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Dear Ms. Hope,

### Consultation Paper 224 – Facilitating electronic financial services disclosures

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to *ASIC Consultation Paper 224 – Facilitating electronic financial services disclosures* (CP 224).

ASFA has consulted with its members and reviewed CP 224 and its attachment – *Draft updated Regulatory Guide 221: Facilitating electronic financial services disclosures* (RG 221). We broadly agree with the proposals made by ASIC and consider them an essential step in catching up with technological advancements.

Our comments on the specific matters raised in CP 224 are set out later in this submission and follow the structure of the Consultation Paper.

#### ABOUT ASFA

ASFA is a non-profit, non-politically aligned national organisation. We are the peak policy and research body for the superannuation sector. Our mandate is to develop and advocate policy in the best long-term interest of fund members. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

#### GENERAL COMMENTS

The overarching goal of the recent changes in financial services disclosure requirements has been to promote clear, concise and effective disclosure of information to consumers of financial services.

The financial services industry, and superannuation funds in particular, are very keen to adopt technologies that would facilitate the delivery of financial product disclosures in a more efficient, timely and cost effective way and, importantly, deliver disclosures in a manner that would be more engaging and relevant for consumers of financial services.

The significant barriers to achieving these goals have proven to be legislative constraints, combined with the relatively conservative approach adopted in regulatory guidance material. ASFA is pleased to see that a more facilitative approach is being promoted in the Consultation Paper and adopted in the revised Guidance.

In our response to the Interim Report of the Financial System Inquiry (FSI), ASFA noted:

- the difficulties faced by superannuation fund trustees over whether or not consent to use an email address had been given, and
- an inconsistency among regulators on technology neutrality.

ASFA called on the Government and regulators to take a consistent approach across all financial service providers and sought Government consideration of changes to the provisions of the *Electronic Transactions Act 1999*, *Electronic Transactions Regulations 2000*, *National Consumer Credit Protection Act 2009*, *Corporations Act 2001* and *Privacy Act 1988*, to name a few, in terms of amendments to enable default electronic disclosure to go ahead. ASFA further recommended that the Government facilitate innovation through co-ordinated action, regulatory flexibility and forward-looking mechanisms.

In its recent Final Report the FSI, at page 195, had the following to say on disclosure:

**3. Facilitate innovative forms of disclosure, including by encouraging industry to further use technology.**

Although the disclosure regime has evolved to reduce complexity over the last decade, consumer behavioural biases and commercial disincentives limit its effectiveness. The Inquiry sees scope to promote efficient communication of information to consumers in a way that responds to technological advances and changing consumer preferences (see also *Recommendation 39: Technology neutrality*). Risk and fee disclosure remains variable and consumer understanding low. In addition, industry should develop consistent standards to improve disclosure of risk and fees.

ASFA considers that the key to improving the effectiveness of disclosure lies in taking advantage of technologies to engage with consumers in ways in which they are comfortable and which take advantage of the technology's capabilities to deliver relevant and focussed information. It is also important that consumers have clear options about how much information they want to access and in what form – for example tables and graphs rather than words. Making better use of these technologies could play a key role in improving financial literacy.

If technology neutrality and flexibility is built into the regulatory regime then the financial services industry can focus on giving consumers what they want, when they want it and how they want it.

Consistent with the desire of the financial services industry for better use of technology, we note the 'digital by default' approach adopted by the Australian Taxation Office (ATO) in its dealing with clients. The success of the *myGov* and *myTax* initiatives (over 3 million taxpayers signed up for *myTax* in the second half of 2014) reflects the desire of consumers to adopt new technologies and their comfort with them. The Government's commitment and support for such an approach is reflected in its December 2014 announcement of the single touch payroll initiative which will be rolled out to employers in 2016.

ASFA considers that, while the time is right for adoption of a new technologies and a 'digital by default' approach for financial services disclosures, the initial move to new technologies may be relatively slow and piecemeal as providers identify, and determine how to mitigate, the emerging risks associated with electronic disclosure.

On 28 November 2014 ASIC announced that, as part of its broader work in promoting digitisation and the use of new media in improving the effectiveness of financial disclosures, it will work with AMP and Vanguard to develop and user test a short, online 'key facts' sheet and a self-assessment tool to guide investor understanding. ASFA is strongly supportive of this initiative and in particular the commitment to working with consumers to gauge effectiveness. Consumer testing using robust methodologies is essential to ensure that any change will deliver the expected benefits to both consumers and providers and that there are no unintended consequences.

Given the timeframe of the ASIC project – preliminary results expected mid-2015 - ASIC may need to reconsider its time frame for updating Regulatory Guide 221 with respect to facilitating the use of more innovative PDSs.

## SPECIFIC COMMENTS

### A Background to the proposals

#### *Barriers to more innovative forms of disclosure*

#### *Options considered*

##### *Proposal A1*

We are considering the threshold options set out in paragraph 18. Depending on feedback, we propose to implement Options 1–3 to further facilitate electronic disclosure.

#### *Feedback*

##### A1Q1

This question seeks advice on the extent to which ASIC should further facilitate electronic disclosure.

ASFA strongly supports ASIC further facilitating electronic disclosure. The fundamental challenge in communications is to engage with consumers in a manner that meets their requirements and satisfies their preferences. The communications challenge is greater for financial disclosures due to the desirability of drawing the consumer's attention to information that they may not necessarily seek, but of which they should be aware.

ASFA supports Option 4 (a combination of Options 1-3), as it would facilitate enhanced electronic disclosure across the spectrum of disclosure documents and provide benefits to a wide range of recipients and issuers.

We note that in its Final Report the FSI expressed concern that electronic service delivery may result in older Australians being excluded (see pages 269-270). As a counter to this, it is ASFA's view that a carefully designed, technology neutral disclosure regime could cater for all demographics, facilitating access to printed material for those who desire it whilst also catering to those demographics that have demonstrated a high take up rate for electronic communications. Importantly, electronic disclosure would encourage engagement in financial services by those in the younger demographics who prefer to interact electronically, have less knowledge of financial services, and would benefit financially both in the short and long term from better access to financial product information. It is of critical importance that consumers who currently receive paper disclosure are advised – by paper – of their ability to “opt-out” of electronic disclosure and that return mail is monitored and actioned. This should act as a sufficient safeguard to ensure that older Australians, in particular, are able to elect to continue to receive paper disclosure.

Consistent with option (c), it is suggested that, for online only products, ASIC extend to existing customers its current approval that providers are able to mandate electronic delivery as a product condition for new customers only, but provide those existing customers with the ability to opt-in to paper.

## A1Q2

This question seeks information on the benefits that would arise from the proposal to implement Options 1-3 so as to further facilitate electronic financial services disclosure.

