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Dear Ms Fung

**Subject: Consultation Paper 300 Approval and oversight of compliance schemes for financial advisers**

CPA Australia represents the diverse interests of more than 163,000 members working in 125 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

A single Code of Ethics is essential for a profession, as it not only informs professionals of the shared values and behavioural expectations, it also communicates these expectations to the community.

With an agreed clear ethical framework in place, all stakeholders can begin to work together to lift current standards of expected behaviour and positively influence conduct with the ultimate aim of consistently improving consumer outcomes and lifting consumer confidence in financial planning advice.

A robust and consistent oversight compliance framework will be critical to the Code of Ethics success in lifting the community's trust and confidence in financial planning advice.

CPA Australia has operated our Quality Review Program for CPA Australia members providing public accounting services for nearly three decades. Our program consists of both proactive and reactive monitoring activities and offers our members a constructive and educational opportunity to ensure highest standards and processes are consistently maintained. This includes compliance with APES110 Code of Ethics for Professional Accountants issued by the Accounting Professional and Ethical Standards Board and other relevant professional standards.

It is from this experience and taking into account the public interest that we provide the following comments to ASIC's proposed approval and oversight compliance schemes framework for financial advisers.

We believe that ASIC should also consider how an association with an existing Code of Ethics could harmonise its monitoring and enforcing of both the FASEA Code of Ethics and its own Code of Ethics, rather than potential separating these obligations.

This would provide the opportunity to harmonise professional and legal obligations to drive behavioural change and support financial advisers to feel personal and intrinsically motivated to act in an ethical manner.

It would also avoid duplicating oversight activities and resources, as well as the associated costs.

This is a key consideration given the potential cost to operate a code monitoring scheme is likely to be significant and may be in full, or in part, passed onto the financial adviser, and in turn their clients. Of relevance, the financial planning sector is currently facing a number of additional costs through the FASEA education requirements and the pending ASIC Industry Funding model separate to these new obligations.

If you have any questions regarding this submission, please do not hesitate to contact Keddie Waller, Policy Adviser – Financial Planning on +613 9606 9816 or [keddie.waller@cpaaustralia.com.au](mailto:keddie.waller@cpaaustralia.com.au).

Yours faithfully

A handwritten signature in black ink, appearing to read "Paul Drum". The signature is fluid and cursive, with a long horizontal stroke at the end.

Paul Drum FCPA

Head of Policy

# CPA Australia responses to Consultation Paper 300: Approval and oversight of compliance schemes for financial advisers

## B Compliance scheme approval application process

### Three-stage application process for initial applicants

**B1Q1 Are there better ways for ASIC to run the application process that will help to give certainty about resources required and enable all approvals to be announced at the same time? If so, please provide details.**

CPA Australia supports the proposed application process and proposed timeline for compliance scheme approvals.

We believe this collaborative approach will assist entities understand the requirements and obligations of operating a compliance scheme, as well as help them develop an appropriate framework for operations.

However, it is possible that some entities may not make a decision on whether to apply to become a compliance scheme until the final Code of Ethics has been set. This may have an impact on the number of entities that express an initial interest under the proposed timeline. Given this, ASIC may need to consider how it will accept and progress expressions of interest and applications outside of the proposed timeline.

**B1Q2 Does our proposed process create any particular risks that we will need to manage? If so, please provide details.**

The process as proposed aims to provide a consistent and fair approach to for applicants and assessment, as well as maximising the amount of time possible for entities to develop their application and schemes.

However, consideration may need to be given to the need for entities that have applied to operate a compliance scheme publicising their application or providing public commentary on the progress of their application. This may lead to a competitive advantage for an entity if a financial adviser or their AFS licensees believe a particular compliance scheme is more likely to be approved. Where the entity is a professional association, this could also lead to financial advisers applying for membership before the compliance scheme has been approved.

ASIC may also need to consider the potential impact on financial advisers if only professional associations apply to operate a compliance scheme, including whether this may also lead to a competitive advantage for these entities.

Early discussions and collaboration will also be important during the draft application phase to ensure entities do not begin establishing frameworks for a compliance scheme if it is apparent they will be unable to meet the requirements expected by ASIC.

## **Content of application**

### **B2Q1 Do you agree with the information we will require as part of the application? If not, why not?**

CPA Australia is broadly supportive of the information ASIC will require as part of the application for a compliance scheme.

However, CPA Australia recommend ASIC should consider how an association with an existing Code of Ethics could harmonise its monitoring and enforcing of both the FASEA Code of Ethics and its own Code of Ethics, rather than potential separating these obligations.

