



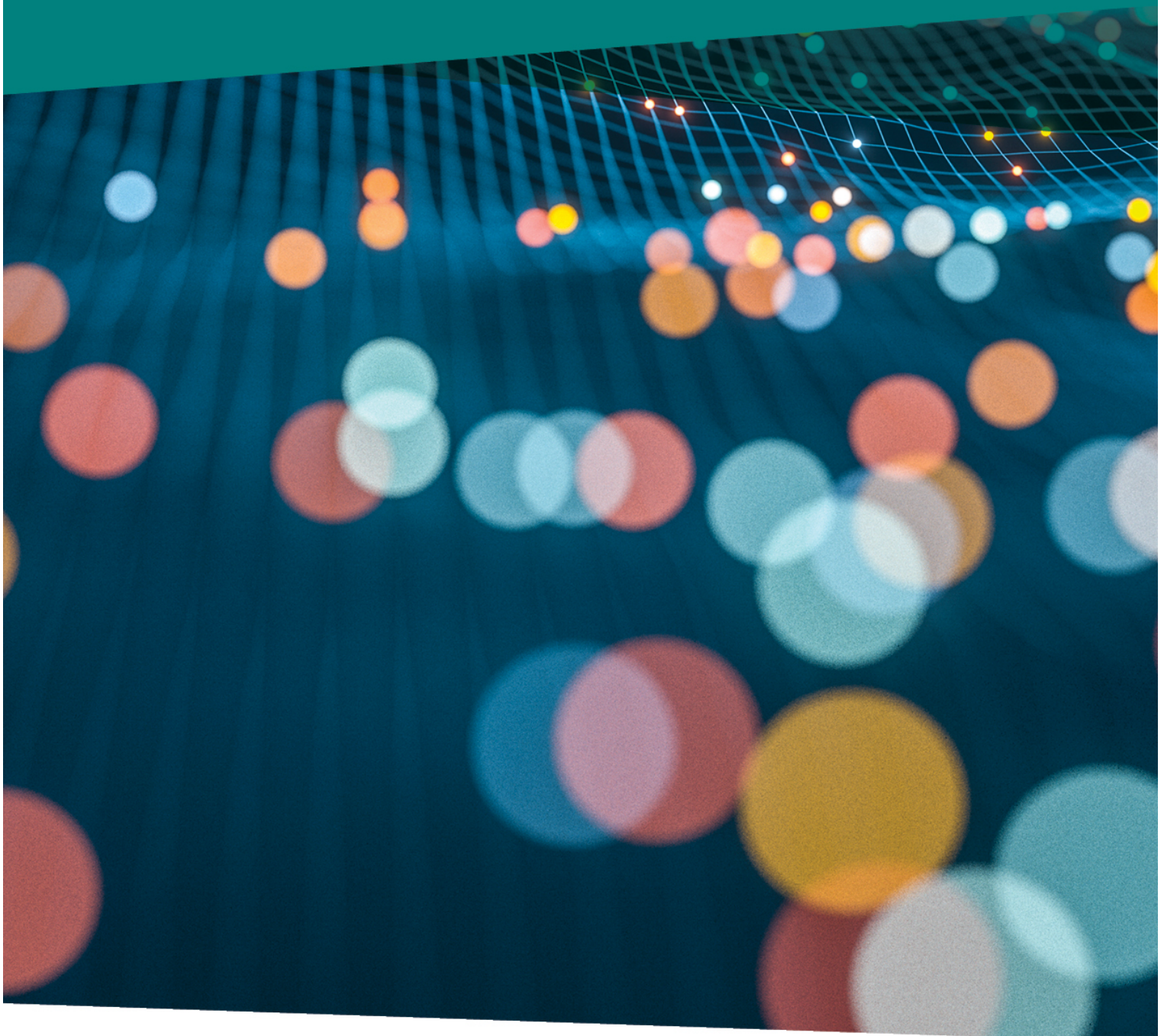
Australian Government
The Treasury

TSY/AU

Quality of Advice Review

Template for response

August 2022



Consultation process

Request for feedback and comments

Interested parties are invited to provide feedback on the proposals for reform listed in the Quality of Advice Review Proposals Paper using the template in [Appendix 1](#). Consultation will close on Friday 23 September 2022.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please submit responses in a Word or RTF format via email. An additional PDF version may also be submitted.

