FINANCIAL PLANNING
ASSOCIATION of AUSTRALIA

15 September 2017

Deborah Bails
Market Supervision
Australian Securities and Investments Commission
GPO Box 9827
Melbourne Vic 3001

Email: sell.side.research@asic.gov.au

Re. **CP 290: Sell-side research**

Dear Madam,

We welcome the opportunity to respond to ASIC's draft guidance CP 290 and the associated consultation paper. We have provided brief answers to some of the questions you have raised in the paper, below.

Our main objective is to promote the production of advice-grade research, that is research that is timely and reliable for the purposes of making an investment decision. We agree that prudential and licensee supervision of individuals is a useful means by which to achieve this objective.

However, especially given the onerousness of the proposed guidance and, in turn, the high expected costs, we are concerned that the consultation paper does not reference any evidence of systemic compliance failures in relation to sell-side research in Australia to justify the proposed guidance.

The only specific example of compliance concerns mentioned in the paper happened in relation to a US-based IPO. Although eight of the ten investment banks identified as having engaged in misconduct have affiliates in Australia, focussing on a single example (and in a foreign context at that) doesn't demonstrate a persuasive case for costly intervention.

We do accept that there is a role for a basic level of intervention to meet community expectations. We recommend, that principles-based measures to support the professional judgement of individual research analysts should be seriously considered as the preferred strategy to promote advice-grade research, especially where both:

- the individual researcher is subject to an appropriate code of ethics and practice of a professional association; or
- the researcher and licensee warrant that the research can be relied on for advice purposes

This approach pushes for research to be of advice grade, while reducing the chances of a substantial increase in regulatory costs.

B1Q1 Is the guidance on how a licensee identifies MNPI helpful? If not, why not? Please include in your reasons what alternative measures you think would be helpful.

FPA response

The guidance on how a licensee identifies MNPI is helpful because of its flexible approach. A principles-based approach, supported by examples, is appropriate if one accepts, as we do, that the characterisation of information as MNPI should depend on a complex judgement being made.

We would caution against a more prescriptive approach as there will often be information that the research analysts will know is generally available, without having to undertake a highly structured step-by-step approach to identifying the status of the information.

We would rather that commercial resources be focussed on non-public information that is most likely to have a material impact on the price or value of a particular financial product, than that resources are spent on lower-risk information.

B1Q2 Should we provide more detailed guidance on the training we expect licensees to conduct for their staff to identify MNPI? If so, please describe.

FPA response

We don't believe detailed guidance on such training is required. In our view, ASIC should simply set objectives and issues for training to address, and leave it to each licensee to develop detailed training arrangements suited to their own circumstances, in particular their structure, size and complexity.

Further, in our view, a licensee's training in relation to MNPI shouldn't necessarily be required to reduce the scope for the exercise of professional judgement by individual research analysts. For example, it may be preferable for research analysts to form a judgement about conflicting indicators as to whether something is MNPI, than to train them to adopt a rule-based approach.

B2Q1 Do you agree with our proposed guidance? If not, why not? Please be specific in your response.

FPA response

We broadly agree with the proposed guidance, which is principles-based, on licensee policies and procedures in relation to MNPI, set out in RG 000.38 and RG 000.39 of draft CP 290. A principles-based approach to identifying and managing MNPI is appropriate for the following reasons:

- Given differences in structure, size and complexity among licensees, it is appropriate that each licensee has flexibility to develop their own policies and procedures for identifying MNPI, to reflect the degree of independent judgment to be left to individual research analysts within the business.
- For similar reasons, it is also appropriate that licensees have flexibility in developing policies and procedures for managing MNPI. Differences in functions and hierarchies in each licensee mean that detailed policies and procedures may need to differ from licensee to licensee.

In our view, a licensee's policies and procedures in relation to MNPI should be able to defer to some extent to the professional judgement of individual research analysts within the business. For

example, as mentioned above, it may be preferable for research analysts to form a judgement about conflicting indicators as to whether something is MNPI, than to adopt a rule-based approach.

B3Q1 Do you agree with our proposed guidance on wall-crossing procedures? If not, please give your reasons.

FPA response

We agree with the proposed guidance, which is generally principles-based, on wall-crossing procedures. We believe a principles-based approach is appropriate given the differences in structure, size and complexity across licensees.

B4Q1 Do you agree that the research analyst should be expected to provide the certification or declaration? If not, why not? Please be specific in giving your reasons.

FPA response

Certification or declaration by the research analyst creates a reputational and professional risk for that individual. This provides an additional layer of incentive to ensure that sell-side research is not compromised. This benefit needs to be weighed against the additional regulatory cost, about which we don't have detailed information.

B5Q1 Do you agree that a licensee should have a review and approval process for an initiation of research? If not, why not? Please give a detailed explanation in your response.

FPA response

We agree that a licensee should have a review and approval process for an initiation of research. This is because this process will promote the quality and integrity of research.

B5Q2 Do you agree that a licensee should have a review and approval process for changes to recommendations or material changes to price targets included in research? If not, why not? Please give a detailed explanation in your response.

FPA response

We agree that a licensee should have a review and approval process for changes to recommendations or material changes to price targets included in research.

