Submission Reference: 2015/02

19 January 2015

ASIC Consultation Paper 224 – Facilitating electronic financial services disclosures

In its submission to ASIC, the Association of Superannuation Funds of Australia (ASFA) expressed its support for the general direction of the changes which are consistent with the overarching goal of financial services disclosure requirements: clear, concise and effective disclosure of information to 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 supports the more facilitative approach being promoted in the Consultation Paper and adopted in the revised Guidance.

The ASFA response, while supporting each of the proposed changes, emphasis the need to build technology neutrality and flexibility into the regulatory regime so that the financial services industry can focus on giving consumers what they want, when they want it and how they want it.

ASFA notes ASIC's 28 November 2014 ASIC announcement that 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 and suggests that given the preliminary results are expected in 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.

ASFA strongly supports ASIC further facilitating electronic disclosure and considers that Option 4 (a combination of Options 1-3), is the preferred approach as it would facilitate enhanced electronic disclosure across the spectrum of disclosure documents and provide benefits to a wide range of recipients and issuers.

ASFA supports the proposal to update Regulatory Guidance 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. However note was made of the specific issues faced by superannuation funds with the provision of email addresses by employers and requested that this be specifically addressed.

ASFA strongly supports the proposal to give class order relief to provide an additional method of delivery for most Ch 7 disclosures (where not already permitted), so as to allow 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.

ASFA considers that the proposal 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.

However, ASFA seeks a public consultation process with respect to the two proposed class orders, and 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.

ASFA supported the proposal 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.

ASFA supported the proposal to update the guidance in RG 221 to:

(a) make it clear that, in ASICs view, 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).

However, 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.

ASFA suggests that to assist the smooth implementation of the recommendations in CP 224, a phased implementation be considered along the following lines::

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.

ASFA supported the proposed alignment of the treatment of financial services disclosures and credit disclosures in the future as being in consumers' interests and for the significant efficiencies flowing from an alignment of the disclosure regimes in those business providing broader financial services.