ASFA members have advised that the following benefits would flow from ASIC's proposed approach to electronic disclosures.

### *Cost savings*

There are significant financial and environmental costs associated with the production and distribution of paper based documents, and these can be expected to continue to grow. These costs ultimately are borne by consumers of financial products.

Examples of estimated potential cost savings are included in the response to question B1Q15.

However, whilst noting that savings can be made on printing and postage costs, true innovation in electronic communication is still expensive. The key benefit of technology is its flexibility to deliver information at different levels of detail, in different forms and with different levels of interaction whilst achieving greater customer engagement with the product information.

### *Improved financial literacy and greater client awareness*

The FSI Final Report (at page 193) noted that 'Improved financial literacy enables consumers to be more engaged and to make more informed decisions about their finances'.

ASFA considers that a key element to improving financial decision making is engaging with consumers in a manner with which they are comfortable and using language and structures with which they are comfortable. Such an approach is not possible when disclosure is constrained by mandated layouts, formats and font sizes.

The Inquiry's observation of the need to 'Empower consumers by encouraging industry to harness technology and develop more innovative and useful forms of disclosure' (at page xx) recognises that a change in approach to disclosure is necessary. The concept is encapsulated in the Final Report's Recommendation 23 (page xxv):

### **Facilitate innovative disclosure**

*Remove regulatory impediments to innovative product disclosure and communication with consumers, and improve the way risk and fees are communicated to consumers.*

The FSI Final Report notes that, although the disclosure regime has evolved to reduce complexity over the last decade, consumer behavioural biases and commercial disincentives limit its effectiveness. ASFA anticipates that the interactive nature of the proposed solutions and the ability for the client to be shown and select the areas of disclosure documents that are of interest and relevant to them will empower and facilitate better decisions than currently is the case.

Anecdotal information and third party research reveals that many consumers do not read disclosure documents. If, as we believe is likely, the percentage of clients who read and understand the salient points of, for example, PDSs can be increased then this is to the benefit of both the client and the product issuer.

### *Increased awareness of rights*

ASFA considers that a further benefit of electronic communication is an increase in consumers' awareness of their rights. By delivering electronically to consumers material that has been appropriately designed to highlight consumer warnings (for example notice of a 14 day cooling off period) there is an increased likelihood of the consumer becoming aware of their rights.

### *Improved timeliness of interactions*

Delivering disclosure material electronically, through a medium with which the recipient is comfortable, both improves the timeliness of the receipt of the communication and increases the likelihood of any necessary action being taken in a timely manner.

In particular, electronic disclosure can provide additional benefits to consumers who are disadvantaged by location or circumstances as it can provide an easier and more convenient way to ask questions and raise issues etc.

Electronic disclosure also has the advantage of enabling more timely disclosures and updating of documents due to the reduced distribution timeframes when compared with paper disclosures.

### *Greater ease of use*

Anecdotal evidence suggests clients find electronic documents easier to read, value being able to search for words and phrases in which they have a particular interest, can more easily reference relevant text in correspondence with others and can file electronic disclosures so the disclosures can be easily and readily retrieved at any time and from wherever the client may be.

## **A1Q3**

This question seeks comments on potential disadvantages that may flow from the proposed approach.

The key disadvantages with the proposed approach relate to some technical and legal challenges. These are dealt with elsewhere in this response.

Potential disadvantages, such as forcing consumers down a non-preferred communications path, would appear to be addressed by the proposal to enable them to choose the method by which they receive disclosures (e.g. the capacity to opt out of electronic receipt of disclosure documents). With this it is critical that consumers whose current preferred communications path is paper are advised by paper disclosure of their ability to opt out of electronic receipt of disclosure documents and that returned mail is monitored and actioned appropriately.

While some challenges may still arise from incorrect information provided by agents they are not insurmountable, and are not dissimilar to the existing issue with currency of address information.

One matter that, if not addressed, could disadvantage consumers is that of ensuring that where disclosure information is able to be accessed electronically through a range of devices, adaptive display technology is utilised. That is, there must be a requirement to present the information in a 'device friendly' format.

Achieving this requires flexibility in the regulatory regime with respect to how material can be presented whilst also ensuring that the regulatory regime requires the use of appropriate technology such that the information is presented to the consumer in a screen friendly format. For example, the disclosure regime must recognise and accommodate the different display/screen capabilities between a mobile phone and a personal computer such that the information is required to be presented to the consumer in a method that is appropriate to the consumer's device.

## **A1Q4**

This question seeks information on other options that should/could be considered that would facilitate electronic disclosure and the development of more innovative PDSs without compromising the right of the consumer to choose the method of delivery.

ASFA considers that an appropriately designed, technology neutral disclosure regime should support both push and pull delivery of disclosure material.

For example, it should contemplate the delivery of personalised electronic disclosure by mail, email, CD Roms, memory sticks etc. whilst also contemplating consumers accessing disclosure information through websites, secure electronic portals accessed by a password, and phone applications. It should also contemplate the structuring of 'documents' that refer to further information or other disclosure documents accessed via embedded hyperlinks (incorporation by reference).

## B1 Enabling electronic disclosure to be the default method

### *Delivery of disclosures to an email address*

#### *Proposal B1*

We are proposing to update our guidance in RG 221 to make it clear that, if a financial services provider has an email address for a client, they do not need consent to use that address to deliver disclosures electronically, in the same way that the provision of a postal address is sufficient consent for the delivery of disclosures to that postal address.

Providers should still be satisfied that if the relevant provision requires the address to be 'nominated', that the email address has been nominated. We think in most circumstances this would be clear from the context (see draft updated RG 221.33), such as when a client provides an email address as part of an application.

#### *Feedback*

We note that, in respect of provisions which allow certain disclosures to be delivered 'electronically', (for example section 1017D of the *Corporations Act 2001* which relates to periodic statements), there is no requirement in the legislation for express consent from a client to do so. We also note that the drafting of such sections differs from those which allow delivery to an electronic address that has been 'nominated' by the client or the client's agent.

Advice to ASFA is that ASIC's existing guidance in the current RG 221 has confused the issue by suggesting that consent was required with respect to disclosures permitted to be delivered 'electronically'. Proposal B1 in CP 224 seeks to address this through the updating of RG 221. Although CP 224 says that the intent of the proposal is to update the guidance to clarify that, where a financial services provider has an email address for a client, it does not need consent to use the address to deliver disclosures electronically, RG 221 does not seem to state this explicitly.

ASFA requests that this be redressed through the inclusion, at RG 221.16, of a clear statement that express consent is not required.