Publication of submissions and confidentiality

All of the information (including the author's name and address) contained in submissions will be made available to the public on the Treasury website unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission.

View our [submission guidelines](#) for further information.

Closing date for submissions: 23 September 2022

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Appendix 1: Consultation template

Name/Organisation: Australian CFD and FX Association

Questions

Intended outcomes

1. Do you agree that advisers and product issuers should be able to provide to personal advice to their customers without having to comply with all of the obligations that currently apply to the provision of personal advice?

We agree that there is room for improvement in the current definitions and obligations, but we are concerned the suggested change to the personal advice definition, without appropriate exclusions, may result in personal advice obligations applying to a type of service provider that it was never intended to cover, namely to those that offer non-advisory execution only services. These types of services are where a broker is merely acting on instructions to trade from a client and no personal advice is provided but the broker may hold details about aspects of a client's financial situation for other purposes. We have outlined this concern in more detail below.

What should be regulated?

2. In your view, are the proposed changes to the definition of 'personal advice' likely to:
 - a) reduce regulatory uncertainty?
 - b) facilitate the provision of more personal advice to consumers?
 - c) improve the ability of financial institutions to help their clients?

2(a) We are concerned the changes to "personal advice" to include situations where "the provider **has or holds information about** the client's objectives, needs or **any aspect of their financial situation**" (**emphasis added**) could have the unintended consequence of capturing situations that are not designed to fit within personal advice. Our particular concern is in relation to our industry but also more broadly to non-advisory, execution only brokers who are required to capture and hold information about assets, income and other trading information in order to fulfil regulatory obligations relating to AML/KYC as well as for

suitability and design and distribution requirements. Without additional clarification or exclusions, we are concerned this could mean these types of services will now be seen as providing a form of personal advice. The risk of bringing this type of financial service into personal advice regulation would:

1. dramatically increase the regulatory burden of those entities;
2. require material business and operational changes that are impractical, if not impossible, and that add no benefit to the client being served;
3. could create a false level of comfort to clients that certain higher risk products are suitable to their individual needs when this decision should remain in their hands; and
4. remove an important conflict avoidance tool in cases where an issuer is on the other side of a trade.

The CFD and FX industry offers over-the-counter or OTC derivatives. OTC derivatives operate outside of a formal exchange. The issuer of the OTC derivative product is the market maker (the one creating the price). As it is the issuer publishing pricing at which they are willing to buy and sell their products and they are marketing them to clients, this could be seen as being intended to influence a person to buy, sell or hold a financial product, which is why industry participants are currently required to hold general advice authorisations in addition to authorisations to arrange, deal and make a market.

The issuer is also on the other side of the trade. This means if a client were to lose, technically the issuer wins and visa versa. Many in the CFD industry handle this clear conflict by operating their businesses in a way that avoids any influence over the client's decisions and market movement. They do this by:

1. basing their pricing on independent pricing received from high-quality, third-party liquidity providers – which ensures the price isn't being manipulated;
2. not conducting any internal proprietary trading for profit purposes – which ensures the broker has no direct interest in how the underlying markets decide to move; and,
3. most importantly - not providing any personal advice, which ensures any client investment decision remains with them.

Our industry operates online and does not have the type of close personal relationship that financial advisors have with their clients. Whether to trade and what to trade is left entirely in the hands of the client, we as the issuer are merely creating a product, advertising prices at which we are willing to buy and sell that product and then acting on instructions from the clients when they decide to trade. Even if our service could be undertaken in a non-conflicted way, we do not have the capacity or infrastructure to facilitate a personal advice aspect to our service. It is also not clear how our industry could continue to operate and remain compliant with other regulatory obligations if we were to operate without holding “any aspect of [a client's] financial situation”.

Recommendation: Any new definition of personal advice should clearly carve out execution only services, namely a service where transactions are executed by a firm upon the specific instructions of a client where the firm does not give advice on investments relating to the merits of the transaction.

Carving out this type of service will not negatively impact current consumer protections. These financial service providers will still be captured under the AFS licensing regime even if general advice is removed because they will be, at a minimum, “arranging” for a financial product to be traded or, in our case, also dealing by issuing and making a market in derivatives.

2(b) Even if the broader definition of personal advice facilitates more personal advice being provided, should it now encompass the types of services we provide, we are concerned that the unintended consequences will be an increase the costs and a reduction in the availability of what is currently non-advisory services.

