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Consultation Paper 214 – Updated record-keeping obligations for AFS licensees

ASFA broadly supports enhanced recordkeeping obligations on AFS licensees which should enhance compliance with, and monitoring of, licensees' "FoFA" obligations. That said, we have significant concerns with the requirements contained in Proposal B3(b).

The requirements in Proposals B1, B2 and B3(a) require trustees (when providing advice) to document decisions that they are required to make in order to comply with the relevant laws and as such, notwithstanding that additional costs may be incurred, the requirements are a reasonable extension of existing obligations. These obligations go to the heart of the FoFA consumer protections contained in the law.

The requirement in Proposal B3(b) to (calculate and) keep records of how much the advice cost, including details about the method of calculation and why any estimation applied in the calculation is reasonable, is a completely new obligation which will require new systems, processes and significant staff time and effort to comply with (to calculate the cost of **each** advice) – for arguably little regulatory benefit.

Once a decision is made to provide advice that cannot be collectively charged for, trustees should not have the additional burden of recording how much that individual advice costs. Funds have little or no incentive to undercharge for non-intra-fund advice as these costs will be borne by the trustee or reflected in increased administration fees. We believe that the costs of complying with Proposal B3(b) (which will be borne by the funds as a whole) will significantly outweigh the regulatory benefit of trying to ensure that funds do not undercharge for non-intra-fund advice which they have little or no incentive to do anyway.

We submit that, instead of being required to calculate and keep records of how much each piece of non-intra-fund advice cost, it should be sufficient for the licensee to maintain records of the aggregate cost of providing non-intra-fund advice and how much was charged in total for the provision of that advice. Furthermore, similar aggregate information will be reported to APRA by RSEs as part of the new APRA data reporting standards, which will provide a valuable source of data for the purposes of reasonableness checking.