In ASFA's view ASIC's approach should be the same whether disclosure is permitted to be delivered electronically or may be delivered to an email address nominated by the client. It is a matter of good practice that a provider should only use an email address that it reasonably believes the client will access and, as such, it is irrelevant as to whether the address has been 'nominated'. It is important that clients who currently receive paper based disclosure are advised of the intention to change to electronic disclosure and be given the option to "opt-out".

Whilst strongly supportive of proposal B1, ASFA cautions that there may need to be a degree of education of consumers as to the risks associated with the receipt of important information by electronic means. Such risks include the hacking of public access accounts and spam filtering. There can also be risks associated with using an internet service provider based email address or an email address tied to their current employment. Post cessation of employment these emails are often accessed by others (e.g. executive assistants and successors in the role) for some time. To facilitate informed decision making consumers should also be made aware of the risks associated with the receipt of printed material. These include the risk of lost, stolen or misdelivered mail; and the possibility of forgetting to notify the provider when they have moved address (if not using the Australia Post mail redirect service) (see B1Q10 for a discussion of consumers changing their residence).

Whilst the proposal notes the need for providers to be satisfied that the address has been 'nominated', consumers need to be aware that, in future, in 'nominating' an email address the provider will assume the consumer has the capacity and willingness to receive information via this medium.

Where financial services providers initially are communicating to consumers that disclosure delivery will be 'defaulting' to electronic, such notification should include information on the right to 'opt out' of electronic delivery and information on how to do so. If the member currently received paper disclosure then this 'opt out' disclosure should also be via paper. Good practice would see similar information provided as part of each electronic disclosure. Good practice would also see providers permit consumers to nominate the disclosure method by type of disclosure as – at least initially - consumers may be reticent to receive electronically those disclosures which are 'personalised' to their circumstances (e.g. annual statements) as distinct from a disclosure that is general or publically available (such as annual reports, PDSs and FSGs).

Given the ongoing issue of consumers of superannuation products frequently failing to maintain the currency of their address for disclosure, it is anticipated that a similar situation may arise with email addresses, creating a need to monitor 'bounced' emails and to develop innovative solutions for collecting and verifying the authenticity of changed email addresses.

## B1Q1

This question seeks feedback on the level of support for the proposal.

In strongly supporting the proposal, ASFA notes that the focus of CP 224 is on facilitating the use of email addresses while effectively ignoring other electronic communication techniques, including techniques not yet invented. As suggested in recommendation 39 *Technology neutrality* of the FSI Final Report (page xxvii), the principle of technology neutrality should be considered in the development process for future regulation:

### 39 Technology neutrality

*Identify, in consultation with the financial sector, and amend priority areas of regulation to be technology neutral.*

*Embed consideration of the principle of technology neutrality into development processes for future regulation.*

*Ensure regulation allows individuals to select alternative methods to access services to maintain fair treatment for all consumer segments.*

With respect to the proposal that, where a client or their agent has provided the financial services provider with their email address, the provider may use that address to deliver disclosures electronically without seeking further specific consent, ASFA offers the following general comments.

Whilst strongly supporting the proposal, clarification is needed on the circumstance of email addresses provided by employers for employer-enrolled members. In particular:

- where an employee has provided an employer with a personal email address for employment purposes, should that authority be taken to extend to employment related superannuation matters such as the enrolment of the employee in the employer default fund where the employee does not exercise choice?
- where the employer allocates a work email address to an employee, should provision of that address to a superannuation provider as part of a default fund, new member enrolment process be considered consent by the employee?

ASFA considers that, in both situations, the answer should be yes, and requests that the updated RG 221 provides clear direction on both circumstances. With respect to the second situation we would suggest that employers should have an obligation to advise the financial services provider when an employee ceases employment.

ASFA acknowledges that, where disclosures are of a sensitive or personal nature, the issuer should be required to have adequate systems in place to mitigate the potential for delivery being made to an incorrect address or unintended person. In this respect we note that a mailing address does not guarantee any greater level of security of delivery than an email address and that email addresses and mobile phone numbers have the potential to be more stable.

## B1Q2

This question seeks information on any other barriers to using email addresses for delivery of disclosures.

ASFA notes that, even where there is specific guidance from ASIC, providers will still need to ensure that any actions taken are consistent with the requirements of the *Privacy Act 1988* and the *Spam Act 2003*.

## B1Q3

This question seeks comment on the implications of the consequences of the proposed change.

The advice to ASFA is that there is a significant number of consumers who have supplied email addresses to their financial services providers but who currently do not have disclosures delivered to those email addresses solely as a result of the providers' uncertainty as to the current legal requirements.

Should RG 221 be amended to address this uncertainty these consumers potentially could be switched from paper to electronic disclosure.

ASFA recommends that RG 221 address this issue by suggesting an approach that a provider could adopt when undertaking the conversion from paper to electronic. ASFA suggests that the appropriate approach would be to send a paper advice to the

consumer advising of the proposal to change distribution method and providing the consumer with the opportunity to opt-out of electronic communications.

ASFA requests that the revised RG 221 address this issue.

#### **B1Q4**

This question seeks an opinion on whether the provision of an email address is a strong indicator of the consumer's comfort with receiving all disclosures by email.

As noted above, in our general feedback on proposal B1 ASFA has concerns with assuming too much about the past provision of an email address, particularly where that was provided by an employer. Whilst anecdotal evidence based on other experiences suggests that the number of consumers who will choose to have some disclosures delivered in print form will be comparatively small, good practice would be to provide these current clients with the option of selecting differing disclosure methods based on the type of disclosure. It is ASFA's view that, while the provision of an email address may mean that a client is comfortable with all forms of disclosure being delivered to that email address, this is by no means certain and for existing customers good practice would require this to be tested through existing communication channels. ASFA recommends that providers manage this issue through the manner in which they transition existing consumers to electronic communications and the disclosure options they offer to new consumers.

ASFA considers that, going forward, where a consumer provides an email address or one is provided by an agent, such as an employer on behalf of the consumer, then it is reasonable for the provider to assume the consumer is comfortable with receiving all forms of disclosure through electronic means. While in ASFA's view consumers who decide that they prefer to receive some disclosures in printed form should be permitted to opt out of electronic disclosures by disclosure type, rather than being forced to take an all or nothing approach, we have not been able to quantify the cost of developing and implementing systems that would facilitate this.

ASFA suggests that, as a matter of course, consumers can take comfort in the required minimum specifications that must be met by a provider for electronic delivery of personal information. To assist in the uptake of electronic disclosure, the providers and ASIC should be educating consumers on the minimum requirements associated with delivery of personal information.

Whilst ASFA considers that most consumers and groups of consumers will be comfortable with all forms of disclosure being made electronically, possible exceptions include those consumers whose email address is work-based.

#### **B1Q5**

This question asks whether a provider seeking an electronic address should be required to provide information, warnings or advice about the potential ways the address might be used.

