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PRINCIPAL MEMBERS



Dear Ms Fung,

Thank you for the opportunity to provide comment on ASIC's Consultation paper on approval and oversight of compliance schemes for financial advisers (CP 300).

The GRC Institute is a membership based organisation for compliance and risk professionals throughout Australia, New Zealand and Hong Kong. Our members work for a variety of organisations both within financial services and much wider.

Our submission to this consultation paper has been put together based on our years of experience with our members' working with advisers and their feedback on their experiences with building compliance frameworks and education programs to assist them with being compliant and providing positive outcomes for their clients. We will attempt to be practical and constructive in our response to this draft and provide insights from our members' experience, successes and failures.

General feedback:

Our first observation is that the use of the term 'compliance' and 'compliance schemes' in this paper, whilst able to be understood, is inaccurate and does not adequately disclose the duties that are being required.

ASIC is developing an enforcement regime for a code of ethics for financial advisers. Given that our members struggle to convey compliance as the framework and tool to meet obligations and enforcement as the actions of a third party to supervise that you have *complied with* obligations, we feel it necessary to suggest a changing of the language utilised in regard to this scheme going forward. The paper does not suggest in any way that the third parties supervising the advisers are required to build a compliance framework to support these individuals and their organisations. Further, clarifications

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about the relationships including any compliance coordination between third parties and organisations where advisors work would be needed to avoid confusion in the implementation of this compliance 'scheme'.

A compliance framework, at its best, is a framework that supports those working in an organisation, or ecosystem or market in this case, to learn how to carry out their work requirements and meet organisational objectives, while being compliant with laws and regulations. Compliance frameworks are not restrained, when done well, by a letter of the law approach. Indeed, the best of compliance frameworks build in customer best interests and organisational policies and procedures that go beyond the letter of the law. An integral part of a compliance framework is education and support, two way communication and an ability to answer questions and handle incidents without repercussions where the reporting party has voluntarily come forward with an issue or suspected issue.

What ASIC is asking of this consultation paper is for third parties to enforce a code of conduct from another third party. There are no requirements built in with the expectation that these bodies would education, support, communication and help improve the practices of advisers in their role as approved by ASIC. We strongly suggest then that this should be made clear in the language. If ASIC's intent is for these bodies to actually provide a holistic compliance framework to support advisers with adhering to the code of conduct, then this should be outlined and not just implied. The substance of the paper suggests that this is not the case.

The GRC Institute has already commented to the FASEA's paper in regard to the code of ethics that merely asking advisers, yet again, to adhere to the law in spirit, where the law already requires them to undertake these duties, is unlikely to provide any added value. We would strongly suggest that ASIC require these bodies to educate and build a real compliance framework to support advisers, in addition to , however if ASIC is only interested in enforcement and reporting to ASIC, then this won't be required.

As the FASEA acknowledged in its paper, advisers are just one part of what may be a potentially organisation wide problem. One possible way of mitigating the risk of culture, conduct and incentives flowing downward to the advisers and adverse effects on the client, is to consider the potential uses of the three lines of responsibility model of compliance. We would suggest that ASIC support this approach and when reviewing the requirements.

Line	Who	Responsibility
First	Third parties Advisers Employees Line Management Senior Management Board	'Does' and owns compliance as part of their embedded business strategy, structure and operations – they are responsible for complying. They are supported in this by the second line. Will have inherent interest in sales and financial performance to a greater or lesser degree. Risk associated with potential conflict between these interests and compliance responsibilities.
Second	Compliance team	Compliance subject matter experts who ensure that compliance is done. They are responsible for the compliance program. Should have no connection to KPI's based on sales or financial performance to ensure independence.
Third	Audit and Review Specialists and experts and internal/external auditors	Independent experts who check on the effectiveness of controls in place to address compliance risks. They are responsible for checks and balances on the program. Should have no connection to KPI's based on sales or financial performance to ensure independence.

Strengthening the paperwork trail of permissions doesn't address the risks to clients or their understanding of the advice or products. The risk of a betrayal of trust can be mitigated by addressing the additional connection points and expectations of clients. We would suggest that potentially, rather than ensuring consents are documented, that advisers need to alter their behaviour in giving advice to encompass broader financial education and to evidence that they have been able to impact a client's knowledge and sophistication of understanding of the advice they are given. This would lead to a better quality of assurance around 'informed consent.'

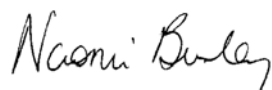
Finally, to supplement internal compliance framework structures and supports for the first line, external educational and guidance should be provided by an independent party who is able to translate case studies and examples of how ethical behavior 'looks' in practice in an adviser environment. This may be critical where advisers are operating in an SME practice where there isn't a second or third line provided internally (or at all.)

We suggest that both of the above is a potentially valuable role for the industry bodies ASIC is considering approving as part of the enforcement scheme and that ASIC should ask and require these bodies to demonstrate how they are going to tangibly support the advisers in being compliant and genuinely going beyond the law, not just how they are going to track, monitor and report them. As ASIC would be aware, there are existing problems for organisations in tracking their own advisers, none-the-less a third party, despite any independence. Further, ASIC should consider providing some guidance on coordination issues between the compliance teams of third parties and organisations where advisors are employed to avoid problems associated with various stakeholders complying with their respective compliance objectives and obligations.

This submission has been compiled from GRCI member feedback and with the valuable contribution of GRCI's Hong Kong Representative, Dr Angus Young.

We would love to discuss our submission further, should you have any questions we can be contacted directly via our Sydney office.

Kind Regards,



Naomi Burley
Managing Director
GRCI