This would provide the opportunity to harmonise professional and legal obligations to drive behavioural change and support financial advisers to feel personal and intrinsically motivated to act in an ethical manner.

It would also avoid duplicating oversight activities and resources, as well as the associated costs.

## **Content of compliance scheme document**

### **B3Q1 Are there any matters other than those in paragraph 55 that should be included in the compliance scheme document? If so, please provide details.**

We do not believe there are any other matters that need to be covered in the compliance scheme document, noting this document will be supported by further documentation and evidence.

### **B3Q2 Are there any matters in paragraph 55 that should not be included in the compliance scheme document? If so, please give details. Please also suggest alternative places for this information.**

The matters proposed in paragraph 55 to be included in the compliance scheme document are appropriate and will be useful for relevant stakeholders to understand the monitoring scheme's role and how it operates.

## **C Compliance scheme governance and administration**

### **Governance**

#### **C1Q1 Do you agree that the governing body should be permitted to delegate all of its responsibilities described in Table 2, other than the responsibilities described in paragraphs 63(a)–63(b)? If not, please give details.**

CPA Australia supports the separation of duties between investigation of a breach and the final determination if a financial adviser has failed to comply with the Code, as well as imposing appropriate sanctions for such breaches. This separation will help ensure a fair and balanced process, as well as ensuring those making the final decision and imposing penalties have the required knowledge and experience.

We also believe it is important that there is appropriate oversight of the operation of the monitoring body.

**C1Q2 Are there any matters other than those set out in paragraph 64 that should be addressed in the charter or terms of reference for the governing body? Please give details.**

In addition to the matters set out in paragraph 64, we believe it is important that members of the governing body should bring an independent and informed judgment to bear in decision-making. Further, they should act ethically and responsibly. While these may be expected standards of behaviour and conduct, we believe it is important that they are included in the governing body charter.

CPA Australia also supports the charter being a publicly available document.

**Independence and impartiality**

**C2Q1 Do you agree that the governing body should be comprised only of non-executive members? If not, please give details and provide alternatives.**

It is important that the governing body remain independent from the financial advice sector that it will regulate, and as such, we support the proposal that they should be appointed as non-executive members.

**C2Q2 Do you agree that the governing body should include an independent chair and a balance of industry and consumer representatives? If not, please give details and provide alternatives.**

CPA Australia believe a minimum of five members should sit on the governing body to ensure procedural fairness. The members should also have diverse backgrounds for expertise and balance.

For example, the CPA Australia Disciplinary Tribunal comprises of highly skilled practitioners from a range of disciplines including legal and engineering. The nature of their work, skills, knowledge and professional obligations means they are well suited to understanding, interpreting and applying professional and legal obligations. They are also well placed to provide an unbiased and independent client perspective, reflecting community expectations of behaviour and conduct.

Given this, we believe the governing body should include consumer representatives, but note that these representatives can come from a diverse range of backgrounds.

We also believe that the focus should be on ensuring the governing body has the right mix of knowledge and skillsets, rather than focusing on how many industry versus consumer representative members make up the governing body.

**C2Q3 Do you agree that the criteria listed at paragraph 70 should be applied to determine the chair's independence? If not, please give details and provide alternatives.**

CPA Australia believe it is important that the chair is both independent and skilled in the interpretation and application of professional and legal obligations. We therefore support the proposal the chair cannot be a member of any financial advice association or currently practicing as a financial adviser.

However, it is our experience that the chair does not need to have specific industry experience to perform this role. Rather, they can be from an equivalent discipline that has a similar professional and legal framework. For example, the current chair of the CPA Australia Quality Review Advisory Committee is an engineer.

**C2Q4 Do you think that the existence of an independent governing body and role separation will be effective to minimise the potential for conflicts of interest in the monitoring body? If not, please give details and provide alternatives.**

CPA Australia believe separating the governing body from the monitoring body will be an effective mechanism to minimise potential conflicts of interest in the review and determination process.

## **Expertise**

**C3Q1 Do you agree with our proposed approach of assessing the expertise of monitoring bodies by assessing the matters outlined in paragraph 76? If not, please give details and provide alternatives.**

CPA Australia is broadly supportive of the proposed approach of assessing the expertise of monitoring bodies by assessing the matters in paragraph 76. It is important that a monitoring body has sufficient expertise to appropriately monitor and enforce compliance with the Code of Ethics on an ongoing basis. However, we reiterate our comments in C2Q2 that expertise to perform this role can come from a variety of relevant professional disciplines.

