

15th November 2021

Mr Joseph Longo
Chair
ASIC
GPO Box 9827
Brisbane, Qld 4001

Via email: joseph.longo@asic.gov.au

CC:

- The Hon Josh Frydenberg MP, Treasurer e: josh.frydenberg.mp@aph.gov.au
- Sen. The Hon Jane Hume, Minister for Financial Services e: senator.hume@aph.gov.au
- The Hon Michael Sukkar MP, Assistant Treasurer e: Michael.sukkar.mp@aph.gov.au
- The Hon David Littleproud MP, Minister for Agriculture e: David.Littleproud.MP@aph.gov.au

RE: Grain Industry concerns with certain AFSL regulations

Dear Mr Longo,

Grain Trade Australia (GTA) is writing to ASIC to raise grain industry concerns with:

- Parts of the AFSL¹ regulations
- The AFSL Guidelines, and
- The Financial Sector Reform Bill 2021.

In the context of the grain industry, we believe they are not “fit for purpose”, disproportionate and result in excessive regulation and cost burden for advisors providing focussed advice on specific commodity and foreign exchange derivatives to grain growers.

We believe the impact of the current regulatory and policy approach will lead to a lack of knowledgeable, specialist advisors available (or willing) to advise grain growers. This will be detrimental for growers and likely, and ironically, lead to an increase in the incidence of growers receiving poor and inappropriate advice on commodity price risk management.

1. About GTA

Grain Trade Australia (GTA) is a national member association and is the focal point for the commercial grain industry within Australia.

GTA has over 270 organisations as members. Their businesses range from regional family businesses to large national and international trading/storage and handling companies who are involved in grain trading activities, grain storage, processing grain for human consumption and stock feed milling. GTA Members are substantial employers, from the farm gate through to end point consumption, and notably in rural and regional Australia. A full list of GTA Members can be found [here](#).

¹ Australian Financial Services Licence

GTA's core focus is to "facilitate trade" in the Australian grain industry. Its products and services, including the Australia Grain Industry Code of Practice, provides a self-regulatory framework across the grain industry to facilitate and promote the trade of grain within the Australian grain value chain. A key segment within this industry framework is GTA members who provide **commodity marketing & price risk management services (advisory services)** to Australian grain producers.

2. Commodity Marketing & Advisory Services - Grain

GTA members who provide advisory services provide grain producers with the information and advice needed to make informed decisions on their commodity marketing and price risk management. This includes:

1. Commodity (grain) market analysis and price discovery,
2. Brokerage of physical grain,
3. Use of price risk management tools (derivatives like Swaps, Futures, Options),
4. Hedging foreign exchange (either a part of a derivative or for cash flow purposes), and
5. Grain sale and contract optimisation.

The advisory services provide a tailored marketing service and that critical objective second opinion to help take the emotion out of marketing grain for the grain producer. A grain marketing advisor with an AFSL provides advice specifically to help a grain producer manage their price risk in relation to the particular commodity using financial products (points 3 & 4). The advisor in this case is not providing holistic plans in relation to a producers' broader investment needs (superannuation, insurance etc) but scoped, focussed advice related to commodity price risk – which is their limitation under their AFSL.

To be clear for a producer of grain this is not an investment decision but more a transactional decision in that they are seeking service to provide an outcome (in this case managing price risk of their production).

3. Regulations

Advice to grain growers regarding price risk management in the grain industry has historically been regulated over a long period. Standards originally were set by the then Sydney Futures Exchange (including education and exam requirements) and following the Financial Services Reforms in the early 2000's this transitioned to AFSL requirements under the Corporations Act.

a. AFSL Requirement

The Corporations Act (Financial Services Reform) sets out a methodology that requires authorisation to provide specific financial services in relation to designated types of financial products.

Many grain marketing advisory services are required to hold an Australian Financial Services Licence (AFSL) usually for the limited scope of providing financial product advice (or dealing in a financial product) for the designated products **only** of derivatives and foreign exchange, we note that in practice they will be narrow/specific commodity derivatives (eg wheat swaps). It is our understanding the law does not allow those AFSL holders (or those advisors that work under them) to do anything other than the conditions of their license.

Ongoing legislation and regulation since 2016 in relation to financial advice, in particular the Corporations Amendment (Professional Standards of Financial Advisors) Act 2017 and the ASIC Supervisory Cost Recovery Levy Act 2017 are placing an increasing compliance burden and financial cost on our relevant members.

b. Corporations Amendment (Professional Standards of Financial Advisors) Act 2017

The intention of the Act is to lift the professional education and ethical standards of financial advisors. FASEA was set up to govern this process including creating education standards and the Code of Ethics. While the Act is well intended, in our view the application needs some nuanced adjustments.

FASEA's approach to-date to regulation, in particular educational requirements, appears completely at odds with the original intent of Financial Services Reform. FASEA's approach to applying a financial planning lens to decisions around educational requirements, including the exam contents, on-going professional education and minimum education standards **is not fit for purpose** in an industry, such as the grain industry, where in many cases financial advisors provide sector specific advice and not financial planning advice.

The Corporations Act recognises, despite the recent approach to a common catch all regulatory architecture, there is a basis for limited scope and specialisation within the "broader financial industry", that is **not a one size fits all approach**.

c. Financial Sector Reform (Hayne Royal Commission Response – Better advice) Bill 2021.

While FASEA is being wound up and functions transferred to other parts of Government including ASIC, we see a real risk that FASEA's one size fits all approach and the issues and problems associated with it will remain. FASEA's approach, **which is not fit for purpose**, of treating every advisor as a financial planner, irrespective of what advice they may provide, will continue if this is the case. We must stress:

- grain marketing advisors are not financial planners,
- they do not operate under an AFSL where they are authorised to provide financial planning and investment advice
- a grain producer would not expect to (and should not) receive knowledgeable, specialist grain marketing advice from a financial/investment planner.

