BNY MELLON

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Mr Gerald Yip
Senior Lawyer
Investment Managers and Superannuation
Australian Securities and Investments Commission
Level 24 120 Collins Street
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Dear Mr Yip

ASIC Consultation Paper 208 – *ASX Managed Funds Service: Relief from the application form requirement*

Thank you for the opportunity to provide a submission to the ASIC Consultation Paper 208 – *ASX Managed Funds Service: Relief from the application form requirement*.

Please find our submission enclosed. We look forward to discussing the contents with you. I can be contacted on 02 9087 7676.

Yours sincerely

Bruce Murphy
Managing Director

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B1 We propose to grant relief from s1016A, as requested by ASX, for responsible entities of schemes in relation to applications made through AMFS, and modify the Corporations Act to impose obligations on AMFS brokers (and settlement participants) who choose to give instructions or make applications through AMFS to ensure that investors are provided with a PDS.

The form and conditions of relief proposed to address the application by ASX are outlined in paragraphs 31–48.

Your feedback

B1Q1 Do you agree with our proposal to grant relief to responsible entities? If not, why not?

Yes.

However, when providing such relief it should be on the basis that, if required, similar relief will be afforded to all eventual AMFS product issuers' not just responsible entities as outlined in the consultation paper. Similarly the relief should take into account the potential for the definition of admitted schemes to be broadened at a later date to provide for all AMFS product issuer fund structures i.e. not just Responsible Entities issuing a Product Disclosure Statements (PDS's) but also the potential for AMFS product issuers to issue a prospectus for regulated overseas funds such as Undertakings for Collective Investment in Transferable Securities (UCITS).

B1Q2 Do you consider that the conditions for relief are appropriate compared to the conditions outlined in [CO 02/260]?

Yes.

Noting that when the conditions for relief refer to the requirements of the Responsible Entity those requirements are able to be met by a service provider appointed by the Responsible Entity given that the Responsible Entity can outsource the service but not the ultimate responsibility.

B1Q3 Are there any other conditions that should be imposed on the responsible entities?

No.

Noting the initial onus to ensure the retail investor has been provided a copy of the offer or issue document rests solely with the ASX broker and/or trading participant.

B1Q4 Are the proposed changes to the ASX Operating and ASX Settlement Rules, in relation to responsible entities (see paragraph 37), adequate as a basis for giving relief?

Yes.

B1Q5 How would the proposed relief affect your compliance costs?

Our compliance costs will increase marginally with the proposed relief, however they would increase with any new financial service particularly in the short term as we make certain both we and our appointed service providers are in compliance with all requirements.

Noting a significant amount of the overall marginal increase in compliance costs will be encapsulated in increased service provider reporting and monitoring costs. However, there will be a reduction in AML compliance costs.

B2 We propose that, if we grant the relief as requested by the ASX, we will modify Pt 7.6 by class order to impose an obligation on AMFS brokers and settlement participants) to ensure that retail investors have been given the current PDS (including any supplementary PDS) that appears on the ASX's market announcement platform before transmitting instructions for a request to be issued products.

In ASX's proposals, the AMFS broker (and any settlement participant) will be required to ensure that the current PDS has been given to an investor and the CHESS system will capture the information that the investor has been given the current PDS and other details, including the date of birth of the investor. This information will be electronically relayed to the responsible entity and the responsible entity will rely on the CHESS message to determine that the obligation to provide a PDS to an investor has been fulfilled.

Your feedback

B2Q1 Do you consider that the conditions imposed on the AMFS brokers (and any settlement participants) are unduly burdensome?

No from our point of view, however, we are not acting as an AMFS broker so we would therefore refer you to the comments from the potential AMFS brokers.

In support of the AMFS brokers we would expect that they would require allowances for the current PDS and any supplementary PDS to either be 1) confirmed as opened from the AMFS broker website or 2) be sent to an email account nominated by the retail investor and that one of these acts individually may be considered as evidence that the current PDS (including any supplementary PDS) has been provided to the retail client.

B2Q2 Are there any other conditions that should be imposed on the settlement participants or on the AMFS brokers?

No from our point of view, however, we are not acting as an AMFS broker so we would therefore refer you to the comments from the potential AMFS brokers.

We expect it would assist these parties to understand their obligations with the clarification that 1) the AMFS broker is the sole party that must ensure that the current PDS has been provided to the retail client and 2) the settlement participant is checking that the AMFS broker has confirmed to them that they have met this obligation and will provide additional information in the transaction statements stating where the latest offer or issue document may be obtained.

B2Q3 Are the proposed changes to the ASX Operating and ASX Settlement Rules, in relation to AMFS brokers, settlement participants and online brokers (see paragraphs 38–48), adequate as a basis for giving relief?

Yes, from our point of view, however, we are not acting as an AMFS broker so we would therefore refer you to the comments from the potential AMFS brokers.

