



29 January 2021

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Australian Securities and Investments Commission

By email: referencechecking@asic.gov.au

Dear ██████████

ASIC Consultation Paper 333: Implementing the Royal Commission recommendations: Reference checking and information sharing

The Australian Banking Association (**ABA**) welcomes the opportunity to provide our response to Australian Securities and Investments Commission (**ASIC**) Consultation Paper 333 on the implementation of a reference checking and information sharing protocol for financial advisers and mortgage brokers (**ASIC Protocol**).

General comments

ABA's reference checking and information sharing protocol

The ABA fully support a mandatory reference checking and information sharing protocol to ensure both consistent practice across the industry and that employment information will be available about all financial advisers and mortgage brokers, thereby improving the quality of advice and/or service received by consumers. However, we have concerns about the practical application and usefulness of some of the suggested requirements in the proposed ASIC Protocol.

In 2016, the ABA established a reference checking and information sharing protocol (**ABA Protocol**) to improve reference checking during the recruitment of financial advisers by member banks (and subsequently other financial advice licensees). Our protocol has operated since September 2016 to promote information sharing about the performance history of financial advisers focusing on compliance, risk management and advice quality, and sets minimum standards for checking references and sharing information, through a series of standardised questions and record keeping practices. This protocol is well-embedded amongst subscribers and has functioned well over the past four years.

Any new mandated protocol should be succinct and should build upon the efficiencies already established by licensees who are regularly involved in the request or provision of references, which would include Australian Financial Service Licensees (**AFSLs**) subscribed to the ABA Protocol. We would urge ASIC to review the information to be provided through the reference template. The extra information being sought may delay the process of providing the reference, is unlikely to be of use to the recruiting licensee, and introduces more complexity to the process. We therefore recommend that the ASIC Protocol mirror the ABA Protocol with minimal change.



Unique identifier for mortgage brokers

Given that current financial advisers are provided with a unique ASIC reference number, and that this ASIC Protocol is being expanded to include mortgage brokers, then the ABA fully supports the proposal of the Combined Industry Forum (CIF) that an ASIC unique identifier be developed for mortgage brokers. A unique identifier would support the efficient flow of information between parties undertaking reference checking for those who engage in Credit Activities (as defined in the NCCP Act) and be consistent with structure for financial advisers.

Aggregators where a broker is a licensee

Credit providers currently rely on aggregators to conduct appropriate checks of mortgage brokers that sit under them, whether they are a prospective representative or licensee. The regime currently appears to assume all brokers are prospective representatives and the ABA seeks clarity from ASIC on how the ASIC Protocol is to apply to aggregators where a broker is a licensee and not a prospective representative.

Specific comments

The ABA's comments on the legislative instrument, template reference request and the proposed information sheet are outlined in the attachment to this letter.

We thank you for the opportunity to provide comments on the proposed protocol and look forward to working with ASIC through this consultation process. Please contact me on [REDACTED] or at [REDACTED] if you have any questions.

Yours sincerely

[REDACTED]

Essam Husaini
Associate Director, Policy
Australian Banking Association



Attachment - ABA feedback on ASIC's reference checking and information sharing protocol

