

Australian Securities and Investments Commission

Via email: referencechecking@asic.gov.au

January 28, 2021

Dear ASIC,

Consultation Paper 333: Reference checking and information sharing

Thank you for the opportunity to comment on ASIC's Consultation Paper 333. The sharing of information about the background, conduct and compliance of financial advisers is critical to ensuring the consistency and quality of the financial planning experience received by Australian consumers, and an important risk management control for Australian financial services licensees.

As a financial services licensee licensing financial advisers for over 2 decades, IFS has experienced the issue of difficulties in retrieving and checking references, conduct and compliance backgrounds of financial advisers. Our experience is largely consistent with ASIC's findings in this area published in ASIC's Report 515, and the findings of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. We do note however, that the sharing of adviser histories between AFS licensees has improved markedly over the past 3 years – although consistency of reporting approaches and timeliness in response remains an issue.

IFS broadly supports the proposed ASIC protocol and legislative instrument provided by ASIC for consultation. IFS believes it generally strikes a balance between administrative burden and benefit to the industry and Australian consumers.

IFS would like to provide feedback to ASIC on a number of selected items in its proposed protocol – these are outlined in the following pages.

If you have any questions or would like to discuss further, please don't hesitate to contact me.

Yours sincerely,

Csaba Baranyai
Executive Manager – Legal, Risk & Compliance

Proposed ASIC Protocol

IFS supports the introduction of a reference checking protocol by ASIC, setting a standard for AFS licensees to share background, conduct and compliance histories of financial advisers with other AFS licensees.

1 Taking Reasonable Steps to Obtain a Reference

- (a) IFS **supports** this proposal as it will increase the efficiency and efficacy of conducting reference and background checking of financial advisers that IFS is considering licensing.
- (b) IFS believes that the obligation should **not** be limited to only the current or most recent licensee of a prospective representative. Such a limitation would significantly reduce the effectiveness of the reference checking process where a representative has moved between multiple licensees within the past 5 years and provide only a limited picture of their background and conduct.
- (c) IFS **supports** the extension of the reference checking obligation to all licensees that employed and and/or licensed a prospective representative within the prior 5 years as this would provide an adequately comprehensive background of the prospective representative for the recruiting licensee to make an informed recruitment/licensing decision.
- (d) IFS does **not support** the obligation for the current or most recent former licensee to provide to the recruiting licensee reference checking history provided to the former licensee in addition to their own reference. IFS believes that such an obligation would increase the complexity of the protocol, and have the potential to extend to the 5 year reference period to far longer by the perpetual 'rolling over' of reference checking materials from licensee to licensee.

2 Seeking consent of prospective representative

- (a) IFS **supports** the requirement for recruiting licensees to obtain consent from prospective representatives in order to request a reference from their current or former licensees. However, IFS does **not support** the requirement for that consent to be written and part of the proposed ASIC reference form.
- (b) However, IFS does **not support** the requirement for licensees providing a reference to another licensee, to have to obtain and check written consent from the prospective representative before providing that reference to the recruiting licensee. IFS feels that this would introduce unnecessary administration and delay in the reference process.
- (c) IFS believes that balancing a minimum of administrative work and delay, with protecting the privacy of prospective representatives, is possible by:
 - a. Recruiting licensees obtaining consent from prospective representatives as part of the recruitment process. This could be in writing, online or verbally;

- b. Licensees providing references at the request of another licensee, should be able to assume that and rely on the recruiting licensee having obtained consent; and
- c. Making it a civil penalty offence for a licensee to request from another licensee, a reference where no consent has been obtained.

Essentially, under this model, the onus is on the recruiting licensee to ensure they have obtained the consent of the prospective representative, while the licensees providing references can quickly and efficiently provide them.

3 Giving References

- (a) IFS **supports** the requirement to provide references in a set template as this will improve the consistency of information shared between and by different licensees.
- (b) IFS **supports** the requirement to provide references within 10 business days of receiving a request from a recruiting licensee as this provides a reasonable period of time to prepare the reference, whilst being timely enough for recruitment and licensing activities.
- (c) IFS does **not support** the requirement for referee licensees to provide updated references to recruiting licensees, where matters within a reference are unresolved. It's not uncommon for such issues to take weeks or months to resolve, and it is administratively unfeasible for licensees to maintain a running record of past references that require updating on an ongoing basis. This would introduce unnecessary administration, complexity and deliver little value to the reference checking regime. IFS believes it should be incumbent on the recruiting licensee to request an updated reference if they wish to receive one.