



1 December 2021

Financial adviser Standards and Ethics Authority Ltd
PO Box A255
SOUTH SYDNEY NSW 1235

Email: consultation@fasea.gov.au

Dear Sir/Madam,

Code of Ethics – Consultation Paper on Standard 3

The SMSF Association welcomes the opportunity to provide this submission in response to the *Consultation Paper* on Standard 3 of the *Financial Planners and Advisers Code of Ethics 2019* (‘the Code’).

Of the three options proposed, we are of the opinion that option 1, which incorporates FASEA’s intent into the standard, is the most appropriate. It achieves its original objective for all stakeholders.

Option 1: You must only advise, refer or act where you do not have a conflict of interest or duty, being that which could reasonably be expected to induce you to act other than in the client’s best interest

Option 1 aligns with our previous feedback and submissions on standard 3 of the Code. The inclusion of FASEA’s intent into the revised standard provides greater clarity and context. It enables the adviser to apply their professional judgement requiring advisers to appropriately review, assess and consider the specific facts and circumstances surrounding the adviser and a client or client matter. The operative intent of the proposed standard is clear and can be practically applied.

We are of the view that the settings are appropriate for all stakeholders, particularly when the standard is considered and applied in the broader context of the other standards in the code. Importantly, its objective that client interests are prioritised is clear.

Some minor edits are recommended to simplify the wording, with the removal of two words:

You must only advise, refer or act where you do not have a conflict of interest or duty, being that which could reasonably be expected to induce you to act other than in the client’s best interest

Option 2: You must not receive any benefit (whether monetary or non-monetary), nor enter into any relationship, that could reasonably be expected to influence the advice you give or the service you provide to your client.

Option 2, utilising Commissioner Hayne’s findings, is too narrow and does not provide sufficient context. We are concerned that this version still contains significant unintended consequences. It



would be problematic for advisers and licensees to navigate in practice due to the limitations it creates. As result it does not deliver the right outcomes for clients.

Certain relationships, by their nature, are cause for concern. We agree that the clients' interests are paramount and must come first.

Conversely, certain relationships are essential to providing quality and appropriate advice to clients. Relationships with research providers, allowing the adviser to access product research from third party providers are one such example. Research is an important component of the advice process in ensuring that the product is suitable for and in the best interests of the client. By its nature research will influence the advice given by the adviser to the client.

In light of the above, we do not support option 2.

Option 3: You must not advise, refer or act in any other manner where you have a conflict of interest or duty.

Option 3 provides for the retention of the existing wording for standard 3. In previous consultations, we have raised concerns on the appropriateness of the standard. In its current form it lacks clarity or context and has been interpreted by industry as determinative.

We therefore do not support option 3.

If you have any questions or wish to further discussion our response, please do not hesitate to contact us. We thank you again for the opportunity to provide our feedback on this matter.

Yours sincerely,

A handwritten signature in black ink that reads 'John L. Maroney'.

John Maroney
CEO
SMSF Association

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak body representing SMSF sector which is comprised of over 1.1 million SMSF members who have more than \$700 billion of funds under management and a diverse range of financial professionals servicing SMSFs. The SMSF Association continues to build integrity through professional and education standards for advisors and education standards for trustees. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial planners and other professionals such as tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them access to independent education materials to assist them in the running of their SMSF.