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Via email: rri.consultation@asic.gov.au

Dear Ms Hadisutanto,

Consultation Paper 285 – Update to Regulatory Guide 181

The Financial Advice Association of Australia (FAAA)¹ welcomes the opportunity to provide feedback on ASIC Consultation Paper 385 and the proposed update to Regulatory Guide 181. We appreciate ASIC's work to modernise and clarify this important area of regulatory guidance, and to ensure that Australian Financial Services Licensees and others within the financial services industry (such as financial advisers) are held to a consistent standard in the management of conflicts of interest.

Confidence in the handling of related-party transactions is fundamental. Failures in this space, most prominently in the Dixon Advisory, United Global Capital, Shield Master Fund and First Guardian cases, have been central to consumer harm and a loss of trust in financial services and financial markets. The update to RG 181 provides ASIC with an important opportunity to set clearer expectations about how related-party conflicts are identified and managed, including when these conflicts are embedded in structures rather than merely transactional.

It has become clear to the FAAA that this lack of clarity, as highlighted in the case of Dixon Advisory and others, has led to serious consumer harm. The consequences have been substantial, with downstream effects on the financial advice profession by having to pay for these failures through the Compensation Scheme of Last Resort. Related party transactions appear to be a central problem in all the recent major product collapses, including more recently with both Shield and First Guardian.

The Shield and First Guardian matters have highlighted a range of issues with respect to the delivery of financial services, including the operation of cold calling outfits and the payment of marketing payments to entities that are associated with financial planning businesses. It is essential that the legal consequences of this are addressed and that this

¹ The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. It was formed in 2023 following the merger of the two leading financial planning/advice bodies in Australia – the Financial Planning Association (FPA) and the Association of Financial Advisers (AFA). With this merger, a united professional association that advocates for the interests of financial advisers and their clients across the country was created.

is reflected in the **conflicts management** guidance. The obligations of licensees in having oversight of their authorised representatives needs to address the expectations in understanding the existence of these arrangements.

Regulatory Background

The core legal obligation with respect to the management of conflicts of interests emanates from Section 912A(1)(aa) of the Corporations Act, however financial advisers also have an obligation under section 961J, where they have a conflict of interest, to give priority to the client's interests when giving the advice. Financial advisers are also bound by the Financial Planners and Advisers Code of Ethics, where Standard 3 states “You must not advise, refer or act in any other manner where you have a conflict of interest or duty”. Despite this failing to reflect the reality of any profession and being totally inconsistent with the law, it has been in place since commencing in 2020. The former Minister committed in August 2023 to review the Financial Planners and Advisers Code of Ethics, however this is yet to happen. It is important that this review happens as financial advisers are being forced to operate in an impractical manner at present. The draft RG 181 recognises the Code of Ethics, however provides no further guidance on it.

Adviser-level responsibilities

In relation to **B1Q1**, we believe ASIC should make explicit that licensees must not only establish conflict management frameworks but also ensure that advisers understand and discharge their own obligations under these guidelines. This extends to their statutory **Best Interest Duty**. While we appreciate that this framework is currently under review as part of the government's ‘Delivering Better Financial Outcomes’ process, these responsibilities remain central to the deliberately ‘independent’ (although not always fully compliant in terms of Section 923A) nature of the advice that many advisers provide. Relatedly, once the government's review of the financial adviser Code of Ethics has been completed, it is important to recognise that RG 181 will need to be updated to reflect any changes to those obligations.

We note the section on page 21 on “Disclosure for retail and wholesale clients” and the statement “that disclosures for wholesale clients may be less detailed than for retail clients”. This reflects the substantial difference in the expectations of retail advisers, who have very high standards of conflicts management and wholesale only client advisers who are still able to receive conflicted remuneration and operate in a much lighter touch disclosure regime. RG 181 makes it clear that a range of conflicts management obligations apply to wholesale only client advisers and we assume that the licensees **who authorise them** ensure that their policies and practices address this.

Broad guidance, not a checklist

It is not sufficient for conflict obligations to sit conceptually at the licensee level; obligations must cascade clearly to the adviser-client relationship. We commend ASIC's work in developing a “roadmap” that demonstrates the intersection of conflict obligations with related duties. This broad approach is useful, but it is important that it remains just that:

broad. The roadmap should not evolve into a checklist. The obligations under RG 181 are deliberately broad and should remain principle-based: they are designed to encourage careful, contextualised decisions, not mechanical compliance.

We support ASIC's intention to clarify what "adequate arrangements" mean in practice. What is missing, however, is guidance that recognises good practice already operating within the advice profession. We encourage ASIC to distinguish clearly between documentation that merely demonstrates compliance, and documentation that is truly effective in helping advisers manage conflicts in their client relationships. RG 181 should reinforce that arrangements must be effective, not just in existence.

ASIC's inclusion of new illustrative examples is welcome. Examples in private equity, related-party arrangements and distribution structures are great but many of these scenarios are more reflective of wholesale markets than of retail or personal advice. We welcome examples that are reflective of the personal advice to retail clients space.

Proportionality

Finally, we welcome ASIC's express articulation of **proportionality** in paragraph 181.48 of the draft RG. This principle is vital. Conflict management arrangements must scale with the size, complexity, and risk profile of the licensee. This ensures that small and mid-tier advice businesses are not unnecessarily burdened, while ensuring that large institutions cannot satisfy their obligations with minimal frameworks. We are pleased to see this concept recognised here and we encourage ASIC to make proportionality central to the finalised guide.

Conclusion

The FAAA supports ASIC's initiative to refresh RG 181. We encourage a final guide that is principle-based, scalable, and clear. In particular, ASIC should:

- emphasise adviser-level responsibilities alongside licensee frameworks;
- preserve the roadmap as broad guidance, not a checklist;
- anchor the framework in proportionality.

We look forward to ongoing engagement with ASIC as this guidance is finalised. If you have any questions with respect to this submission then please contact me on [REDACTED] or via [REDACTED]

Yours sincerely,

[REDACTED]

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Financial Advice Association of Australia