



ASIC

Australian Securities & Investments Commission

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Senator David Fawcett
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By email: Senator.Fawcett@aph.gov.au

Dear Senator

Financial Advisers Register – banned advisers who do not appear on the register

At ASIC's appearance before the Parliamentary Joint Committee on Corporations and Financial Services on Friday, 16 October 2015, you asked a number of questions about why certain banned financial advisers do not appear on the Financial Advisers register (FAR).

Financial Advisers register data set

Information to be included on the Register is ultimately determined by the Parliament.

The Financial Advisers register provides a list of all financial advisers currently operating in the industry, but does not provide a complete list of all advisers who have operated in the industry in the past. The FAR lists all advisers who have been authorised to provide personal advice since 31 March 2015¹. They will remain on the register even if they are subsequently banned or leave the industry for any other reason.

Most current advisers were operating in the industry prior to 31 March this year, and so the register contains significant information about advisers who have operated in the industry in previous years as long as they are still active. However, advisers that

¹ As a practical measure to assist licensees enter details onto the Register in the very short implementation timeframe established by Government, they were able to select a date between 1 January 2015 to 30 March 2015 (the data collection period set out in the Corporations Regulations 2001 (Cth)) as the starting date for the list of their advisers they placed on the register.

ceased to practice prior to 2015 will not be listed on the register. The register is not retrospective for the reasons set out in this letter.

Government's policy decision

It was a policy decision by Government that only current advisers who were authorised to provide personal advice to retail clients on investments and life insurance products would be required to be entered on the Financial Advisers register.

The Government's decision to include only current financial advisers was supported by Treasury, ASIC and industry, as it was consistent with the primary purpose of the register, to improve transparency and empower consumers to validate and help choose from financial advisers that are currently active.

Requiring licensees to gather information about their historical advisers would have imposed a significant burden. The Government saw it as appropriate to balance the costs to industry with the potential benefit to the public. Licensees were already under substantial pressure to meet the short timeframe to provide the data on current advisers to populate the register, and it would have been unreasonable to require them to also provide data on all former advisers.

Having said this, information about advisers who were previously banned or disqualified (including prior to 2015) is available from ASIC's website. A consumer or other interested party can check whether an adviser who is not on the register was banned in the past.

Clearly if a consumer comes across a person who purports to offer personal financial advice but does not appear on the Financial Advisers Register they should carefully consider choosing a different adviser – one who is on the register as currently operating in the advice industry.

Recently banned advisers who do not appear on the Financial Advisers register

In a very limited number of cases a recently banned adviser will not appear on the register.

A person who has been recently banned from providing financial services may not appear on the Financial Advisers register because, at the time licensees were required to provide information to the register about their current advisers the person was not authorised by any licensee (and has not be authorised at any time after 31 March 2015).

It is not unusual for advisers to have their advice authorisation terminated and to cease operating during the course of investigation by ASIC, or by their licensee, prior to ASIC's banning action being completed. In some current matters this termination may have occurred prior to 2015, while the announcement of the banning will occur this year. However, this is a relatively short-term transitional issue and only arises in a small number of cases.

Of course, the adviser's banning is still publicly announced via media release and is listed in the Banning and Disqualification information on ASIC's website.

Over time the historical record of advisers on the register who provided advice in the past but no longer do so (for whatever reason including formal bannings) will grow.

ASIC's use of the FAR to identify problem advisers

The Financial Advisers Register serves a number of purposes. First and foremost it is a tool for consumers to help them choose from the pool of current financial advisers.

Another purpose is to provide ASIC with much greater visibility of the advisers in the industry, those moving to different firms and those entering (or re-entering the industry). As discussed at the October PJC meeting, ASIC is using the register to help track advisers where we may have concerns, and in particular to identify if any advisers that are the subject of a current banning attempt to enter the industry via another licensee. This includes those advisers banned prior to 2015 where the banning was permanent or still current.

ASIC is firmly of the view that the Financial Adviser Register is an important policy initiative and is already playing a role in reducing the risk of 'bad apples' and improving consumer information. We are committed to ensuring that the Register works effectively to ensure that the information provided about the advice industry is as robust as possible.

I trust this explains the situation but please contact me if you would like to discuss the matter further.

Yours sincerely

Peter Kell
Deputy Chairman
Australian Securities and Investments Commission