

From the Desk of Director Marija Pajeska



6 December 2018

Ms Natasha Nguyen  
Lawyer  
Financial Advisers  
Australian Securities and Investments Commission  
By email: [natasha.nguyen@asic.gov.au](mailto:natasha.nguyen@asic.gov.au)

Response to ASIC Consultation Paper 305 – Organisational competence requirements for advice licensees: Update to RG 105

The Association of Securities and Derivatives Advisers of Australia (ASDAA) appreciates the opportunity to provide these comments to ASIC in respect of ASIC Consultation Paper 305 – Organisational competence requirements for advice licensees: Update to RG 105.

ASDAA's members are comprised of individuals who are either directors or employees of firms which hold Australian Financial Services Licences (AFSLs).

Our specific comments to each of ASIC's proposals in the Consultation Paper are detailed in Annexure A of this letter.

In addition we make the following comments:

- A Responsible Manager is someone who is recognised as having the skills and experience to monitor and supervise the activities of the AFS Licensee. An existing RM should be able to rely on the option they originally selected as they can adequately supervise its representatives (including its Authorised Representatives) that do provide personal advice to their clients without having to meet the higher standards themselves. The RM's job is to have the skills and practical experience to cover the issued authorizations. If the RM isn't also actively providing a personalized service then it seems rather redundant that ASIC insists that the RM should have the same qualifications.
- We note that ASIC has defined an existing adviser as someone who has been appointed on the financial adviser register during the period 1 January 2016 to 1 January 2019. We note that ASIC has given everyone sufficient time to be authorised as a financial adviser however disagree with this standard. As an example someone who holds the relevant degree that decided to go work

overseas for a period starting prior to 1 January 2016 and then decides to return to Australia post 1 January 2019, according to ASIC will not be able to benefit from the transitional standards set by FASEA. The transitional standards should be applicable to all existing advisers and it should be at FASEA's discretion when the cut offs apply not ASIC's. To suggest that the qualifications acquired by someone before 1 January 2016 are not relevant just because they were not included on the financial adviser register between 1 January 2016 to 1 January 2019 is ridiculous. By setting this requirement ASIC is penalising industry and potentially clients by stating that because ASIC did not have financial adviser register prior to 1 Jan 2016 ASIC does not have the resources to verify a person's qualifications.

- We refer to draft RG105, in particular RG105.52. We feel that Option 6 should be one of the options available to a person to demonstrate that they are qualified and experienced to be a Responsible Manager in circumstances where an AFS Licence application or a variation has been submitted that relates to the provision of advice to retail clients. We note that the following options can still be relevant provided that some minor modifications are made:
  - Option 2 – On the condition that someone can be individually assessed to determine that they meet the higher qualification requirements. This would require Option 2 to make reference to the a relevant diploma or degree instead of just a diploma.
  - Option 3 – In its current form is relevant and meets the FASEA standards. For further clarity ASIC could consider adding the completion of the National Exam in applicable circumstances.
- We refer to draft RG105, in particular RG105.54 and RG105.57. We feel that these requirements should be amended to make reference to Option 6 and most importantly they need to direct the reader to the relevant section of the Regulatory Guide that gives further information on how to the meet the requirements under Option 6.
- We do not see how amending the requirements to ensure that all existing Responsible Managers meet the requirements under Option 6 will benefit the industry. We feel that the costs involved in adoption this requirement far out weight the benefits considering that:
  - at this point in time ASIC does not appear to have a central database that it can use to determine which Responsible Managers need to meet the requirement; and
  - at this point in time ASIC does not appear to have the resources to ensure compliance with this requirement as they don't appear to have adequate tools.

This conclusion has been drawn on the basis of our experience with ASIC

through the licensing team and the team that is responsible for receiving the FS20 to appoint a new Responsible Manager. There is a clear disconnect between these departments so we don't see how ASIC is equipped to be able to achieve this goal without making it unnecessarily complicated and expensive for industry and ultimately clients.