In support of the AMFS brokers we would expect that they would require allowances for the current PDS and any supplementary PDS to either be 1) confirmed as opened from the AMFS broker website or 2) be sent to an email account nominated by the retail investor and that one of these acts individually may be considered as evidence that the current PDS (including any supplementary PDS) has been provided to the retail client.

B2Q4 Should, and how would, compliance with the requirement to provide a current PDS for the managed investment product to an investor be more effectively enforced in the context of the AMFS?

One essential element should be that the current PDS and any supplementary PDS can either be 1) confirmed as opened from the AMFS broker website or 2) be sent to an email account nominated by the retail investor, and that one of these acts individually may be considered as evidence that the current PDS (including any supplementary PDS) has been provided to the retail client.

B2Q5 As the AMFS is not covered by the NGF, do you consider that the risk of inadequate compensation or inaccurate perceptions about compensation arrangements should be addressed in PDSs, and that this should be a requirement for relief? Please explain why or why not.

No, the PDS should remain as currently presented. The introduction of statements around compensation arrangements that do not exist for managed funds presently or other services not covered by the NGF would only serve to confuse investors.

Whilst the AMFS itself does not require coverage by the NGF, if following consumer testing it is found that there is a public perception that the AMFS would be covered by a compensation arrangement such as the NGF then it should be clarified how the actions of the "Dealer" or Market Participant of ASX (as defined in the ASX operating rules) are separate to the AMFS. As with other services the actions of a Dealer are not the responsibility of the AMFS we therefore believe it should be unnecessary to make this qualification within the PDS.

B3 When deciding whether to grant relief, we propose to consider (among other things), whether:

(a) the AMFS represents a net benefit to the industry and investors that outweighs any reduction of regulatory protection for investors;

(b) the arrangements proposed by ASX would be effective to ensure that an investor will be given a PDS by the AMFS broker before or at the time the investor invests;

(c) an investor will understand when using the AMFS that the investor is applying or requesting redemption of products from the issuer and is not able to buy or sell products through a financial market;

(d) the arrangements will result in a current PDS (and not an outdated PDS) being provided to the investor;

(e) there is any mechanism to identify when an investor is not given a PDS and, when this happens, what rectification measures will follow;

(f) there is sufficient record keeping to ensure that the policy objectives of s1016A are achieved through the system proposed by the ASX; and

(g) investors utilising the service to invest in admitted schemes will have diminished rights or be treated differently to investors in registered schemes that are not admitted schemes. We note investors using the AMFS will continue to have cooling-off rights under s1019B.

Your feedback

B3Q1 Are there any other factors that we should consider when granting relief, and why should the factors be considered?

When granting this relief the potential future application of the AMFS should be taken into consideration as this relief should not limit or impede the ultimate development of the AMFS and the net benefits it may ultimately provide the industry and investors.

To that end we would propose that the current AMFS proposal consider the following structure:

<u>AMFS product issuers to include:</u>

1. Responsible Entities issuing PDS's; and
2. Managers issuing prospectuses for shares in funds

<u>Products admitted to the AMFS to include:</u>

1. All managed investment schemes; and
2. Australian issued prospectuses for overseas funds such as UCITS.

B3Q2 Do you consider that investors are likely to confuse the AMFS with a trading platform? If yes, what changes to the AMFS should be made to reduce this likelihood of confusion?

No, it will be obvious to the investor that the AMFS is a quoting platform not a trading platform as evidenced by the transaction itself. For example, an application is for a specific dollar amount of a fund, the price and the number of units / shares is not determined until a future date as specified in the offer or issue document. As the transaction price is not immediate and transaction cannot be placed based on a price it is easily recognisable as fundamentally separate to a trading platform. To date press and ASX press releases have explained that the AMFS is not a trading platform and this information should continue to be reiterated on the ASX and product issuer marketing material and websites.

B3Q3 What effects do you foresee on the distribution arrangements of schemes as a result of implementing the AMFS?

Should ASIC accept our recommendation to broaden the scope of AQUA 11 to include ALL managed investment schemes as well as Australian issued prospectuses for overseas funds then the AMFS stands to re-shape distribution to the advantage of Australian investors. Significantly increased price competition and fund choice would ensue. Key drivers of this better outcome for the end investor include:

- Cost: Most investors are accessing Australian domiciled funds via investment platforms at an all up cost which ranges between 1.5% and 2.25 % p.a. This pricing comes under constant pressure from industry funds and the retail sector is simply not competitive on price. Via the AMFS the all up cost of these funds would likely range between 0.75% and 1.5%, a significant saving to end investors.
- Competition: If the scope of AMFS expands to all managed investment schemes including offshore funds then the current barriers to entry for high quality investment offerings will be broken down. Currently the lead time to get funds on Australian platforms is typically over three years, a significant barrier to providing such options to Australian investors. The costs of local fund creation and management, research, shelf space fees and marketing are prohibitively high. Cases in point include resources and real return funds where Australia was three or more years behind the rest of the world in providing the first option for investors to consider, let alone any true competition via a range of competitively priced options. By contrast if the AMFS is given sufficient scope then these very funds, issued via an Australian prospectus and already regulated in a robust framework such as UCITs, complete with lengthy track record, research ratings from respected global providers such as Morningstar and all up cost under 1.50% could be provided without delay.