The expertise of the governing body and the measures to ensure they are maintained on an ongoing basis are also of critical importance.

We believe it is important that at least one member of the governing body has strong expertise in financial planning. This goes beyond simply meeting RG 146 training requirements to provide personal advice on Tier 1 or relevant products. They should have at least five years' authorised experience providing personal advice to retail clients on these products. This level of knowledge and skill is essential to understand the legal obligations when providing advice including the:

- different client challenges, including financial literacy levels or risk tolerance and reward expectations
- ethical challenges, and
- potential conflicts of interest that may be faced.

We also believe that this requirement should not be limited to within the past 5 years, as this may exclude experienced and highly skilled professionals from filling this important role. However, it is important that if the individual met the criteria longer than five years ago that they can demonstrate the currency of their knowledge and skills. It is suggested that this be via their demonstration of ongoing professional development, or individual assessment.

Given it will be a statutory Code of Ethics and imposed sanctions have the potential to impact a financial adviser's livelihood, we believe it is appropriate that at least one member has experience in and knowledge of the principles of procedural fairness and administrative law. However, we note that there is the possibility that determinations and sanctions imposed may be legally challenged by a financial adviser. Simply ensuring a member of the governing body may not address this risk. Of importance, the drafting of the Code of Ethics may also impact this risk.

**C3Q2 Will it be practical to provide information about the members of the proposed initial governing body in an application for approval of a compliance scheme? If not, please give details and provide alternative methods we may use to assess the expertise of the governing body.**

Given the proposed timeline, it may be difficult for an entity to provide information about the members of the proposed initial governing body during the draft application period. However, it should be possible for entities to provide this detail in their final applications.

During the draft application period, the entity could provide the proposed expertise of the members, as well as the processes and criteria for appointing new members of the governing body on an ongoing basis.

**C3Q3 Do you agree that there should always be one member of the governing body who, at some point in the five years before being appointed to the governing body, met the training and competence standards that would have allowed them to give personal advice to retail clients on 'Tier 1' or relevant financial products? If not, please give details and provide alternatives.**

CPA Australia supports this proposal, noting the member should meet the knowledge and experience requirements as outlined in our comments to C3Q1.

**C3Q4 Do you agree that there should always be one member of the governing body who has experience in and knowledge of the principles of procedural fairness and administrative law? If not, please give details and suggest alternative ways that the governing body may be able to access this expertise.**

CPA Australia supports this proposal.

**C3Q5 Are there other aspects of a monitoring body's expertise that we should assess before granting approval for a compliance scheme? If so, please provide details.**

We do not believe there are any other aspects ASIC should assess before granting approval for a compliance scheme.

**C4Q1 Do you agree with this proposal? If not, please provide details and alternatives.**

CPA Australia is broadly supportive of this proposal, although we note that because members will not be employed by the entity, they will not be involved in the day to day operations of the monitoring body. It will therefore be important for the governing body to have a close, but independent, relationship to ensure sufficient oversight and interaction with the daily operations of the monitoring body.

Alternatively, this responsibility should be included in the job description of one of the senior staff of the monitoring body.

## **Resources**

**C5Q1 Are there factors, other than those listed at paragraph 88, that would affect the human, financial and technological resources required for the monitoring body to effectively carry out its role? If so, please provide details.**

We believe the factors listed in paragraph 88 capture the relevant factors that would affect the human, financial and technological resources required for the monitoring body to effectively carry out its role.

However, we do not believe whether the financial advisers are primarily located close to the monitoring body is a key factor for consideration. Rather geographical distribution will be a consideration to ensure adequate resourcing.

Of relevance, the final Code of Ethics will also be an important consideration, including any guidance. This will influence how the monitoring body will need to interpret the obligations and provide appropriate guidance for financial advisers.

**C5Q2 Do you agree with our proposed approach of asking the monitoring body to set out in a statement to ASIC the basis on which it considers its resources to be adequate? If not, please give details and provide alternatives.**

CPA Australia supports the proposed approach as this provides a level of flexibility that allows an entity to customise and scale its required resources for its compliance scheme, relevant to the factors outlined in paragraph 88.

**C5Q3 Should we set a specific benchmark for the financial resources that monitoring bodies should have initially (e.g. that monitoring bodies should have at least 12 months cash against an outlined program of work)? If so, please provide details.**

We do not believe it is necessary for ASIC to set specific benchmarks for the financial resources that monitoring bodies should have initially. However, not having sufficient financial resources could be an impediment to the success of a monitoring body. Therefore, consideration could be given a solvency or positive net assets test.