ASFA considers that, with the move to default use of an electronic address for disclosures, application forms etc. should make it clear that if an email address is provided it will be used for the provision of disclosures unless the consumer indicates otherwise.

Additionally, and consistent with our comments above, ASFA considers that current disclosures should be modified so as to provide the capacity for a consumer to be selective about how specific types of disclosures are provided.

Given the expanding delivery choices available, good practice would see providers including information about known security issues with the various forms of disclosure delivery, including paper, such that consumers may make an informed decision when selecting a disclosure method(s).

#### **B1Q6**

This question seeks views on likely consumer preferences for receiving various types of disclosures.

ASFA considers that consumers are likely to prefer electronic disclosures for disclosures that are not tailored (e.g. annual reports, PDSs and FSGs).

Consumers may prefer more secure electronic methods, such as encryption, secure electronic portal etc for personalised disclosures such as periodic statements and Statements of Advice (SOAs).

## B1Q7

This question asks whether it is relevant to whom the email address was provided.

As noted above, where an email address is provided by a third party, such as an employer, the question arises as to the purpose(s) for and the expectations under which the consumer provided the address to that party.

It is ASFA's view that, before using currently provided email addresses for providing disclosure documents, the provider should advise the consumer by paper of the intended use of the email address going forward.

Where the email address is provided by the consumer's agent (employer, financial adviser etc.), there should be an obligation for the person passing on the email address to have explained or provided explanatory material as to the purposes for which the email address may be used.

## B1Q8

Sections of the *Corporations Act 2001* which permit disclosures to be delivered to an electronic address 'nominated' by the client or client's agent (such as sections 940C and 1015C relating to PDSs and SOAs respectively) are addressed at RG 221.33 – 35.

Question B1Q8 seeks comments on Example 1 at RG 221.35 of the draft updated Regulatory Guide. ASFA has concerns with the usefulness of the example in providing guidance as to when an electronic address could be considered to have been 'nominated' by the client or who might be acting as a client's 'agent'.

The concerns are that the example does not deal with the common superannuation situation where email addresses are provided to the trustee by the member's employer. The example also does not make clear the purpose for which Rahini gave Anna the address, but rather implies this from the agent and client relationship.

While ASFA supports the view in Example 1 on the permitted use of the email address, we have concerns with the non-committal language used in the commentary that follows the example. Terms like 'we think' combined with a statement that 'Big Company would have to be satisfied' do little to give product providers the degree of comfort and certainty they require.

It is ASFA's view that, in the situation set out in the example, the obligation lies with the financial planner either to:

- At the time of establishing the relationship with the client - seek authorisation for the purposes for which the client's email address will be used (e.g. for giving to providers for the purpose delivering disclosure documents), or
- When requested to purchase Big Company bonds - seek a direction from the client as to what contact details are to be provided to Big Company, and provide an explanation of the implications of the decision.

ASFA considers that – from commencement of the revised version of RG 221 - where a consumer engages the service of an agent to act on their behalf when purchasing a financial product, the provider should be able to act on the information supplied by the agent. That is, if the agent supplies an email address the provider may use this for disclosure purposes without recourse to the consumer.

As stated above, ASFA considers that good practice would require providers to make provision for consumers, on an ongoing basis, to indicate if they do not want to receive certain disclosures by specific methods.

## B1Q9

Question B1Q9 seeks information from providers as to how currently it is determined that an address (postal or email) has been nominated for the purpose of disclosures.

Advice to ASFA is that providers typically consider an email address to have been nominated when it is provided by the client (or their agent), in circumstances where they have been made aware of the purposes for which it will be used – for example, by the client completing their email address on a (paper or web-based) form which sets out the purposes for which it will be used.

## B1Q10

This question seeks opinions on whether email disclosures are more or less likely to be lost, such as through un-notified changes or misdelivered, than posted disclosures.

ABS statistics (4102.0 - Australian Social Trends, Dec 2010) show that 43% of people aged 15 years or over had moved house in the preceding five years.



This increases dramatically in certain demographics:

- over 60% of people in the 20-34 age groups moved house in the preceding five years
- over 80% of 25-29 year olds moved house in the preceding five years
- Some of those who had moved in the previous five years had moved multiple times, with over 10% of the movers having moved five or more times in that period.

Whilst no comparable figures are available for changes of email addresses, given this high mobility in the population it does not appear any more likely that emailed disclosures will be lost. Anecdotally, email addresses are less likely to be changed than residential addresses. The exception to this may be where an email address is employment or internet service provider-based, as this would change as the individual moved between employers or internet service providers.

More stable than both residential and email addresses are mobile phone numbers, which are generally only changed in extenuating circumstances (e.g. the person is being harassed) or the mobile phone is employment-based. This adds weight to the argument that disclosure requirements should be technology neutral.

With respect to superannuation disclosures, consideration needs to be given to the superannuation industry's capacity to source Tax File Number (TFN) associated address information from the Australian Taxation Office and the strong uptake (over 3 million registered users) of the ATO's MyTax digital-by-default delivery service for taxation related documents.

Information provided by ASFA members reveals that email bounce back messages (when an email cannot be delivered) fall into one of two categories:

- (i) a mailbox full message, which often means the email address owner's email storage capacity has been exceeded; or
- (ii) an undeliverable message, which may mean the mailbox has been deleted (common where employment or internet service provider-based addresses have been used, or an account has not been accessed for some time) or never existed (often because of mistyping of complex addresses or the addition of an extraneous ".au" extension).

ASFA members have not reported any cases of "misdelivered" email - where delivery has been made to an email address other than the one intended. Unlike printed correspondence, where human error can result in delivery to the wrong postal box or wrong residence, the technology associated with emails makes it most unlikely that an email will be delivered to an address other than that specified.

ASFA anticipates that providers, and in particular superannuation providers, would follow the same procedure as they currently do for returned printed disclosure material: attempt to contact the recipient by telephone or postal service. ASFA acknowledges that this may require implementation of information technology management processes not currently in use by trustees.

In summary, ASFA does not think that an email disclosure is any more likely to be lost than a posted disclosure, and in fact is possibly less so. However, providers would need to ensure that there are methods by which clients can easily update their email address. Of course, in the case of both mail and email disclosure there is no guarantee that clients will read the disclosures. Whilst to a limited extent delivery and opening of electronic mail can be monitored, proof that the disclosure was received by the intended person would be dependent on secondary systems. Short of registered mail there is, of course, no method for ensuring that mail has been delivered, and even this is no guarantee the mail has been opened.

## B1Q11

This question seeks views on whether there may be an issue with people changing email addresses and any available relevant data.

ASFA has no data on the frequency with which people change email addresses. However, anecdotally, people generally change email addresses relatively infrequently, though at a higher rate than they do mobile phone numbers, except where email addresses are employment or internet service provider based.