2(c) In our industry, the new requirement would decrease our ability to help clients because our relationship is one where we (and our clients) do not want personal advice to be provided. Any changes would either remove the ability to offer our product in Australia at all or dramatically increase the cost of the products for clients.

3. In relation to the proposed de-regulation of ‘general advice’ - are the general consumer protections (such as the prohibition against engaging in misleading or deceptive conduct) a sufficient safeguard for consumers?

a) If not, what additional safeguards do you think would be required?

3(a) We agree with the additional comments in the paper that impacts to conflicted remuneration and the design and distribution obligations would need to be considered should general advice be removed.

How should personal advice be regulated?

4. In your view, what impact does the replacement of the best interest obligations with the obligation to provide ‘good advice’ have on:

a) the quality of financial advice provided to consumers?

b) the time and cost required to produce advice?

4(a)(b) As we do not currently provide personal advice, others will be better suited to respond to this question. We only highlight again that our industry would not be able to comply with such a requirement given the level of information our clients are willing to provide us as part of current business arrangements.

5. Does the replacement of the best interest obligations with the obligation to provide 'good advice' make it easier for advisers and institutions to:

- a) provide limited advice to consumers?**
- b) provide advice to consumers using technological solutions (e.g. digital advice)?**

5(a)(b) As we do not currently provide personal advice, others will be better suited to respond to this question.

6. What else (if anything) is required to better facilitate the provision of:

- a) limited advice?**
- b) digital advice?**

6(a)(b) As we do not currently provide personal advice, others will be better suited to respond to this question.

7. In your view, what impact will the proposed changes to the application of the professional standards (the requirement to be a relevant provider) have on:

- a) the quality of financial advice?
- b) the affordability and accessibility of financial advice?

7(a)(b) As we do not currently provide personal advice, others will be better suited to respond to this question.

8. In the absence of the professional standards, are the licensing obligations which require licensees to ensure that their representatives are adequately trained and competent to provide financial services sufficient to ensure the quality of advice provided to consumers?

- a) If not, what additional requirements should apply to providers of personal advice who are not required to be relevant providers?

8(a) As we do not currently provide personal advice, others will be better suited to respond to this question.

Superannuation funds and intra-fund advice

9. Will the proposed changes to superannuation trustee obligations (including the removal of the restriction on collective charging):

- a) make it easier for superannuation trustees to provide personal advice to their members?
- b) make it easier for members to access the advice they need at the time they need it?

9(a)(b) As we are not involved in superannuation investment, others will be better suited to respond to this question.

Disclosure documents**10. Do the streamlined disclosure requirements for ongoing fee arrangements:**

- a) reduce regulatory burden and the cost of providing advice, and if so, to what extent?
- b) negatively impact consumers, and if so, how and to what extent?

10(a)(b) As we do not currently provide personal advice, others will be better suited to respond to this question

11. Will removing the requirement to give clients a statement of advice:

- a) reduce the cost of providing advice, and if so, to what extent?
- b) negatively impact consumers, and if so, to what extent?

11(a)(b) As we do not currently provide personal advice, others will be better suited to respond to this question.

12. In your view, will the proposed change for giving a financial services guide:

- a) **reduce regulatory burden for advisers and licensees, and if so, to what extent?**
- b) **negatively impact consumers, and if so, to what extent?**

12(a)(b) As we do not currently provide personal advice, others will be better suited to respond to this question.

Design and distribution obligations

13. What impact are the proposed amendments to the reporting requirements under the design and distribution obligations likely to have on:

- a) **the design and development of financial products?**
- b) **target market determinations?**

13(a)(b) We do not distribute the types of products we issue and offer via a network of personal advisors. Changing these obligations will therefore have no impact on the design and distribution of our products or our target market determinations.

Transition and enforcement

14. What transitional arrangements are necessary to implement these reforms?

14. In the event that non-advisory execution only financial services ends up falling within the personal advice regulation, our industry would require at least 2 years as we would have to redesign our operations or close down our Australian businesses.

General**15. Do you have any other comments or feedback?**

15. As this consultation has been predominantly focused on changes to the personal advice regime, there is a possibility that smaller, non-advisory financial services businesses may not be aware of the potential impact these proposed changes could have on their operations. Should Treasury decide that these types of services should in future be captured under a new personal advice definition, it may be beneficial for Treasury to reach out directly to those types of businesses for additional feedback.

Our industry is also happy to provide additional information if required.