## **Outsourcing**

**C6Q1 Is the definition of ‘core function of the compliance scheme’ set out in paragraph 93 appropriate? If so, please provide details.**

We believe the definition of a ‘core function of the compliance scheme’ is appropriate and aligns with the legislative purpose of a compliance scheme.

**C6Q2 Are there key matters, other than those listed in paragraph 97, that monitoring bodies who outsource their activities should address in their contractual arrangements with outsourced service providers? If so, please provide details.**

We believe the key matters listed in paragraph 97 are appropriate and largely reflect the considerations detailed in *APES GN Guidance 30 Outsourced Services*.

## **D Compliance scheme monitoring and enforcement**

### **Monitoring and enforcement**

**D1Q1 Should monitoring bodies carry out both proactive and reactive monitoring? Please provide reasons for your response.**

CPA Australia supports the requirement for monitoring bodies to carry out both proactive and reactive monitoring as part of its oversight and enforcement activities.

Proactive monitoring has many benefits, including it:

- provides a constructive and educational opportunity to ensure highest standards and processes are consistently maintained
- will develop trust and confidence in financial planning advice and services by consumers, as they can have confidence that financial advisers are being proactively monitored against the Code of Ethics, and
- will help the sector develop as a profession to consistently provide quality advice and services to consumers.



Reactive monitoring ensures that all financial advisers are held accountable for their conduct and behaviour, and where appropriate disciplinary action take where there is a breach of the Code of Ethics.

**D1Q2 Would it be preferable to delay any aspect of the monitoring and enforcement requirements to facilitate transition to the new regime (e.g. should we delay the requirement that the monitoring body conduct proactive monitoring activities)? If so, please explain why and provide details.**

The establishment and operation of a compliance scheme will be a significant task for any entity, given the proposed requirements and obligations, including the restricted timeframe.

CPA Australia recommends that monitoring bodies are permitted to implemented a staged approach to monitoring and enforcement. This could include a pilot for proactive monitoring, allowing the monitoring bodies to commence operations and test their documented processes.

However, CPA Australia believes that it is important that a monitoring body commences reactive monitoring from the commencement of its operations. This will help ensure any potential breaches can be investigated in a timely manner to avoid further possible consumer detriment.

**D1Q3 Could monitoring bodies work together to develop a uniform approach to monitoring and enforcement, and would this be appropriate? If so, please explain why and provide details of how this could occur.**

It is possible that monitoring bodies could work collaboratively to develop a uniform approach to monitoring and enforcement. However, this would depend on the entities considering becoming a monitoring body such as whether they were professional associations or independent commercial providers.

There would also need to be agreement for entities who intend to express an interest to operate a compliance scheme to have their details shared by ASIC with other entities also expressing an interest.

It is also likely that existing professional association may look to leverage from their experience of their respective oversight and conduct programs when developing their approach monitoring and enforcement. This approach may not be supported by other entities based on their own experience or proposed work plans.

**D1Q4 Could a single body carry out these activities for all or a number of compliance schemes and would it be appropriate? If so, please provide details.**

It would be possible for one governing body to carry out these activities for all or a number of compliance schemes. This approach could have multiple benefits including:

- ensuring a uniform approach to monitoring and enforcement, including consistency in the issuing of sanctions for breaches of the Code
- reducing potential costs and duplication from multiple governing bodies, and
- confidence from consumers that all financial advisers are consistently being held accountable.

This approach could be appropriate, provided agreement could be reached amongst relevant entities for the establishment, composition and ongoing resourcing of the governing body.

A high level of independence and transparency will also be necessary to ensure trust and confidence in the one governing body overseeing multiple compliance schemes.

## **Annual work plan**

**D2Q1 Do you agree that a monitoring body should prepare a risk-based annual work plan? If not, please give details and provide alternatives.**

CPA Australia support the proposal that a monitoring body should prepare a risk-based annual work plan. However, in the first year of operation there will be no existing data or identified risks to base the development of the plan.

CPA Australia recommends that in the first year, a monitoring body develop a pilot work plan to test processes and procedures, as well as begin to collect relevant data. This can then be used to evolve into a risk-based work plan in the second year of operation.