Part B - Proposed legislative instrument – Obligations for licensees

Issue	ABA comment
Taking reasonable steps to obtain a reference	<p data-bbox="712 408 1312 435"><i>Do you agree with the proposal? If not, why not?</i></p> <p data-bbox="712 475 2045 566">The ABA is of the view that this is an unnecessary change to the current ABA Protocol and creates further complexity. In practice, many licensees seek references over a five-year period to allow for a holistic view of the performance of the adviser or broker.</p> <p data-bbox="712 603 2007 662">The ABA seeks clarity from ASIC on what it considers are reasonable steps to obtaining a reference. We would suggest ASIC outlines a view on best practice to ensure consistency across the industry.</p> <p data-bbox="712 699 2045 826">ABA recommendation: In line with the ABA Protocol, a reference should be obtained from all licensees the prospective representative has been a representative of or employed by in the previous five years to ensure recruiting licensees have a complete view of the compliance record of any prospective representative. The five-year period should commence from the point the adviser or broker provides consent.</p> <p data-bbox="712 863 1868 890"><i>Do you think the obligation should be limited to obtaining a reference from a current licensee?</i></p> <p data-bbox="712 927 2029 1050">The ABA supports an ASIC Protocol that allows references to be sought from all licensees over a five-year period from the date of consent of the prospective representative. Limiting the ASIC Protocol to just the current licensee does not adequately provide an assessment of the performance of the prospective representative and serious compliance concerns of previous licensees could go unshared.</p> <p data-bbox="712 1086 1995 1214">ABA recommendation: In line with the ABA Protocol, recruiting licensees should be required to seek references from previous licensees over the last five years whereby the prospective representative was authorised or aggregated under those licensees. With the five-year period commencing from the date of consent of the prospective representative.</p> <p data-bbox="712 1251 1888 1310"><i>Do you think the obligation should extend to all former licensees who employed the prospective representative in the five years before the request?</i></p> <p data-bbox="712 1347 1364 1374">The ABA supports this. See above for our reasoning.</p>



Do you think a recruiting licensee should be able obtain from a current or most recent former licensee previous references provided to them under the ASIC Protocol?

The ABA is of the view that in most circumstances a recruiting licensee should be seeking information directly from the former licensee and not relying on a reference report they have previously provided, as in between the time the reference was made and the recruiting licensee seeking this information, new information may have been revealed around that particular adviser or broker.

However, a particular circumstance may exist where the former licensee is no longer operating, in this situation, an ability to obtain a previous reference report provided by that licensee would be beneficial.

ABA recommendation: Recruiting licensees should not be able to obtain former licensee reference reports, rather the recruiting licensee should be seeking this information directly from the referee licensee. An exception should apply where the former licensee is no longer in operation, where obtaining the reference report may be of value.

Licensees no longer operating

The legislative instrument does not provide any guidance on what obligations apply where an entity no longer operates or ceases providing relevant financial advice or broking services.

The ABA believes there needs to be a consistent approach to this across industry to ensure the integrity of the process. For an entity to continue to comply with the protocol after it ceases holding an AFSL, it still needs to exist in some form and have a designated representative listed to complete required actions. This may be possible for large organisations that have multiple businesses, but it is less likely for small to medium size firms.

We note that it is possible that a licensee may not consider employing the broker or adviser without the reference check for a relevant period of recent employment. Therefore, we suggest that guidance needs to be provided that licensees should not draw adverse inferences about a broker or adviser merely because it cannot obtain a reference check in these circumstances.

We would suggest ASIC clarify in its guidance the obligations of a licensee in the following scenarios:

- A business that has ceased, but still has a licence to operate for the purpose of completing all remediation activities that are derived from the former advice business.
- A business that has ceased and no longer has an active licence.
- Businesses who no longer have a key person/principal (e.g. deceased) and no one remains in a position to provide a reference for ex-advisers.



Seeking consent of a prospective representative

ABA recommendation: The obligations under the ASIC Protocol should not apply to an entity no longer providing relevant financial advice (this includes licensees who are no longer providing personal advice, but are undertaking a broader client remediation program) or broking services and a hiring licensee should not be required to seek information from such an entity. Guidance should be provided to ensure that advisers and brokers are not adversely impacted due to a previous employer no longer operating and complying with the ASIC protocol.

Do you agree with the proposal? If not, why not?

The ABA supports ASIC's proposal, but we seek further clarity that electronic forms of consent by the prospective representative are acceptable. This would allow for an efficient and timely process for seeking the reference.

ABA recommendation: Recruiting licensees should be required to seek the prospective representative's consent before requesting a reference. Electronic consent should be acceptable under the ASIC Protocol.

Should ASIC prescribe a consent form? If so, should the template consent form require any further information to be disclosed to the prospective representative?

The ABA supports ASIC prescribing a template consent form to ensure consistency across the industry. We would suggest that the template consent form contain guidelines on the information being sought, alongside the rights and obligations of a prospective representative. The consent form should also include a link to the ASIC Protocol.