Many people have multiple email addresses, a work email address, an email address for personal/private business purposes and an email address for other mail (the 'junk mail' address used for signing up to offers etc). Managing multiple email accounts appears to be standard fare, particularly for the younger generations.

Significantly, unlike changing a physical address, when a new email account is opened access to the old email account is typically retained (except where the old account is an employment or internet service provider related account), although it may be accessed less frequently.

The considered view of ASFA is that a consumer changing an email address can be less problematic than a change of residential or postal address.

#### **B1Q12**

Question B1Q12 seeks information on particular contexts in which the current requirement for a client to 'nominate' an address would prove a barrier to efficient electronic disclosure.

As noted above, uncertainty exists in relation to consent to use a client's email address where the address is provided to financial services provider by a third party such as an employer or a financial adviser.

The consent issue is not restricted to financial services disclosure but includes the legal position with respect to compliance with the requirements of the *Privacy Act 1988* and *Spam Act 2003*.

ASFA, as stated above, is of the view that it is the responsibility/duty of the third party provider to ensure that the client/employee (as the case may be) is advised of any relevant matters under the *Privacy Act 1988*.

ASFA is of the view that where an electronic address has been provided it should be regarded as the nominated address unless the customer advises that an alternative medium should be used. The financial services provider should disclose to the member in the current format, generally paper, to advise of the change to the default for disclosure from paper to electronic and how the member can 'opt out'.

It is also ASFA's view that this position should be reflected in relevant Commonwealth legislation.

#### **B1Q13**

This question asks, where there is a provision allowing a disclosure to be notified, sent, given, provided or delivered electronically, any further guidance is needed on whether an email address that is held can be used to satisfy such a requirement.

ASFA's view is that any guidance that provides clarity would be useful, particularly with respect to the superannuation specific circumstance of provision of email addresses by employers and other third parties, specifically with respect to addresses that were collected during the time when ASIC's view with respect to specific consent had currency.

#### **B1Q14**

This question seeks information on any other guidance or relief that is required to facilitate the delivery of disclosures by email to clients.

ASFA seeks ASIC guidance on the following matter: Unlike with paper documents, with advances in technology it is possible for providers of disclosure documents to measure the amount of time spent by recipients in reviewing a document. This is known as "dwell time".

ASFA is concerned that, where a provider maintains a record of dwell time, this may be used against it by recipients claiming the provider should have been aware the recipient could not reasonably be considered to have read a particular disclosure document as the dwell time was too short for this to have occurred.

ASFA considers that the obligation on the provider to provide the disclosure is separate and distinct to the consumer's obligation to read the document.

ASFA considers that both legislation and guidance material should be clear on the different obligations: the provider's duty to disclose and the consumer's responsibility for determining how and the extent to which they choose to engage with the disclosure.

Further, the legislation should ensure that a financial services provider is only liable with respect to the content of electronic disclosure and has no liability with respect to any knowledge or awareness of the length of time the consumer spent reading the disclosure material.

With respect to relief, ASFA considers that this is required with respect to products that are only available online. ASFA considers that where a product is only available through electronic means it should not be possible for a client subsequently to seek access to printed communications. Doing so would be contrary to the intention of both the provider and the consumer at the time of acquiring the product.

## B1Q15

This question seeks information from business of any cost savings they expect to realise from this change.

In general, savings are difficult to quantify as they depend on the degree of use of electronic delivery and future innovations possible through the use of electronic delivery. However, there would be immediate savings in postage, printing and compilation costs. Major savings may come from being able to include information in documents via hyperlinks rather than having to include it in printed form (even allowing for inclusion by reference). For an SOA, such an innovation would significantly reduce preparation time and document size. Similar results would be achieved for PDSs and FSGs.

The following information on the estimated costs of paper and email delivery has been provided with respect to a superannuation fund with 1.5 million members (noting that there are at least 33 million superannuation accounts).

Disclosure	Cost of paper delivery	Cost of electronic (email) delivery
Financial Services Guide	No figures available	No figures available
Statement of Advice	\$1,680,000	\$75,000 if email used
Product Disclosure Statements Note: the FSG is often part of the same mailing	\$1,680,000	\$75,000 if email used
Annual reports	Nil (statutory relief permits website posting)	Nil (statutory relief permits website posting)
Periodic statements	\$2,444,000 per annum	\$302,644 per annum
Ongoing disclosure of material changes and significant events	\$1,225,000 per event	\$75,000 per event
Confirmation of transactions	\$1,350,000	\$90,000
Additional information on request	Costings included in the ongoing disclosure figure	Costings included in ongoing disclosure figure

It should be noted that, as the costs are based on a 100% shift from paper to electronic disclosure, the extent to which those savings are realised is dependent on the percentage of members who provide an email address and who do not opt-out of electronic disclosure.

It should also be noted that the above costs are printing and delivery costs. They do not reflect any cost savings that may flow from the economic benefits flowing from better and timelier disclosures to consumers.

Advice from another ASFA member is that for a general member communication (excluding design and programming) the paper based production cost (letterhead, mail house, print, envelopes and postage) is \$1.00 – \$1.10 per item depending on the volume and mailing options. These costs increase for weightier publications such as multiple PDSs and SOAs where additional postage costs are incurred or when more complex mailing instructions are provided to mail houses.

The comparable cost for email distributions is approximately 1 cent per item where internal digital distribution capability is used.

The exact quantum of cost savings achieved will be influenced by the transitioning costs and the extent to which the 'good practice' steps outlined above are implemented.

## B1Q16

This question seeks an estimate of any additional costs that consumers might be expected to incur as a result of this change.

In ASFA opinion, the majority of consumers are unlikely to incur additional costs unless they choose to print out documents rather than read them in electronic format. These printing costs would be marginal and, if a concern, could be mitigated where the consumer is able to request a paper copy from the financial services provider mail them a paper copy.

Electronic delivery of disclosure documents provides consumers with the opportunity to retain the documents in a secure, easily accessible and efficient manner.

## B2 Provision of disclosures on a website or other electronic facility

### *Proposal B2*

We propose to give class order relief to provide an additional method of delivery for most Ch 7 disclosures (where not already permitted), allowing providers to make a disclosure available on a website or other electronic facility, provided clients:

- (a) are notified (e.g. via a link or a referral to a web address or app) that the disclosure is available; and
- (b) can still elect to receive that disclosure via an alternative method of delivery, on request.

### *Feedback*

ASFA is supportive of this measure provided consumers who are unable to access information in an electronic format are not disadvantaged by the outcome.

Proposal B2 makes the communication of information timelier and reduces the costs associated with more traditional delivery methods. Updates to online material should be made available in whatever means the consumer wishes to receive them, with, hopefully, synergies being created when considering the various electronic avenues.