ASDAA appreciates the opportunity to provide this Submission to ASIC on these significant proposals. We would be happy to discuss any issues arising from our submissions on this issue, or to provide any further material that may assist. Should you require any further information, please contact Brad Smoling, Director of Communications, on (07) 5532 3930 or email [brad@asdaa.com.au](mailto:brad@asdaa.com.au).

Yours Sincerely

Marija Pajeska  
Compliance Director

## Annexure A: Response to ASIC Questions

### Updating the organizational competence requirements for advice licensees

B1 proposal: ASIC proposes to:

- (a) add to the existing options for demonstrating the knowledge and skills of responsible managers by introducing Option 6, which will reflect the new education and training standards for financial advisers; and
- (b) require advice licensees to have at least one responsible manager who satisfies Option 6 (see draft updated RG 105).

ASIC Question		Response
B1Q1	Do you agree that ASIC should update the options for demonstrating the knowledge and skills of responsible managers in light of the professional standards reforms? If not, why not?	<p>We agree that Option 6 should be an option available to an AFS Licence application and/ or variation submitted after 1 January 2019.</p> <p>We also wish to note that the application of Option 6 will be quite difficult as we note historically, assessors from the ASIC Licensing Team have taken the view, on occasion, that relevant experience is considered to be experience acquired after the qualifications were attained. So taking this principle into consideration this option will realistically not be available to anyone until 2022 as that is when an applicant could demonstrate that they have 3 years relevant experience.</p> <p>For this to be a valid option ASIC will need to modify RG105 to clarify what is deemed as relevant experience and standardize this requirement across all options.</p>
B1Q2	Do you agree with our proposal to require advice licensees to have at least one responsible manager who satisfies Option 6? If not, why not?	<p>We do not agree with this proposal and feel that it would be more cost effective and reasonable to apply this standard to new AFS Licence applications and applications for AFS Licence variations which includes the provision of personal advice.</p> <p>The main issue with implementing it across the board is being that when it comes to Responsible Managers there does not appear to be a centralized register of Responsible Managers that ASIC can use to identify who needs to comply with the requirements and then to assess whether or not they have complied.</p> <p>Implementing these requirements would not be cost effective for industry or ASIC and it would mean utilizing ASIC's limited resources for an exercise which would not necessarily achieve a higher standard in industry.</p>
B1Q3	Please provide any feedback you have on the possible cost implications of our proposals.	<p>We refer to our response in B1Q2. We note that any costs incurred by ASIC would be passed back to the industry through the ASIC Industry funding model which would then inadvertently flow to clients which may push some clients into a non-advisory service meaning they are potentially worse off as a result of ASIC's actions.</p>

ASIC Question		Response
B1Q4	Do you think there is a better way to amend ASIC's organisational competence framework to reflect the higher levels of competence expected in the industry? Please provide reasons for your answer.	ASIC should continue to recognize the qualifications and skills of existing Responsible Managers and apply the new standards to AFS Licence application and/ or variation submitted after 1 January 2019 This will give the flexibility required to ensure that someone can be approved as an RM in the interim period (ie. until 3 years have passed post implementation of FASEA requirements)

### The knowledge and skills components in Option 6

B2 proposal: ASIC proposes that Option 6 will consist of:

- (a) a knowledge component made up of the new financial adviser exam, the degree requirement and the CPD requirement; and
- (b) a skills component of three years relevant experience over the past five years (see draft updated RG 105).