ABA recommendation: ASIC should prescribe a template consent form. This form should contain a description of the information sought and the rights and obligations of the prospective representative. The consent form should be able to be accessed electronically and enable electronic consent.

Will this proposed obligation to obtain written consent cause practical problems for licensees?

The process to receive consent from the prospective representative is a standard process under the ABA Protocol. Member experience to this point has not identified any practical issues with requiring this consent.



Requesting a reference

Do you agree with the proposal? If not, why not?

The ABA supports ASIC prescribing a list of questions about a prospective representative that is applied across the industry. This will ensure consistency and provides certainty for licensees and prospective representatives. While we support ASIC providing a template reference request form, we are of the view that it should not be mandatory for a licensee to use that specific template document. Flexibility is necessary for larger AFSLs or those that have report generating systems and tools, who may prefer to integrate the prescribed list of questions into their current report generation process. Provided the template report generated meets all the requirements of the ASIC Protocol, including using the same questions, numbering, and ordering, then AFSLs should be allowed to generate their own template report.

ABA recommendation: ASIC set out a prescribed list of questions for referee licensees to ensure consistency across industry. ASIC should also provide a template reference request form, but it should not be mandatory for licensees to use this specific template. Rather licensees should be able to generate their own template report provided that generated template meets all the requirements of the ASIC Protocol, including using the same questions, numbering, and ordering.

Requesting additional information

Do you agree that a recruiting licensee may make more than one request to a referee licensee and may seek additional references from former licensees?

The ABA supports the ability of the recruiting licensee to seek more than one request from a referee licensee and the ability to seek additional references from former licensees. We would suggest ASIC outline circumstances for seeking further information. Without clarity, there may be situations where the second request will lead to the recruiting licensee receiving an identical response to what was originally provided.

ABA recommendation: Recruiting licensee should be able to seek more than one request from referee and former licensees. We would suggest ASIC provide clarity on circumstances where this should occur to avoid the recruiting licensee receiving an identical reference report to what was previously provided.

Limitation on requesting additional information

Do you agree with the proposal? If not, why not?

The ABA has concerns with the ASIC Protocol allowing recruiting licensees the ability to introduce new questions to the template reference request. This would be an additional burden on referee licensees. It would also introduce uncertainty and slow the process of providing the reference.

In addition, it is unclear to the ABA if any additional information sought by the recruiting licensee is covered by the defence of qualified privilege.

ABA recommendation: ASIC's Protocol should be limited to the reference request template questions. If ASIC intends to allow recruiting licensees to seek further information through the addition of questions to the template, then the ASIC Protocol should make clear that referee licensees are under no obligation to complete the additional questions. We would suggest the draft instrument clearly outline that if a referee licensee responds to such questions, then that licensee would be captured by qualified privilege.

Proposed legislative instrument – Obligations for referee licensees

Issue	ABA comment
Giving references	<p data-bbox="712 639 1312 663"><i>Do you agree with the proposal? If not, why not?</i></p> <p data-bbox="712 703 2051 1023">In line with the ABA Protocol, the ABA supports the requirement for a referee to provide a response within 10 business days of a request being made by a recruiting licensee, unless a longer period is agreed between the licensees. We do, however, raise concerns with the 20 business day limit imposed by ASIC for providing the reference. We note that the ASIC Protocol outlines a number of items that must be gathered to complete the reference request. Such items include information regarding all compliance audits, a wide variety of details on the conduct of the representative, and also ongoing inquiries/investigations and unresolved complaints in relation to the prospective representative. We therefore suggest the ASIC Protocol allow for a maximum limit of 30 business days where it is agreed between the licensees. This would ensure referee licensees are able to complete any investigative work necessary and meet all their obligations under the template reference request to the standard expected of ASIC.</p> <p data-bbox="712 1070 2051 1198">ABA recommendation: The ASIC Protocol require a referee licensee to provide a response within 10 business days of a request being made by a recruiting licensee unless a longer period is agreed to between the licensees. Where a longer period has been agreed to by the licensees, a 30 business day maximum limit should apply for referee licensees to provide a reference on a prospective representative.</p> <p data-bbox="712 1246 1637 1270"><i>Should ASIC allow verbal responses to be given under the ASIC Protocol?</i></p> <p data-bbox="712 1310 2051 1406">The ABA does not support the ASIC Protocol allowing verbal responses. This would impose a higher compliance burden on licensees and introduces unnecessary privacy risks. Consistent with the ABA Protocol, all references should be made in writing.</p>