With respect to the two proposed class orders, ASFA seeks a public consultation process.

ASFA requests that consideration also be given to a review and update of related instruments such as ASIC Class Order 03/237 (Updated Information in Product Disclosure Statements) to better facilitate electronic disclosure and to other Class Orders such as Class Order 13/763 (Investor Directed Portfolio Services) such that they are technologically neutral and allow electronic notifications via means other than email (for example, SMS delivery).

### **B2Q1**

This question seeks advice on the degree of support for this additional method of disclosure, together with reasons.

ASFA is supportive of the proposal that, subject to certain conditions, providers may make a disclosure available on a website or other electronic facility.

ASFA considers that, in an environment of rapidly changing technology, like most other products electronic mail has a product life cycle. As a result, electronic disclosure methods should not be limited to the use of electronic mail, but rather the regulatory framework should recognise that email may be replaced by, or become secondary to, other technologies. Consequently, the regulatory framework should be technology neutral and be described in flexible terms.

In this context, the regulatory framework should recognise the advantages and disadvantages of 'push' and 'pull' information exchanges and make provision for both to be used.

In the case of electronic mail, 'pushing' large documents to customers may build up resentment and create problems for the customer where the action results in mail boxes becoming full. We also would welcome a review and update of related instruments such as ASIC Class Order 03/237 (Updated Information in Product Disclosure Statements) to better facilitate electronic disclosure. Moreover, other Class Orders, such as Class Order 13/763 (Investor Directed Portfolio Services) should be updated to be technologically neutral and allow electronic notifications via means other than email (for example, SMS delivery). For many customers, particularly in the short term while electronic mail is prevalent, the preference may be for a short electronic advice that a disclosure document is available, together with details of how it may be accessed. The recipient would then 'pull' the disclosure document through the advised access method as determined by the provider.

Accordingly, ASFA strongly supports ASIC's proposal to provide additional methods of disclosure. ASFA, in supporting the proposal, considers that such an approach would be consistent with the differing roles of the provider (appropriate disclosure) and the customer (consumption of the disclosure material).

### **B2Q2**

Question B2Q2 seeks views on whether clients should be notified each time (via their existing method of communication) of the availability of the disclosure on a website or other electronic facility.

ASFA considers that the need for, and desirability of, notification each time a disclosure document becomes available will vary depending on the nature of the disclosure document and the client's individual preferences, but that the method of notification should be the member's preferred method of communication.

### **B2Q3**

This question seeks information on what are acceptable methods of notification (e.g. letter, email, SMS, voice call, or other).

Whilst of those listed both email and SMS are preferable to a letter or voice call, ASFA requests that ASIC not attempt to legislate the acceptable methods of notification.

The listed contact methods were developed in the nineteenth and twentieth centuries. Given the pace at which advancements in uses of technology are occurring, and new technologies are emerging, care should be taken to ensure that the use of new methods or yet-to-be-developed technologies is not precluded.

ASFA considers that a better approach is to establish a set of basic principles for the use of electronic disclosures. For example, the notification method used by the provider ideally should facilitate easy movement from the notification mechanism to the disclosure document delivery mechanism.

Adopting the above principle to electronic notifications would enable the client to move to the disclosure document from the notification mechanism with no more than one press of the screen, click of the mouse or speech recognised syllable. It overcomes the problems created by paper disclosure notifications where the customer is required to re-type the website address to access the disclosure document. Those consumers whose preference is to receive paper notifications should, of course, have that preference honoured.

Permitting easy access to disclosure documents serves the interest of both the customer and the provider.

### **B2Q4**

This question seeks information on how notifications should be made, whether there are any suggested notice design considerations that would help ensure clients do not miss the opportunity to access their disclosures and what guidance ASIC should give on this issue.

As a basic principle ASFA considers that notifications should be made by the method that the client wishes to receive them. However, the consumer's choice should be limited to the options made available by the provider (with paper being a mandatory option provided by all providers) and set out in regulation or guidance.

For certain disclosures (eg PDSs), the notification should be structured such that its importance is not easily overlooked and the consumer is encouraged to access the disclosure. This may require consumer research and the sharing of learnings among providers.

The application, or creation and application, of smart technology that would advise the provider of whether an electronic notification advice was acted on (the consumer 'clicked through' or just 'closed' the notification) would be useful from a provider perspective for determination of consumer behaviour and refining communication techniques. However in line with our earlier stated principle on the roles of the provider and the consumer, ASFA considers that both legislation and guidance material should be clear that it is the consumer's responsibility for determining how, and the extent to which, the consumer chooses to engage with the disclosure.

### **B2Q5**

This question seeks any data which providers have on the likelihood of clients printing their own copies of relevant disclosures when they are made available online.

ASFA does not have any data on this and suggests that this may be a topic for ASIC consumer research more generally on consumer preferences and expectations with respect to the receipt of disclosure documents.

### **B2Q6**

Question B2Q6 seeks advice on whether ASIC should restrict the use of hyperlinks in notifications.

ASFA considers that, as a general principle, the use of hyperlinks make for more effective and efficient disclosure, particularly as it avoids the risk of providers inadvertently filling up a customer's mail box and denying delivery access to other people.

However some providers, concerned about the risk of 'phishing emails', are sensitive to the use of hyperlinks with respect to periodic statements and personal information and, as such, have a policy to not use hyperlinks.

ASFA requests that ASIC not be prescriptive in this area but rather leave it to providers to determine the suitability of the use of hyperlinks for any given notification.

#### **B2Q7**

This question seeks feedback on the costs to businesses of:

- (a) developing or modifying an electronic facility;
- (b) printing and mailing disclosures (including, where possible, volumes and expected changes in volumes based on the proposal); and
- (c) any savings they would expect to make were this proposal implemented.

ASFA has not been able to obtain any costings and has been advised that determination of cost estimates or cost savings is not possible without first developing a more detailed proposal/business case.

Many organisations will already have a secure portal that customers can log into to access information and documentation in a secure manner. Any required modification to support new processes or to accommodate changed usage levels should not be prohibitive.

#### **B2Q8**

This question seeks estimates of any costs that consumers might be expected to incur as a result of this change.

Advice to ASFA is that consumers are unlikely to face any significant costs as a result of implementing such a facility as most consumers accessing the internet use software and hardware that is current and fit for purpose. The only (marginal) costs would be those of printing should the consumer wish to access a paper copy, although, in most circumstances, they should also be able to request that the provider send them a paper copy.