**D2Q2 Do you agree that the annual work plan should be provided to ASIC each year, from 1 January 2020? If not, please give details.**

In principle, CPA Australia agrees that the work plan should be developed and provided to ASIC from 1 January 2020. However, given 2020 will be the first operational year it will be difficult to develop a comprehensive plan given there will be no previous activities to inform the work program or reports of possible failures to comply with the Code.

The Code of Ethics itself will also be a determining factor in potential risks and areas that should be prioritised, noting it is currently unclear when it will be finalised.

CPA Australia recommends that in the first year of operation a monitoring body develop a pilot work plan and provide this to ASIC.

**D2Q3 Do you agree that the annual work plan should be made public? If not, please give details.**

CPA Australia does not support the annual work plan being made public, as it will likely contain specific information such as the financial advisers selected for proactive monitoring

Rather, we believe the monitoring body should provide a public overview of the key areas of focus similar to the Compliance Program that the ATO previously provided to tax practitioners each financial year. This would be a key engagement activity for a compliance scheme and will help financial advisers of the scheme understand key areas of focus for possible improvement.

## **Proactive monitoring activities**

**D3Q1 Will a minimum of one thematic own-motion inquiry and one compliance statement process each year, with associated verification activities, be sufficient proactive monitoring activities to ensure that compliance with the code is appropriately monitored and enforced under a compliance scheme? If not, please give details and provide alternatives.**

CPA Australia does not support the proposal for a minimum of one thematic own-motion inquiry and one compliance statement each year.

In our 25 years of running an oversight and compliance program, it is our experience that proactive auditing is a more effective and broad-reaching activity that provides many benefits including it:

- provides participants a constructive and educational opportunity to ensure their processes are consistently maintained
- can act as a deterrent for poor behaviour, conduct and processes, knowing that this will be proactively reviewed by the monitoring body

- can help identify common or systematic issues sooner, which can then be communicated to other participants
- can provide meaningful data for analysis and for the development of risk-based work plans, and
- can enhance consumer confidence in the new framework, knowing that all financial advisers are subject to proactive audits.

We believe that proactive audits will prove a more effective and efficient use of a monitoring bodies resources, as well as provide broad positive benefits for all stakeholders than the proposed thematic own-motion inquiry and compliance statement.

CPA Australia recommends that a monitoring body should be required to audit a minimum percentage of financial advisers each year. A monitoring body could then elect to undertake further activities, such as research, at their own discretion depending on the scale of their work plan and available resources.

**D3Q2 Are the proposed proactive monitoring activities appropriate for monitoring compliance with the standards set out in the draft code? If not, please give details and provide alternatives.**

Please refer to our recommendations in D3Q1.

**Receipt and initial assessment of reports**

**D4Q1 Is it reasonable for monitoring body staff to complete their initial assessment of the report within 28 days of receiving a report? If not, what other**

In principle, CPA Australia believes that 28 days should be adequate to complete the initial assessment of a report. However, consideration needs to be given to unforeseen circumstances such as receiving a high number of reports in a short period of time or staff absences.

It is also our experience that it can sometimes be difficult to obtain the appropriate evidence, including from the complainant. A potential option may be to complete the initial assessment and possibly close the complaint and reopen if when further evidence is acquired.

**D5Q1 Do you agree with the proposal for monitoring bodies to have a communications strategy? If not, please give details and provide alternatives.**

CPA Australia believe it is important to ensure that a client understands their options and avenues to address a compliant. However, the monitoring body should have the discretion how they execute their communications strategy.

We also believe that it would be beneficial for ASIC, and once operational AFCA, to promote to consumers ASIC approved monitoring schemes to further improve the public's knowledge of the schemes role and what their options are to address an issue they may experience when seeking advice.

**Investigation process**

**D6Q1 Is it reasonable for investigations to be completed within 90 days of the initial assessment recommending that further investigations should take place? If not, what other timeframe would be appropriate?**

CPA Australia believes it is reasonable for an investigation to be completed within 90 days of the initial assessment. However, factors such as the complexity of the situation, seriousness, scope, obtaining relevant information, sourcing expert advice or the number of open investigations could impact the

proposed timeframes. It is therefore important that monitoring bodies can have a level of flexibility in such circumstances.

Further, if a matter is before the courts it should be put into sub judice. A possible solution may be that the 90 day timeframe is halted in such circumstances.

CPA Australia recommends that monitoring bodies aim to finalise the investigation within 90 days, but the time spent investigating a complaint will depend on its seriousness and complexity. We also recommend that this benchmark is reviewed after two to three years of operation.