Requirement to respond to all questions

The ABA seeks clarity from ASIC on whether circumstances exist where a licensee may be unable to respond to a specific question in the ASIC Protocol, and in what circumstances this is acceptable.

Updating a reference

Do you agree with the proposal? If not, why not?

The ABA does not support imposing a responsibility on the referee licensee to provide an updated reference on the outcome of an investigation, inquiry or audit once finalised. Given the primary responsibility for requesting a reference and complying with all onboarding requirements rests with the recruiting licensee, it should in turn be the recruiting licensee's responsibility to follow up on any open matters that they require additional information on.

ABA recommendation: In line with the ABA Protocol, the ASIC Protocol should not impose an obligation on the referee licensee to provide an update on the outcome of an investigation, inquiry, or audit. The onus should fall on the recruiting licensee and the ASIC Protocol should facilitate the ability of that licensee to make additional requests about the updated status of an inquiry/investigation notified in the reference check.

Is the proposed six-month timeframe for an updated reference appropriate?

The ABA supports the six-month timeframe to provide an updated reference. However, as mentioned above, the responsibility to follow up on outstanding matters should fall on the recruiting licensee.

Rationale – employing an adviser with an open investigation

The ABA seeks clarity from ASIC on how recruiting licensees should manage prospective representatives under investigation. There are associated risks and consequences for authorising an adviser while a matter is still open with a referee licensee. This could result in negative consequences for customers. Alternatively, waiting on the matter to be resolved could have practical employment implications for the prospective representative who may have to wait to be onboard. In this regard, we would suggest ASIC provide guidance on how best to manage this situation.



Proposed legislative instrument – Obligations for all licensees

Issue

ABA comment

Agents acting on behalf of licensees

Do you agree with the proposal? If not, why not?

The ABA supports the ability for a licensee to authorise an agent to collect, use, disclose or store personal information on their behalf for a reference check of a prospective representative.

Will this requirement cause any practical problems?

The ABA sees no problems with this proposal. It is consistent with the ABA Protocol.

Do you think a prospective representative must consent to the use of an agent to undertake the reference check?

The ABA is of the view that consent is not required from the prospective representative. The use of an agent is a decision of the recruiting licensee and the prospective representative should not have a say in the business model a recruiting licensee uses in obtaining the reference. Provided the prospective representative has provided consent for the reference check, then the use of an agent should be at the discretion of the recruiting licensee.

ABA recommendation: The use of an agent to undertake the reference check should be at the discretion of the recruiting licensee. Consent should not be required from the prospective representative.

Permitted use of information

Do you agree with the proposal? If not, why not?

The ABA supports the information collected by a licensee or their agents in accordance with the ASIC Protocol must only be collected, used, disclosed, or stored for the purpose of reference checking and information sharing in accordance with the protocol.

Do you agree that a recruiting licensee that is given a reference about a prospective representative in accordance with the ASIC Protocol may give a copy of the reference to the representative?

The ABA sees merit in allowing the prospective representative access to a copy of the reference. Having access to the reference would make the process more transparent and will enable the financial adviser or



broker the ability to address any adverse reference with the hiring licensee. However, the provision of the reference to the prospective representative should be subject to the following conditions:

- A copy of the reference can only be provided by the referee licensee. There should be no obligation on the referee licensee to respond to questions / challenges from the prospective representative around the content of the reference.
- The referee licensee has full discretion not to provide it where providing the reference may prejudice appropriate action against unlawful activity, misconduct (including breach of licensee policies) and including ongoing matters / investigations (including remediation programs / reviews).
- Qualified privilege would not be affected by providing the reference to the financial adviser or broker.