ASIC Question		Response
B2Q1	Do you think there are any elements in our proposed knowledge component that should not apply to responsible managers? Please provide reasons for your response.	The knowledge component of Option 6 appears reasonable if it is an option made available to new Responsible Managers only.
B2Q2	Do you think there are other elements of the professional standards reforms that should be added to our proposed knowledge component for Option 6?	
B2Q3	Do you think there is a better way for Option 6 to reflect the higher training and education standards for financial advisers? Please provide reasons for your answer.	
B2Q4	Do you agree with our proposed skills component of three years relevant experience over the past five years? If not, why not?	No because of the way the ASIC AFS Licensing team applies these standards. Historically they have only recognized experience acquired after someone has held the qualification. So taking this approach it means that Option 6 will not be an option for anyone until at least 2022. ASIC needs to provide clarity in RG105 as to what is considered as relevant skills as there is no uniformity within ASIC as to the interpretation of the skills component generally.
B2Q5	Do you think there is a better way for responsible managers to satisfy the skills component of Option 6? Please provide reasons for your answer.	The skills component should be used to determine whether or not a person has the skills and experience to provide advice. In relation to Option 6, if a person has been registered on the Financial Adviser Register for at least 3 years then it should be deemed relevant.

### The degree requirement in Option 6

B3 proposal: ASIC proposes that responsible managers should be able to meet the degree requirement in Option 6 by satisfying the 'existing provider' degree standard: see draft updated RG 105. This means they could adopt one of five education pathways (ranging from a graduate diploma to a single subject), depending on what qualifications they already hold.

ASIC Question		Response
B3Q1	Do you agree that the existing provider degree standard is the most appropriate standard to apply to responsible managers under Option 6? If not, why not?	We feel that the FASEA Education Pathways should be adopted instead of the existing provider degree because this then allows for flexibility for a Responsible Manager to demonstrate which pathway applies to them and how they have met it.
B3Q2	If ASIC adopts the existing provider degree standard for responsible managers, do you think that in the future we should review whether this is still the appropriate standard? If so, when do you think we should review the degree standard and why?	Yes, at a minimum the standard should be reviewed in 2024 when the transitional period expires. In general there is expectation for ASIC to ensure that all Regulatory Guides remain relevant so it should be reviewing and updating the guides periodically.
B3Q3	Do you think there is a better way for responsible managers to satisfy the degree requirement under Option 6? Please provide reasons for your answer.	More importantly we feel that if a Responsible Manager has been approved under one of the other Options their approval should continue under the said option and that all Responsible Managers to whom the new standards apply should complete the National Exam only.

## Transitional Arrangements

C1 proposal: ASIC proposes that all new responsible managers who wish to satisfy Option 6 will have until 1 January 2021 to pass the financial adviser exam and until 1 January 2024 to meet the existing provider degree standard.

ASIC Question		Response
C1Q1	Do you think that ASIC should offer transitional arrangements for new responsible managers? Please provide reasons for your answer.	Yes ASIC should offer transitional arrangements for new responsible managers on the basis that RG105 does not clearly explain what is considered as relevant experience.
C1Q2	Do you think that our proposed transitional arrangements will give AFS licence applicants and new responsible managers enough time to adapt to the new requirements? If not, why not?	Yes
C1Q3	Alternatively, do you think we should shorten the timeframes in our proposed transitional arrangements for new responsible managers? If so, please explain why and what you think the timeframes should be.	No, because if the time frames are shortened then Option 6 may be a redundant option for some time.

C2 proposal: ASIC proposes that existing responsible managers will have until 1 January 2021 to pass the financial adviser exam and until 1 January 2024 to meet the existing provider degree standard.

ASIC Question		Response
C2Q1	Do you think that ASIC should offer transitional arrangements for existing responsible managers? Please provide reasons for your answer.	Firstly we wish state that we do not agree with ASIC's proposal to require existing Responsible Managers to meet the new standards. If however, this becomes a requirement then the same transitional arrangements should be offered to existing responsible managers as are being offered to existing advisers.
C2Q2	Do you think that our proposed transitional arrangements will give AFS licensees and existing responsible managers enough time to adapt to the new standards? If not, why not?	Yes

ASIC Question		Response
C2Q3	Alternatively, do you think that we should shorten the timeframes in our proposed transitional arrangements for existing responsible managers? If so, please explain why and what you think the timeframes should be.	No, because if the time frames are shortened then Option 6 may be a redundant option for some time.