**D6Q2 Should the governing body regularly review a random sample of matters that were investigated but not referred to it, as proposed in paragraph 134? If not, please give details and suggest alternative measures that can be used to ensure consistency and quality in the investigation and referral process.**

CPA Australia supports this proposal, as it is good governance that will help ensure consistency in both assessments and determinations. It will also help ensure the governing body allocates appropriate resources to the monitoring body.

### **Decision-making process**

**D7Q1 Do you agree that the governing body should be responsible for making the final determination about whether a financial adviser has failed to comply with the code? If not, please give details and provide alternatives that address the need to ensure that the decision maker is impartial.**

CPA Australia supports the proposal that the governing body should be responsible for making the final determination whether a financial adviser has failed to comply with the Code.

**D7Q2 Is it reasonable to expect the governing body to make a determination within 45 days of a matter being referred to it? If not, what other timeframe would be appropriate?**

CPA Australia believes a governing body should aim to make a determination within 60 days of a matter being referred to it. This provides a level of flexibility to account for different periods of the year such as Christmas and the volume of determinations required. If the members of the governing body are employed full-time, it will also be difficult for them to meet more than once a month.

Another important consideration will be the framework for how the determinations are made. For example, will the matter be considered purely on the papers provided to the governing body or will a full disciplinary tribunal need to be convened. Will individuals be present for cross-examinations and how many matters could be heard within one meeting of the governing body? These important factors further demonstrate the need for flexibility in setting benchmark timeframes.

**D7Q3 Do you agree that the governing body should comply with the principles set out in Table 4 in carrying out its decision-making activities? If not, please give details and provide alternatives.**

CPA Australia supports the principles set out in Table 4 for carrying out decision-making activities. We also note that if the process is based on a domestic tribunal, a relevant reference is Justice in Tribunals by JRS Forbes. The principles observed in domestic tribunals include:

- supporting evidence
- natural justice
- no 'surprises'

- no actual or perceived bias
- civil standard of proof, and
- reasonable person test.

## **Sanctions**

**D8Q1 Does the list at paragraph 145 capture all of the sanctions that might be appropriate to impose? If not, please give details.**

In addition to the sanctions proposed, CPA Australia recommend that a governing body has the ability to issue a financial penalty.

A financial penalty both acts as a deterrent for poor behaviour, as well as recognises the costs involved in investigating and determining a breach of the Code of Ethics. This would also be consistent with similar frameworks such as AFCA and ASIC.

**D8Q2 Are there matters other than those listed in Table 5 that a governing body should take into account when determining which sanctions to apply? If so, please provide details.**

CPA Australia believes the matters listed in Table 5 are appropriate.

## **Appeals and dispute resolution**

**D9Q1 Are there matters, other than those listed in paragraph 152, that should be covered in a monitoring body's documented appeals process? If so, please provide details.**

We believe the matters outlined in paragraph 152 address what could be covered in a monitoring body's documented appeals process. However, we also note that until the framework of the disciplinary process is documented to reflect what constitutes an appeal and the timeframes in which an appeal must be lodged, it can be difficult to capture all relevant matters.

**D9Q2 Should there be another party, aside from the governing body, that can hear appeals from covered financial advisers? If so, please give details.**

Like the complaints process between a client and a financial adviser, we believe it is important to aim to resolve the dispute between the financial adviser and the monitoring body in the first instance.

If following the documented appeals process this cannot be achieved, then we believe there may be a role for ASIC to moderate the dispute and make a final determination before potentially looking to revoking a financial adviser's coverage.

**D9Q3 Is it reasonable for a final response to be provided to a covered financial adviser about their dispute within 45 days? If not, what other timeframe would be appropriate?**

CPA Australia believes that 45 days is an appropriate time to provide a final response to a financial adviser about their dispute. There may be instances where this timeframe is exceeded and in such cases, the reasons why should be documented in the case file.

Using the example provided in paragraph 154, it would need to be clear the steps a monitoring body be expected to take if the financial adviser objected to a request for information. One solution may be:

1. issue a written request for information, with ten business days to respond

2. issue second written request for information and also notify the AFS licensee, with ten business days to respond
3. issue third and final request to the financial advice and AFS licensee which includes confirmation that ASIC have been notified of the financial adviser's non-compliance and that failure to respond will result in their membership being revoked, and
4. if no response, revoke membership notifying the financial adviser, AFS licensee and ASIC.

It should be noted that such delays to requests for information would also impact the ability to provide a final response regarding their dispute within the proposed 45 day timeframe.