Some clarity is also sought around the ASIC Protocol providing subscribed licensees with the ability to share previously collected references with other subscribed licensees only for the purpose of an investigation of any potential misconduct from the prospective representative.

ABA recommendation: The ABA supports the prospective representative having access to a copy of the reference subject to the above conditions.

No arrangements to limit information

Do you agree with this proposal? If not, why not?

The ABA supports the ASIC Protocol prohibiting the licensee from entering into any agreement with any individual that limits the licensee's ability to collect, use, disclose and store information. This is consistent with the ABA Protocol.

Maintaining a contact point for reference checking

Do you agree with this proposal? If not why not?

The ABA has concerns with requiring each licensee to have varying arrangements in place to ensure they can be easily contacted by a recruiting licensee. Without having a mandated arrangement, inconsistencies will arise in how each licensee shares contact information. This would likely cause confusion and delays to the process of seeking a reference.

To provide consistency across the industry, we would suggest ASIC establish a portal that would contain the contact details of references. This portal would be centrally coordinated by ASIC, but there would be no requirement on ASIC to validate the information or ensure it is up to date, rather that obligation would fall on referee licensees. Such a portal would address the potential delays that may arise under the current



proposal. Alternatively, ASIC could use its professional registers as the central point where this information is located, with a responsibility on the AFSL / ACL to maintain the details.

ABA recommendation: ASIC should develop a portal that would contain the contact details of licensees for reference checking and information sharing under the ASIC Protocol. The onus should fall on licensees to update the contact details of the list where they have changed, and there should be no requirement on ASIC to validate this information. Alternatively, ASIC could make use of its professional registers as the central database where this information is held.

Keeping records

Do you agree with this proposal? If not, why not?

The ABA supports ASIC's proposal to require a licensee to keep written records that are complete and accurate and that demonstrate compliance with the obligations of the ASIC Protocol for five years. This is consistent with existing record-keeping obligations under the *Corporations Act 2001*.

In addition, we would suggest that recruiting licensees should be required to record evidence of the number of attempts made to source a reference from a licensee and where that has gone un-responded to. In this regard, we would also suggest ASIC include guidance on how many attempts are considered appropriate over a specified period before the request could be closed following a non-response.

ABA recommendation: The ASIC Protocol should require licensees to keep records that demonstrate compliance with the protocol for five years. We also suggest that the protocol should require recruiting licensees to record the number of attempts made to seek a reference and provide guidance on when a request could be closed following a non-response from the licensee.

Part C – Proposed legislative instrument – Template reference request

Issue

Background information on a prospective representative

ABA comment

Do you agree with the proposed questions? If not, why not?

The ABA has concerns with questions 1a and 1b. The ABA Protocol does not require a role or main responsibilities to be disclosed. We question the value of providing this information to the recruiting licensee and are of the view the questions will add unnecessary complexity and delay to the process of providing the reference. If ASIC intends for these questions to be included, then they should be limited to the areas in which the financial adviser is authorised to provide advice or the mortgage broker's roles and responsibilities.



The ABA also has concerns with question 1d. This is not a requirement under the ABA Protocol and as currently drafted seems to set the expectation that the reference will be made by a specific individual rather than the licensee organisation as a whole. It also assumes that there is a relationship between the individual and the prospective representative. In practice, however, the reference is prepared by a number of different people within different functions on behalf of the licensee including compliance, human resources, and individuals within the business. Even if one person at the licensee organisation is nominated to provide the reference, there will be situations where they had no relationship with that prospective representative and were nominated as a coordinator of responses. In this regard, we would suggest question 1d be deleted.

ABA recommendation: To keep consistent with the ABA Protocol, questions 1a, 1b and 1d should be removed. Questions 1a and 1b add unnecessary complexity and delay to the process of providing the reference. If ASIC intends to include these questions, then the information provided should be limited to the areas in which the financial adviser is authorised to provide advice or the mortgage broker's roles and responsibilities. Question 1d sets the expectation that the reference will be made by a specific individual and not the licensee as a whole. In practice, references are prepared by a number of people within the licensee.