#### **C1 Facilitating the use of more innovative PDSs**

##### ***Proposal C1***

We propose to facilitate more innovative PDSs, such as interactive PDSs, by giving relief:

- (a) from various provisions requiring a copy of a PDS to be given to a person on request and instead allowing a provider to give a copy of any current PDS for the relevant product or offer—meaning a provider can give a different printed PDS, even if technically it is not a ‘copy’;
- (b) from the shorter PDS regime, provided the PDS communicates the same information that is required by that regime; and
- (c) from the requirements for certain language to be included on the cover or ‘at or near the front of’ a PDS so they can equally apply to a more innovative PDS.

##### ***Feedback***

ASFA considers the basic principle for provision of PDS content is not the method of delivery, but rather that the informational content of documentation is consistent. That is, what is relevant is not whether the material is facilitated in an electronic or printed format, or the content looks identical, but rather whether the manner of provision is suited to the consumer’s delivery preference.

With respect to shorter documents and a requirement to include mandated language or information at the commencement of the document, the proposed change is logical as the remainder of the information will be only relevant, and accessed, based upon the consumer’s interest in it.

When that concept is related to other documents, such as FSGs or SOAs, a less prescriptive format has the potential to both overcome existing difficulties and provide the opportunity to make the material more ‘user friendly’ and streamlined, allowing advice providers to draw consumers’ attention to the critical areas of personal recommendations and advice.

#### **C1Q1**

This question seeks comments on the proposals for relief in proposal C1(a) regarding copies of the PDS.

ASFA is supportive of the proposal to facilitate more innovative PDSs.

Given the potentially complex nature of multi-media PDSs the opportunity to be able to provide a printable version of a PDS as a copy of record is welcomed.

A multi-media PDS allows a provider to present information to the clients in a fashion that facilitates the highlighting of important parts of the disclosure and allows attention to be drawn to those parts of the PDS that are relevant to the client. It also facilitates greater engagement and understanding by the consumer. The printable version then becomes a reference version for the client records.

In considering this option, consideration has been given to the situation where the multi-media version of the PDS differs in some significant way from the printable version. ASIC guidance is sought on this. Of course, where there is a difference between the PDS versions then the client should not be disadvantaged.

## C1Q2

The question seeks comments on the relief from the shorter PDS regime in proposal C1(b) and seeks other suggestions as to how this might be achieved. Comment is also sought on whether communicating 'the same information' is an appropriate limitation on a more innovative PDS.

ASFA supports the proposed relief from the shorter PDS regime, provided that the information required by that regime is provided to the consumer. We consider that 'communicating the same information' is the appropriate limitation on developing and delivering a more innovative PDS.

## C1Q3

Question C1Q3 seeks comment on whether the proposed requirement in proposal C1(c) that the mandated language be included 'at or near the front of the PDS' will accommodate more innovative PDSs.

ASFA accepts that an innovative PDS must include and highlight to the client the importance of certain information and supports the proposed relief from providing certain language at or near the front of the document.

ASFA considers that this would still require the language to appear very early on in an innovative PDS disclosure process.

However, ASFA considers that one of the key long term objectives of PDS disclosure should be to engage clients in a manner and using language that the client is comfortable with whilst still ensuring easy comparability of products. The appropriateness of some of the mandated language is a matter that could be considered once the use of more innovative PDSs has been implemented and bedded down.

## C1Q4

This question seeks advice on any further legislative barriers to providers' use of more innovative PDSs, including interactive PDSs.

ASFA understands that there are further legislative barriers to the use of innovative PDSs, specifically section 1016A of the *Corporations Act 2001*. This requires that an application form must be copied or directly derived from a form included in or accompanying a PDS. There is some doubt as to whether a multi-media PDS would satisfy this requirement and this will need to be clarified.

## C1Q5

Question C1Q5 seeks comment on whether any of the proposed relief should be extended to other types of disclosure, such as FSGs and SOAs.

ASFA is of the strong view that the relief proposed should be extended to cover both FSGs and SOAs.

On a related matter ASFA considers that, in order to better facilitate the electronic acceptance of documents, ASIC's framework should be expanded to incorporate e-signature. Doing so would meaningfully facilitate an electronic exchange between providers and customer.

More generally, consideration needs to be given as to how a confirmation can be provided by a client. For example, would it be appropriate use a 'radio button' in an email or on a mobile device or an SMS text message from a mobile phone? This requires the balancing of competing priorities of the desire of consumers for fast and simple ways of communicating with providers against the public policy desire for informed decision making to be well considered.

## C2 Updated regulatory guidance

### *Proposal C2*

We propose to update our guidance in RG 221 to:

- (a) make it clear that we think Pt 7.9 operates to allow a provider to have more than one PDS for a single financial product or offer, such as a version able to be printed and an interactive version;
- (b) make it clear that the requirement that a consumer can identify the information that is part of the PDS is particularly important in the case of more innovative PDSs; and
- (c) include further guidance on the use of more innovative PDSs and update our 'good practice guidance' on electronic disclosure to help ensure consumers receive clear, concise and effective information when disclosures are delivered electronically and in electronic form (see Section D of draft updated RG 221).

### *Feedback*

#### C2Q1

This question seeks views on the proposal and the reasons for the view.

Conceptually ASFA agrees with proposal C2 and requests that the guidance clearly sets this out and that, for regulatory purposes, each PDS is treated on a 'standalone' basis.

ASFA is concerned that unless it is clear from the guidance that, where PDS disclosure is made in more than one format, ASIC considers that each disclosure represents a single PDS then it is likely providers will reconsider their commitment to the development of more innovative PDSs. Such an outcome would be to the detriment of both the consumer and the provider.

Access to innovative PDSs is seen by the financial services industry as key to improving access to financial information by younger customers. Younger consumers, as a demographic, have demonstrated a high take up rate for electronic communications and are likely to ignore financial services that rely upon printable documents. Failure to engage these consumers, through the delivery of innovative PDSs, may lead to short and long term consumer detriment due to consequential lower savings and investment rates.

ASFA agrees that, when innovative PDSs are used, it should be possible to identify the salient points of the PDS and, through the use of some limited "intelligence" embedded into the innovative PDS, ensure that relevant important information is brought to the consumer's attention.

Feedback from ASFA members is that Section D of draft revised RG 221 has been developed without significant consumer or provider input.

ASFA recommends that ASIC use a number of focus groups or similar to ascertain the needs and expectation of consumers and then apply that knowledge to a reconsideration of Section D.

To assist the smooth implementation of the recommendations in CP 224, as amended to reflect the suggestions in this response, ASFA suggests a phased implementation:

Stage 1: Implement simple outcomes like electronic mail as the default.

Stage 2: Implement the more complex outcomes such as multi-media PDSs.

Stage 3: Implement changes that require legislative change.

#### C2Q2

This questions seeks comment on any other areas where a lack of clarity of ASIC's view would prevent or discourage providers from producing a more innovative PDS.