The transfer of the FASEA function provides an opportunity for ASIC to apply a broader lens and to engage with the various types of financial advisors (and industries) and break clearly from FASEA's approach of treating the whole financial advice sector as if it were homogeneous.

4. Education and Professional Development

The current approach of applying a financial planning lens to decisions around the Code of Ethics and Educational Requirements including the Exam, on-going professional education and minimum education standards is not fit for purpose.

a. Advisors Exam

GTA **does not** consider the FASEA advisors' exam in its current form suitable as it is tailored to financial planners and has little relevance to our members activities and their client's commodity advisory needs. We see an opportunity for ASIC to better align or contextualise the exam to categories of financial advisors, other than more broadly to financial planners, in a more relevant approach. The current approach examines content that is to a large degree irrelevant to the day-to-day business and role of grain marketing advisors.

b. Recognised Qualifications and Educational Standard

FASEA's approach to minimum education standards (for new and existing advisors) is fixated on financial planning. Tertiary degrees in disciplines such as Commerce, Business, Economics, Agricultural economics, Agribusiness, Agricultural Science, Rural Science and Finance are in fact more relevant to provision of advice in relation to commodity derivatives and foreign exchange.

GTA suggests and would support a move to have degrees in these disciplines being included on the list of approved courses including the recognition of existing qualifications.

Further GTA suggests grandfathering currently registered advisors existing relevant degree qualifications. This would have the benefit of retaining the more mature, more knowledgeable and more skilled specialist professionals. ASIC and Government are no doubt well aware of the loss of advisors from various industries that the approach to recent Financial Reforms has created. Without recognition of this fact and without a change in recognition of these degrees, this exodus will rapidly increase leading into 2026 when FASEA requires all advisors to have met the current education standard (FASEA approved course).

This will have a detrimental impact on the availability of quality, specialist advice on commodity price risks to grain growers, and the likely increase in the risk and incidence of growers receiving poor, ill-informed advice on commodity prices.

c. Continuing Education

We have concerns with the FASEA requirement for an advisor to complete 40 hours of CPD per year which includes a mandated breakdown of minimum hours to be spent in various areas. For example, the minimum 9 hours requirement on professionalism and ethics (every year) is disproportionate against other metrics such as 5 hours of technical competence. GTA supports CPD however believes there should be flexibility to customise to the specific needs and circumstances of the industry and the advisors.

GTA's believes the objective of the CPD (not just for grain marketing advisors but other financial advisors whose key functions are asymmetric to financial planning), should be to ensure grain marketing advisors (commodity marketing advisors more widely) have the appropriate skills and knowledge through a tailored continuing education program (potentially developed through an consultative process involving representative bodies).

5. Impact on Industry and GTA members

The ongoing regulation since 2016 in relation to financial advice, in particular the Corporations Amendment (Professional Standards of Financial Advisors) Act 2017 and the ASIC Supervisory Cost Recovery Levy Act 2017 is placing an increasing compliance burden that lacks relevance and is an excessive financial cost on our relevant members.

The financial burden includes:

- costs related to the FASEA exam,
- the on-going cost of CPD,
- the ASIC industry funding levy,
- various ASIC lodgement fees, and
- uncertainty surrounding levies to fund the Compensation Scheme of Last Resort.

The increasing costs are either being in part passed onto the consumer of these services (making the cost of obtaining advice for those more in need - more prohibitive) or being absorbed into their business leading to advisors increasingly questioning the sustainability of continuing to provide advice.

The well-intended however misguided educational requirements have and will continue to impact the industry being able to maintain experienced advisors and attract new entrants.

The current requirement of advisors in the grain industry having to meet minimum education requirements (effectively complete financial planning degrees, diplomas, or other related subjects which are unrelated to what a reasonable person would expect the education of a grain advisor to entail) prior to 1 January 2026 will see experience leave the industry.

Furthermore, these requirements as they currently stand **will likely limit new entrants**. The industry needs to attract new entrants, and these people are more likely to come from (and have

interest in the industry) a background of degrees in commerce, economics, finance, agriculture, and business (in essence commodity and currency markets) and **not** financial planning. It is also important to understand grain advisory firms are small rural businesses (1-7 advisors) and do not have the financial ability to fund sizable salaries while potential new and existing advisors' re-train.

GTA supports licensing of financial advisors and supports the ability of consumers (in this case grain producers) being able to access professional, ethical and high-quality advice. GTA would welcome the opportunity to engage directly with Government and ASIC to increase the understanding of the type of financial advice our members provide and to provide input into, or be part of, any process that aims to make a more appropriate fit for purpose regulatory model.

Further, we respectfully request:

- a) Recognition that financial advice is broader or more specific than financial planning.
- b) Realignment of the FASEA educational requirements to meet the specific needs of sectors, rather than assuming all financial advisors provide financial planning.
- c) Degrees and post-graduate qualifications in disciplines including commerce, business, finance, economics, science, agribusiness, agricultural economics, agricultural science, rural science be formally recognised as suitable qualifications.
- d) Existing advisors' qualifications in these disciplines be grand fathered in.
- e) Ability and flexibility to tailor CPD requirements to the specific needs and circumstances of industry sectors and the advisors themselves.

We trust you will consider the issues raised in this letter and we welcome the opportunity to engage and work directly with ASIC/the Government on these issues.

I look forward to your response and a key ASIC contact that GTA can further progress this request.

Yours faithfully,



Pat O'Shannassy
CEO
Grain Trade Australia