clearer guidance and new examples. We also plan to raise this issue with licensees in roundtables that we have planned to hold in April to explore issues raised in submissions to CP 332.

10. In CP 332, we asked respondents about their preference for describing limited advice. Majority of respondents to this question preferred the term 'limited advice'

Statements of Advice

11. In CP 332, many respondents raised issues with the provision of SOAs when providing advice. In summary, respondents raised the following issues:

- a. **RG 90 is not sufficiently helpful:** To address this issue, we have a workstream underway to redraft the existing example SOA in RG90 and are collaborating with an industry association (using the same scenario) to explore the viability of a 'Video SOA'.
- b. **Respondents want to use ROAs more but can't due to licensee and regulatory restrictions:** Respondents want more guidance on providing ROAs and have generally submitted they would like to see ASIC promote its use. We are considering possible guidance on ROAs and plan to raise ROAs as a key topic for discussion in the roundtables for exploring issues raised in CP 332.

We are also considering possible relief to expand the situations where a ROA can be used, for example when providing limited advice or strategic advice.

- c. **SOAs are a key cost barrier to providing limited advice:** Respondents have raised that Government should reconsider the SOA requirements and expand the situations when a ROA is permissible instead of an SOA.

Strategic advice

12. In CP 332, we consulted on 'strategic advice', which we defined as advice that addresses a client's needs and goals either:

- a. without making a financial product recommendation to a client; or
- b. by only making a recommendation about a class of financial products.

13. 128 respondents thought Australians would benefit from more strategic advice.

14. We will consider how to address the following key issues that were raised:

- a. **The boundary between product advice and strategic advice is uncertain:** Based on this feedback, we will consider developing some examples, to show how compliant strategic advice can be given. The examples will also address when strategic advice becomes product advice.
- b. **Licensees restrict the provision of strategic-only advice:** Adviser respondents say that their licensees restrict strategic-only advice and require advisers to go

through the full advice process (including product suitability tests), even though a client only seeks strategic advice. We intend to explore this issue further in the roundtables.

Digital advice

15. In CP 332, we consulted on digital personal advice, which we defined as the provision of automated financial product advice using algorithms and technology, without the direct involvement of a human adviser. 132 respondents that answered these questions did not provide digital advice services and did not want to provide digital advice in the future.
16. We will consider how to address the following issues:
 - a. **There is very little appetite for digital advice among existing advisers. However, advisers see potential for technology to support the advice process:** In response to this feedback, we may seek to make more prominent previous guidance on the use of technology (e.g. on our CoVID-19 web page), including practical information about using technology to support the advice process. We could place this information on the online hub, referred to above.
 - b. **RG 255 can benefit from additional examples:** We may seek to provide additional examples on providing digital advice across different advice topics in response to this feedback.

General comments

17. In CP 332, respondents were asked if they had any other comments to raise that were not covered off in response to other questions.
18. Respondents principally stated that ASIC (and Government more broadly), should talk directly to advisers, not just licensees, professional associations and “lobbyists”. The FPA submitted that some of its members cited the “ATO’s Tax Liaison Group” as an example of effective engagement. As an immediate response to this feedback, we plan to hold separate roundtable discussions with advisers.
19. Respondents also raised that ASIC should “consumer test” guidance to ensure that it is understood and useful for advisers. We plan to pre-test new guidance with industry associations and the FACP.
20. Lastly, adviser respondents submitted that individual adviser licensing should be introduced. This is clearly not something within ASIC’s control.