As an overarching comment, ASFA considers that the development of a more innovative PDS will not occur without clear, concise and effective good practice guidance from ASIC on the use of interactive PDSs. The guidance should reflect the minimum required information and make clear that the provider is not prevented from incorporating additional information.

A specific concern is that RG 221 and CP 224 are, of necessity, focussed on the *Corporations Act 2001* and the *National Consumer Credit Protection Act 2009*. Financial service providers must also give consideration to other legislation which impedes or blocks electronic disclosure, in particular the *Insurance Contracts Act 1984*, *Life Insurance Act 1995* and *Superannuation Industry*



*(Supervision) Act 1993*. As a minimum the existence of such legislation and the need for providers to consider any impact on how disclosures are made should be recognised in the guidance.

The willingness of providers to innovate based on guidance is inhibited when the guidance fails to recognise and, where appropriate address, issues raised by the presence of competing and conflicting legislation.

Resolution of these limitations on financial electronic transactions and electronic disclosure documents may require an interdepartmental, multi agency approach, with broad ranging consultation. Ultimately Parliament may need to enact overarching legislation or amending existing legislation on a consistent basis. This gives weight to the call for a phased implementation of the proposed reforms.

### C2Q3

Question C2Q3 seeks comment on any other risks to consumers that may be more apparent in the electronic environment.

ASFA is not aware of any additional risks to consumers.

### C2Q4

This question seeks views on whether any of the proposed updated guidance should be extended to other types of disclosures, such as FSGs and SOAs, where that does not already exist.

ASFA is of the view that the proposals with respect to PDSs should also extend to other disclosures, and specifically to FSGs and SOAs.

ASFA seeks ASIC consideration of how electronic documents are to be witnessed but acknowledges that this matter needs to be considered on a whole of government basis as such requirements are spread throughout Commonwealth and State/Territory legislation. An example from legislation for which APRA is responsible is regulation 6.17A of the *Superannuation Industry (Supervision) Regulations 1994* which states that, in order for a binding death nomination to be valid, it must be witnessed by two people.

In an era where consumers expect to be able to lodge forms electronically there is a need for legislation to consider and accommodate the electronic witnessing of documents.

As noted in our response to question C1Q5, ASIC's framework should in ASFA's view be expanded to incorporate e-signature, if the intent is to meaningfully facilitate an electronic exchange between providers and customer.

### C2Q5

This question asks whether there is agreement with updated good practice guidance in Section D of draft updated RG 221.

As stated above, ASFA is concerned that Section D may not meet the needs and expectations of consumers and providers and recommends that ASIC use a number of focus groups or similar to identify, and where possible accommodate, consumer expectations.

### C2Q6

This question seeks views on whether complying with the updated good practice guidance would be too onerous.

ASFA does not consider that compliance with the good practice guide would be too onerous but cautions that in its present state it may not provide the desired support for the implementation of more innovative PDSs.

### C2Q7

Question C2Q7 seeks comment on anything else that would be usefully covered in ASIC's good practice guidance.

ASFA draws ASIC's attention to our response to question C2Q2 above and asks that the good practice guide have regard to other relevant legislative requirements.

## D Electronic disclosure of credit disclosures

### *Proposal D1*

We are considering aligning the treatment of financial services disclosures and credit disclosures in the future.

### *Feedback*

The views and level of interest of ASFA members on this topic reflects the nature of the members' businesses.

Those offering only superannuation products see no merit in aligning the two different areas, given the varied nature of the activities involved in the provision of financial and credit services and see the clear segregation of activities from a disclosure perspective making greater sense at this stage.

Those with business providing broader financial services see significant efficiencies flowing from an alignment of the disclosure regimes.

In providing the comments below, ASFA considers it appropriate that it reflect the views of ASFA members that offer the broader range of financial services and consider the position of consumers of those services.

### D1Q1

Question D1Q1 seeks advice on whether there is agreement with ASIC's proposal to align the treatment of financial services disclosures and credit disclosures, together with reasons.

ASFA considers that the two regimes should be aligned in permitting electronic disclosure.

Financial services companies use technologies across their platforms and many have customers with multiple products across their offering of financial services and credit services. ASFA considers it reasonable for these consumers to expect seamless and consistent processes and experiences across the range of offerings of the financial service company.

The considerations set out in CP 224, such as the increasing acceptance, and in many cases preference, for electronic communication and the desirability of providing information in innovative ways that new technology permits apply equally to credit products.

Advice to ASFA is that financial services companies are keen to take advantage of electronic avenues to meet and exceed customer expectations, whilst also reducing costs.

### D1Q2

This question seeks information on any encountered barriers to the electronic provision of credit disclosures and details of those barriers?

Advice to ASFA is that the main barrier is the requirement for express consent prior to being able to send information electronically.

CP 224 mentions inertia and customer reluctance to change a default position and ASFA members have found this to be the case, for example with moving to electronic statements. ASFA financial conglomerate members advise that, with respect to customers with multiple products, the majority of those who have been defaulted into electronic disclosures have not taken the opportunity to switch to (opt-in to) electronic disclosures for their other products.

To overcome the opt-in issue for credit disclosures, ASFA considers that, in future, both for initial disclosures (e.g. pre-contractual and contract documents) and for ongoing disclosures (statements), providers should be able to determine that electronic delivery is the default position for a product. ASFA is of the view that, if the credit provider adopts a default position of electronic disclosure, that should apply to new and existing customers, with appropriate notice to existing customers and opportunity for customers to opt-in to paper if desired.

Requirements that disclosures are able to be printed and/or stored by the customer (e.g. under the electronic transaction provisions incorporated into the National Credit Code and the equivalent ePayments Code requirements) act as a further barrier to electronic disclosures. Where, for example, documents are delivered to a tablet or mobile device, it may not always be clear whether the customer is able to store the document on the device, or forward the documents to another electronic address using their mobile device. ASFA considers that a more flexible approach is required, that would permit documents to be deemed given provided they can be viewed on the receiving device and a copy of the documents may be retrieved by the customer on request (e.g. by logging onto a website) when the need arises for a copy of the document to be printed or downloaded.

**D1Q3**

This final question seeks an estimate of any compliance cost savings expected to be realised if provisions for credit disclosures were aligned with the proposals for financial services disclosures.

No information on this has been provided to ASFA.

\* \* \* \*

We trust that the information contained in this submission is of value. We would be pleased to meet with you to discuss our submission.

If you have any queries or comments regarding the contents of our submission, please contact ASFA's Principal Policy Adviser, Robert Hodge, on (02) 8079 0806 or by email [rhodge@superannuation.asn.au](mailto:rhodge@superannuation.asn.au)

Yours sincerely

Fiona Galbraith

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