Compliance audits of a prospective representative

Do you agree with the proposed questions? If not, why not?

The ABA has concerns with questions 2b(ii) – (iv), 2c, and 2d.

2b - The requirement for information in relation to the representative's last compliance audit does not provide a holistic picture of the adviser's compliance history. In order to provide sufficient context and history of compliance, we would suggest this be expanded to include compliance audits within a 5-year period.

In addition, it is unclear to the ABA what insights information on remedial action provide to the recruiting licensee. There is a high degree of subjectivity involved in conducting an audit and no consistent industry standard on how this is managed. This question requires an extensive review of the audit report, consultation with internal stakeholders, and internal system interrogation, which may still not result in a fair and consistent outcome for all AFSLs. As under the ABA Protocol, the current practice of disclosing audit rating outcome is a more efficient and reliable method for the recruiting licensee to understand the severity of the findings of an audit without being overwhelmed with unnecessary detail. It is also important to note that a failed audit will be reflected in the audit rating outcome. Furthermore, the consequences of any serious issues identified through the audit process will become known in other questions (e.g. investigation matters, client complaints or termination matters), through other sources and broader background checks conducted.



2c - For mid to large AFSLs and ACLs, this information will require time and could be complex to obtain. This is because not all the information, decisions and systems related to the original audit are easily linked together to outline the remedial action taken. There are often several teams including risk, compliance, legal and human resources involved in the process. A requirement to source this information is operationally challenging and may lead to a breach of the timeframes for providing the reference. This may have an adverse impact on the adviser or broker in their pursuit of employment.

2d - As noted above, this information would be time consuming and complex to source and may result in a breach of the timeframes for providing the reference. We note that under the ABA Protocol, any identified issues resulting in client compensation will be disclosed but are not linked to a specific audit.

Overall, the responses required to questions 2b(ii) – (iv), 2c and 2d are all highly subjective and complex, which does not enable the quick and efficient generation of a reference. This would have a direct impact on the time to provide the reference and the ability for the recruiting licensee to make a clear and easily formed view of the adviser or broker and their risk and compliance capability. The additional information being requested does not facilitate efficient reference production, nor decision making, and we question the overall usefulness or relevance of such information.

ABA recommendation: The ASIC Protocol should align with the ABA Protocol. Questions 2b(ii) – (iv), 2c and 2d should be removed. This section should be kept simple, efficient, reduce subjectivity, and not introduce a compliance burden on referee licensees. We also suggest that information provided on compliance audits should be expanded to include audits within a five-year period.

If ASIC intends to keep the proposed questions, then we seek further clarity on the definition of remedial action.

Conduct of a prospective representative

Do you agree with the proposed questions? If not, why not?

The ABA has concerns with the level of detail required under questions 3b and 3c.

3b and 3c - In line with the reasoning noted above, we are of the view that the collection of this information will be time consuming, may require the passing of a significant amount of client information, and could result in licensees breaching the timeframes for providing the reference. The reasons for an adviser's departure are sometimes unclear or not fully known and can become clearer or less clear over time as facts are established. This means that the information may not always be reliable or complete particularly where the



licensee has merged, or the advice business has ceased to operate. There is also the risk of an open Fair Work case or litigation matter with the adviser which cannot be disclosed.

Questions 3b(iv) and (v)

We seek greater clarity from ASIC on what questions 3b(iv) and (v) are intended to cover. Do these pertain purely to the individual acting in their capacity as an adviser or broker, or should these points be interpreted more broadly to include other personal/employment behaviours e.g. domestic violence, sexual harassment, and breaches of business codes.

Use of the term "failure"

If ASIC intends to move forward with the proposed questions, the ABA notes that Schedule 2, question 3(b)(iv) requires the referee licensee to disclose instances where the representative's conduct indicates refusal, failure to deliberate non-compliance in relation to the financial services law or the credit legislation.