B3Q4 What effects do you foresee the AMFS will have on the use of financial advice by investors in simple managed investment schemes?

Investors in products admitted to the AMFS will ask more question about the AMFS itself as it is a new service and therefore also the products available on that service. As they must apply through an AMFS broker it actually provides investors with an additional opportunity to seek financial advice if desired rather than potentially just completing a downloaded form or in many cases continuing to primarily invest solely in Australian equities rather than diversifying their investment into a fund strategy which has a risk management guideline in place.

Further, it should have no impact on the level of financial advice currently being provided as the products admitted to the AMFS are currently already offered to investors.

Longer term if the AMFS has sufficient products included then it stands to facilitate financial planners building sufficiently globally diversified high quality portfolios "housed" on a single simple CHESS platform at a materially lower cost to the end investor. In particular such portfolios are critical to the fast growing SMSF segment for which many financial planning businesses are looking to offer a high quality package of advice under the FOFA rules, but lack a competitively priced platform to do so. The SMSF segment has a propensity to trade on the ASX and may embrace the AMSF if it provides sufficient choice rather than continuing to have a high incidence of concentrated and volatile Australian share portfolios.

B3Q5 What other negative or positive effect, if any, do you foresee the AMFS may have on investors or industry participants?

The greatest positive effect will be for investors overall with reduced fees, ease of application , greater investment in managed funds (noting managed funds make up a proportionally low percentage of most investors assets), greater range of products being offered (particularly if overseas funds such as UCITS as available), potential to increasingly diversify their assets, potential for assets (equities, property, fixed income related, ETF's and funds) to be accessed through one medium.

As the funds offered on the AMFS will still require the same level of regulatory compliance there will be no reduction in regulatory protection, however there will be an increase in investor risk diversification with the opportunity for many investors to now including professionally managed fund strategies to their portfolio, noting managed funds currently represent a small percentage of an the investors portfolio.

The greatest negative impact may be on the profitability of the large platform providers which monopolise this space, as their add on fees and other charges including product shelf space fees would need to be curtailed in order compete with the AMFS, noting this is to be benefit of the investor.

Some Australian research houses who charge for research may be impacted by the inclusion of offshore funds which in most cases will already have Morningstar or other global research house ratings that can be made available to investors. Clearly this is to the benefit of fund managers but is indirectly passed on via the lower cost offering platform AMFS operates on.

Lastly, thematic investing has grown in importance over the last decade, but in Australia choices are limited, and in particular our ability to tap in to new themes with product in the hands of investors before the idea has already run its course. In larger markets such thematic options have scale and track record already. The provision of timely thematic investment options with track record from other jurisdictions is an important benefit.

B3Q6 What do you foresee the net direct and indirect cost impacts of the AMFS and specifically the proposed relief will be on your organisation?

The AMFS, with the scope for offshore funds included provides the scope for us to provide high quality and robustly regulated investment options that are otherwise uneconomic to offer to Australian investors due to the significant barriers to entry in this market. Without AMFS we are not in a position to cost effectively compete in the Australian retail market. The Australian retail investor misses out on significant choice and price competition as a result.

Regulatory and financial impact

In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:
(a) confident and informed investors by holding ASX and the AMFS brokers to account and by empowering investors through appropriate information and disclosures; and
(b) fair and efficient financial markets by allowing the proposed use of a mechanism for transacting in products in admitted schemes that can compete with existing distribution arrangements.

Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:
(a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
(b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
(c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).

All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:

(a) the likely compliance costs;

(b) the likely effect on competition; and

(c) other impacts, costs and benefits.

In summary:

Our proposal to ensure that the AMFS allows all managed funds plus offshore funds via a prospectus to be quoted will result in the following:

a) Compliance costs? Some early compliance cost increases which are easily absorbed and saved by the scale and other savings available via an AMFS offer
b) Competition? Material reshaping of the competitive landscape to at last allow high quality product at lower cost in to Australian investors hands. Remove some of the long held inefficiencies in our industry – high costs of fund creation, management, research, shelf space, marketing, and put the benefit in to the hands of the consumer via well diversified global options previously not accessible

c) Other? Our industry would move to the next stage of evolution and have a competitive framework that facilitated the continued success of the SMSF sector (which has been largely facilitated to date by the need for investors to escape traditional platforms to lower cost alternatives)