## **Enforceability**

**D10Q1 Is a legally binding agreement an appropriate way to make the compliance scheme enforceable between the monitoring body and financial advisers? If not, please give details and provide alternatives.**

CPA Australia believes this is an appropriate and necessary mechanism to ensure the compliance scheme is enforceable between the monitoring body and financial adviser.

**D10Q2 Do you agree with the proposed process for dealing with non-compliance by a covered financial adviser outlined in paragraph 161? If not, please give details and provide alternatives.**

CPA Australia supports the proposed process for dealing with non-compliance by a covered financial adviser.

## **E Compliance schemes' ongoing operation**

### **Data collection, analysis and reporting**

**E1Q1 Do you agree that monitoring bodies should produce public annual reports covering the matters outlined in paragraph 167? If not, please give details (e.g. about which data in particular should not be made public) and provide alternatives.**

CPA Australia recommends that a monitoring body should be required to produce an annual report covering the matters outlines in paragraph 167. However, rather than the monitoring body making this report public, it should be provided in a prescribed format to ASIC, for ASIC to analyse and issue a consolidated report covering all ASIC approved monitoring schemes.

This approach would be consistent with other regulatory, such as the Professional Standards Council and the Financial Reporting Council. It would also provide a central mechanism for all stakeholders to access this information, rather than visiting multiple websites for example.

**E1Q2 Do you agree that monitoring bodies should produce quarterly reports for ASIC and meet with ASIC on a quarterly basis to discuss the matters outlined in paragraph 167? If not, please give details and provide alternatives.**

CPA Australia recommends that a monitoring body should issue two reports in the first year, after six and 12 months of operation. In the second year three reports should be prepared, or one every four months.

The frequency of the reports should then be reviewed and if necessary, amended.

**E1Q3 Do you agree with our proposed 45-day timeframe for monitoring bodies to report serious contraventions or systemic issues to ASIC? If not, please give details and provide alternatives.**

CPA Australia supports a 45 day timeframe to report serious contraventions or systematic issues.

**E1Q4 Would it be preferable to delay the commencement of some or all of the data collection, analysis and reporting expectations? If so, please explain why and provide details.**

Please refer to our response to E1Q2.

**E1Q5 Would it be appropriate to reduce, or consider reducing, the proposed requirements for reporting to ASIC over time? If so, please explain why and provide details.**

CPA Australia recommends the staged reporting obligations as outlined in our response to E1Q2, which is then reviewed after two years of reporting to determining an appropriate reporting cycle.

**E1Q6 Would it be feasible for monitoring bodies to work together to develop a reporting standard and would this be appropriate? If so, please explain why and provide details of how this could occur.**

It may be feasible for monitoring bodies to work together to develop a reporting standard. However, this will likely depend on the entities considering becoming a monitoring body.

### **Independent review**

**E2Q1 Do you agree with this proposal? If not, please provide details.**

In principle, CPA Australia broadly supports this proposal. However, we request ASIC provide guidance on who a suitable independent person would be to conduct such reviews.

### **Consultation**

**E3Q1 Do you agree with our proposed expectations for consulting about the compliance scheme? If not, please provide details.**

CPA Australia broadly supports this proposal. However, we believe there needs to be a threshold understanding as to what would level of change would be required to a compliance scheme that would require consultation with relevant stakeholders.

**E3Q2 Are our expectations for consultation and information sharing between monitoring bodies appropriate? If not, please give details and suggest alternatives.**

CPA Australia supports the obligation for consultation and sharing between monitoring bodies.

## **Ongoing support and education for advisers**

**E4Q1 Do you agree that monitoring bodies should offer support to covered financial advisers to help them comply with their ethical obligations? If not, please give details.**

CPA Australia agree that monitoring bodies should offer support to covered financial advisers to help them comply with their ethical obligations.

This can be through a range of mechanisms, including webinars and digital content which will be important to support regional based financial advisers.

**E4Q2 Are there any forms of support not listed in paragraph 189 that we should suggest? If so, please provide details.**

There are multiple ways a monitoring body could support its covered financial advisers, including webinars, discussion groups, seminars, podcasts and online case studies for example.

To encourage innovation and development using different channels and mediums, we do not believe ASIC should prescribe how a monitoring body should support covered financial advisers.

## **F Revocation of and conditions on compliance scheme approval**

### **Information we will use to make a decision**

**F1Q1 Is there information other than that set out in paragraph 193, that we should take into account when deciding whether to exercise ASIC's powers to revoke approval of a compliance scheme or vary or impose a condition on approval? If so, please provide details.**

In addition to the information set out in paragraph 193, we would recommend that ASIC should first engage with the monitoring body to raise any initial concerns. From there it can determine what additional, if any, information and steps it should consider when deciding whether to exercise its powers to revoke the approval of a compliance scheme as outlined in paragraph 193.