B5Q4 Do you think that the review and approval process should be undertaken by a supervisory analyst, or compliance or another control function? Do you think that this is sufficient to ensure the integrity and independence of the research function?

FPA response

We agree that the review and approval process should be undertaken by a supervisory analyst, or compliance or another control function.

B5Q5 Should we provide guidance on what constitutes a material change to a price target? Should we include a percentage movement in the price target? If so, please provide information on what you consider would be appropriate.

FPA response

We would recommend listing indicia of materiality and specific examples. In our view, examples where weight is given to percentage movement of the price target would be appropriate.

B7Q1 Do you agree with our proposed guidance? If not, please give detailed reasons for your answer.

FPA response

We support the approach set out in paragraph 39 of the discussion paper. Knowing that there will be regular reviews of contact between research analysts helps avoid problems that analysts and others know about. And a control function periodically attending meetings where both research analysts and sales are present also helps avoid compliance problems that analysts and others are not aware of.

C1Q1 Do you agree with our proposed guidance? If not, please give your reasons. Please include in your response what alternative measures you think would ensure the integrity and independence of the research function of the licensee and management of MNPI during pre-solicitation.

FPA response

We agree with the proposed guidance set out in paragraph 55 of the discussion paper. The proposed controls are generally prescriptive. A prescriptive approach would appear to be appropriate as the controls seem uncontroversial regardless of the details of the particular licensee.

C1Q2 Do you think our proposed guidance sufficiently explains our expectations of how a licensee should manage conflicts of interest and MNPI during pre-solicitation? If not, please give your reasons. Please include in your comments what additional guidance, if any, you would expect to be provided.

FPA response

We think the proposed guidance sufficiently explains ASIC's expectations. The guidance is detailed and appears to be comprehensive. Although sub-paragraph (e) defers to the internal protocols of the licensee, we believe that this is appropriate given the heterogeneity of structure, size and complexity across licensees (see response to B2Q1 above).

C1Q3 Do you think our definition of 'sell-side research' for the purposes of our regulatory guide is appropriate (see paragraph 27 of the attached draft regulatory guide)? If not, please give your reasons. Please provide an alternative definition in your response.

FPA response

In broad terms, we agree with the definition of 'sell-side research' set out in paragraph RG 000.27 of the draft guide. We are concerned that including 'general economic or business issues' 'which is intended, or that could reasonably be regarded as intended, to influence an investor on' 'particular classes of financial products' is unnecessary. This is because we understand that such information would rarely include, or be, MNPI. We question whether any benefit to investors of having to specifically assess the character of the information outweighs the regulatory cost.

C2Q1 Do you agree with our proposed guidance on interactions between the research analyst and the corporate advisory team during transaction vetting? If not, please give your reasons. Please include in your response what alternative measures you think would ensure the integrity and independence of the research function of the licensee during the transaction vetting process.

FPA response

We agree with the proposed guidance, which generally allows research analysts to participate in vetting a transaction, on interactions between the research analyst and the issuing company (or its advisers) during the transaction vetting stage. The controls set out in paragraph 64 of the discussion paper are generally principles-based. We consider this is appropriate considering the competing factors that need to be weighed and balanced in order to determine the limits of the general permission for research analysts to participate in vetting a transaction.

C3Q1 Do you agree with the proposed guidance on interactions between the research analyst and the issuing company during the transaction vetting stage? If not, please give your reasons. Please include in your response what alternative measures you think would ensure the integrity and independence of the research function of the licensee during transaction vetting.

FPA response

Direct interaction between research analysts and the issuing company seems likely to help analysts establish, in a timely way, the soundness of information being provided by the issuing company during vetting. We believe that licensees should be allowed to rely on the professional judgement of individual research analysts coupled with monitoring and oversight, rather than be constrained by the very prescriptive approach taken in the proposed guidance, to ensure inappropriate information isn't exchanged between analysts and the issuing company during interactions (including direct interactions).

C5Q1 Do you agree with our proposed guidance on interactions between the research analyst and the issuing company during pitching? If not, please give your reasons. Please include in your response what alternative measures you think would ensure the integrity and independence of the research function of the licensee during pitching.

FPA response

We believe the guidance should take a more flexible approach. Companies need research coverage and, in turn, may need to meet directly with potential research analysts to establish their capability. Further, unless there is evidence of systemic risk under the existing regulatory structure and culture, we question the value of the additional measures. Perhaps compliance or another control function could sit in on any meetings between the issuing company and research analysts to help manage the risks of passing on inappropriate information.

If you have any queries or comments, please do not hesitate to contact me at policy@fpa.com.au or on 02 9220 4500.

Yours sincerely

Dimitri Diamantes CFP®
Policy Manager
Financial Planning Association of Australia[1]

[1] The Financial Planning Association (FPA) has more than 12,000 members and affiliates of whom 10,000 are practising financial planners and 5,600 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.

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- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
- We have an independent conduct review panel, Chaired by Mark Vincent, dealing with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 24 member countries and the 150,000 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 17 Australian Universities for degrees in financial planning. As at the 1st July 2013 all new members of the FPA will be required to hold, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional bodies, eg CPA Australia.
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