We have concerns with the use of the term "failure" and suggest it be removed. Failed compliance can occur without intention in comparison to a 'refusal' or 'deliberate non-compliance'. If licensees are required to provide details of all internal assessments, external notifications or complaints against the representative in connection with that failure, then a substantial amount of documentation will need to be provided that would impose a significant compliance burden on referee licensees for information that would not be of much interest to the recruiting licensee.

Voluntary notifications

The ABA notes that some member banks commonly report voluntary misconduct notifications. These notifications are generated following the member bank undertaking some investigative activity into the conduct of a financial adviser. This investigative activity will not necessarily uncover evidence that supports a breach of law. As currently drafted, the ASIC Protocol is unclear if it would require member banks to notify requesting licensees of these misconduct notifications. In this regard, we seek further clarity from ASIC on whether misconduct notifications that did not amount to a breach of the law are required to be included in a reference response.



FASEA Code of Ethics

We note that Schedule 2, question 3(b)(vi) seeks a response to whether the prospective representative breached the FASEA Code of Ethics. Any reference to breaches of the Code of Ethics should be linked to the obligations to report a relevant provider under *s922HD of the Corporations Act 2001*.

ABA recommendation: The ASIC Protocol should align with the current ABA Protocol. If ASIC intends to move forward with the current proposed questions, then we would suggest removing the term “failure” in question 3(b)(iv), seek clarity on what questions 3(b)(iv) and (v) are intended to cover, and seek clarity on whether misconduct notifications that did not amount to a breach of the law are required to be provided under the ASIC Protocol. We also note that the reference to breaches of the FASEA Code of Ethics in question 3(b)(vi) and note that this should be linked to the obligations to report a relevant provider in the *Corporations Act 2001*.

Ongoing matters

Do you agree with the proposed questions? If not, why not?

The ABA has concerns with proposed questions 4b and 4c.

4b – The ABA suggests removing this question. The details of a compliant can change significantly over time as facts are established through client engagement and file reviews. We consider this to unfairly prejudice the adviser or broker at the point in time of the reference, given that the licensee may eventually conclude that it was not a legitimate compliant. Under the ABA Protocol, only finalised, adviser fault complaints are disclosed.

4c – The ABA suggests removing this question. Similar to the concerns raised above, we believe this will unfairly prejudice the adviser or broker. All enquiries should be completed and considered collectively with other factors before any disclosure is made on the matter.

ABA recommendation: The ASIC Protocol should align with the ABA Protocol. Providing information on unresolved complaints or compliance audits may unfairly prejudice the adviser or broker. Information should only be provided once complaints and compliance audits are resolved.

Ongoing compliance activities of licensees

If ASIC intends to move forward with the proposed questions, then the ABA seeks clarity on whether a referee licensee is required to respond to question 4, where an investigation is not a result of any action or

inaction of the prospective representative, but is a result of the referee licensee's ongoing compliance activities.

The definition of "compliance audit"

The ABA had concerns with the current definition of a compliance audit provided in Schedule 2 of the draft instrument. The current definition is expansive, and we note that it encompasses any review by a financial services licensee or credit licensee. ABA member banks undertake several reviews, in the ordinary course of their business, which are not triggered by allegations of non-compliance or misconduct. These reviews include file reviews, documentation reviews etc. The use of the term review in the compliance audit definition would capture these reviews and we believe that ASIC did not intend for this information to be shared, and do not believe it will assist the requesting licensee.

ABA recommendation: The definition of compliance audit should be amended to introduce a materiality threshold to ensure it excludes reviews that are not relevant to the vetting of prospective representative.

Part D – Proposed information sheet

Issue

ABA comment

Guidance for licensees

Do you agree with the proposal? If not, why not?

The ABA supports ASIC providing guidance to licensees through the proposed information sheet on meeting their obligations. We believe that the information sheet should include several case studies that provide responses to the questions proposed in the ASIC Protocol. This would provide guidance to licensees on the detail required for each response. This will ensure consistency across the industry.