### **Threshold for making decision**

**F2Q1 Are there matters other than those set out in paragraphs 197 and 198 that we should take into account when deciding whether to exercise ASIC's powers to revoke approval of a compliance scheme or vary or impose a condition on approval? If so, please provide details.**

The matters outlined in paragraphs 197 and 198 are appropriate to consider when deciding whether to revoke the approval of vary or impose a condition on a compliance scheme.

**F2Q2 In what circumstances should we exercise ASIC's power to revoke a compliance scheme's approval or impose conditions on our approval? What conditions should be imposed?**

CPA Australia believes that circumstances in which ASIC could use its power to revoke a compliance schemes approve or impose conditions may include:

- significant reduction in resources and expertise
- systematic failures in process
- non-compliance of reporting obligations for two consecutive periods



- failure to complete the majority of activities of the agreed work plan, or
- appointment of non-executive director to governing body that is in conflict with the provisions.

Conditions that ASIC may impose could include:

- replacement of resources or expertise that had been reduced
- modify the existing work plan to address activities that have failed to be undertaken
- independent review of the scheme outside of the proposed five year cycle, or
- appointment of an ASIC-approved non-executive director to the governing body.

## **G Requiring AFS licensees and authorised representatives to provide information to monitoring bodies**

### **Declaration to require AFS licensees and authorised representatives to provide information to monitoring bodies**

#### **G1Q1 Do you agree with our proposed amendments to s921L(3) and s921M(2)? If not, why not?**

CPA Australia supports the proposed amendments, as they are necessary for a compliance scheme to effectively carry out their proactive monitoring obligations, which is integral to creating confidence and trust in the new framework.

#### **G1Q2 Will our proposed amendments be sufficient to enable monitoring bodies to carry out the activities we are proposing to expect? If not, please give details and provide alternatives.**

We believe the proposed amendments will be sufficient to enable monitoring bodies to carry out the proactive and reactive monitoring activities, which we recommend includes proactive audits. However, we recommend that the effectiveness of the amendments is reviewed after 12 months of operation to ensure they remain appropriate or if further amendments may be necessary.

As discussed earlier in our submission, clarity is needed whether a failure by the financial adviser to produce evidence would constitute a statutory breach, and if so, whether ASIC is to be the responsible entity or body for prosecuting the matter.

The collection of evidence when and as required is crucial to the effectiveness and timely completion of any investigation. If a financial adviser failed to comply with a monitoring scheme's request, revocation of membership may be the only sanction the governing body could issue. However, this alone would not be suitable as it would fail to address the original complaint.

Another consideration would be jurisdiction to address complaints. For example, if a complaint related to when the financial adviser was a member of another compliance scheme it needs to be clarified if the financial adviser's current compliance scheme has jurisdiction to investigate the complaint.

#### **G1Q3 Please give details of any additional costs to AFS licensees, authorised representatives or monitoring bodies associated with monitoring bodies gathering information in reliance on a modified s921L(3) and s921M(2), as opposed to some other mechanism. If possible, please quantify these costs.**

If the financial adviser and AFS licensee have robust and efficient internal controls and procedures, we do not believe there would be much cost imposed to comply with a request for information.

## **H Notifications to ASIC**

### **Notification requirements**

**H1Q1 Is it reasonable for the monitoring body to notify ASIC of a ‘significant’ reduction in the resources or expertise it uses to monitor and enforce compliance with the code within 45 days of becoming aware of the reduction? If not, what other timeframe would be appropriate?**

We believe it is appropriate for a monitoring body to notify ASIC of a ‘significant’ reduction in resources or expertise within 45 days of becoming aware of this change.

**H1Q2 Are there any matters, other than those set out in paragraphs 209–210, that monitoring bodies should be required to consider when deciding whether a reduction is significant? If so, please provide details.**

CPA Australia believe the matters outlined are appropriate to consider when deciding whether a reduction is significant, noting that ensuring a governing body and monitoring scheme continually has the required skill sets is fundamental to it meeting its obligations.

### **Notifications about proposed modifications to a compliance scheme**

**H2Q1 Do you agree with our proposed guidance? If not, please provide details.**

CPA Australia are broadly supportive of the proposed guidance for notifications about proposed modifications.