



Mr. Gerald Yip
Senior Lawyer
Australian Securities & Investments Commission
MELBOURNE VIC 3001

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Dear Mr Yip

FSC SUBMISSION – Consultation Paper 208

Thank you for the opportunity to provide a submission on CP 208.

The Financial Services Council (FSC) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, private and public trustees. The FSC has over 130 members who are responsible for investing \$2 trillion on behalf of more than 11 million Australians.

The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the fourth largest pool of managed funds in the world. The FSC promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

Please find our submission enclosed. We look forward to discussing the contents with you. I can be contacted on 02 9299 3022.

Yours sincerely

ANDREW BRAGG
SENIOR POLICY MANAGER

Introduction

There have been significant reforms to the financial services industry in Australia over the past five years – flowing out of the government’s domestic regulatory agenda as well as international reforms seeking to respond to the financial crisis.

Collectively, these reforms have introduced a vast array of new regulatory requirements which, in many cases, the industry is only just beginning to implement.

We are therefore very supportive of proposals which

- Create efficiencies;
- Reduce cost;
- Increase access to investment; and
- Lower the regulatory burden without undermining consumer protection measures.

The FSC has long supported overturning the barriers to direct online investment in the Corporations Act.

We believe it has been appropriate for some time to bypass paper-based processes by permitting real-time electronic applications and investments in financial products. Accordingly we have previously supported the Australian Securities Exchanges’ (ASX) applications for relief from these barriers on the condition that such relief is granted to all participants.

Given the increasing consumer preference to purchase financial products online, inefficient paper-based requirements, such as lengthy application forms, need to be modernised.

Section 1016A of the Act prevents a financial product from being issued to a retail client until an application form has been completed and processed. This means that financial products such as interests in Managed Investment Schemes (MIS) can not be issued to an investor in real time despite advances in technology and online processing.

The FSC therefore supports permanent relief from the Act to revise the obligations to collect and process application forms thereby permitting investors to take advantage of electronic applications and the related efficiency and cost benefits. However we support relief on the basis that is made widely available in the wealth management industry (and not just in relation to the ASX Managed Funds Service).

We believe that straight through processing of electronic applications with simultaneous issuance of financial products should be permitted. Importantly, this would not affect existing consumer protection mechanisms in the Act including cooling off periods. Furthermore, a Product Disclosure Statement would remain a mandatory disclosure requirement prior to issuance.

Key recommendations

1. FSC continues to support the proposals in Consultation Paper 208 to grant relief from the application form requirement on the basis it is provided on a competitively neutral basis
2. Wholesale permanent relief from section 1016A of the Corporations Act should be provided on a competitively neutral basis – that is to issuers, platforms and other market participants via a secure electronic means, not just in relation to the ASX Managed Funds Service
 - The breadth of the relief ultimately provided should also take into account the Commonwealth Government’s policy of Australia as a financial centre which will be best served where universal messaging standards for instance can be utilised such as ISO
3. Relief should be extended to all registered Managed Investment Schemes (MIS) which are available to retail investors rather than simple MISs that are available through the ASX Managed Funds Service which is an unnecessarily narrow application. Further:
 - An overly narrow application of relief to simple MISs will result in a loss of efficiency, choice and access for investors and issuers of MISs. It will also result in a playing field which is not level between issuers of MISs. The relief should be extended to unlisted managed investment schemes that are not available through the ASX Managed Funds Service.
 - There is no precedent to limit a class of financial product to discriminate against a certain type of sub class so that an investor is prevented access. For example, all ASX listed entities are available to investors via registered participants. This is not limited to (for instance) the ASX 50 or ASX 200. Nor are investors prohibited from acquiring any financial product provided the product and the issuer have complied with the relevant licensing and disclosure requirements.
 - Additional disclosures for certain types of registered MISs are already required such as in the case of mortgage, infrastructure and hedge funds
 - Restricting the eligible schemes to simple MIS will result in an inability for investors to access appropriate levels of diversification if they are solely invested via this channel. For example, some issuers who managed hundreds of schemes will be restricted to less than ten via this relief
 - Given the costs associated with connecting to this service and its limited scope, many issuers may decide not utilise the proposed relief if it does not provide a platform for all of their funds.
4. Funds which qualify under the Asian Region Fund Passport initiative should be automatically granted relief. This will increase the availability of passport funds and ensure they can compete effectively with local funds.

Specific matters

Alternative means to provide competitive neutrality

FSC believes there are other ways in which the financial services industry can deliver online services to investors as an alternative to the proposals in CP 208. Software in existence can provide an up-to-date library of all the PDSs of the schemes, to support giving an investor a contemporaneous PDS when the investor applies for products.

Investors would be able to apply for or redeem the admitted scheme products by interacting directly or through their financial adviser or dealer or wealth professional, who holds an AFSL, in one of two ways:

- Online - by submitting through the AFSL holder dealer or adviser automated client order system provided by the wealth management software or stockbroker; or
- Issuing instructions in person or by telephone, fax or email to the representative of the wealth professional, who then takes steps to execute the instructions through the wealth management system or stockbroker platform

If relief is widely granted, the policy objective of the s1016A(2) requirement (to ensure that a retail investor is given a PDS before they are issued with products) will be fulfilled in an alternative manner.

The responsible entity will not be restricted from issuing without an application form if the Wealth professional (AFSL holder) involved with the order accepts responsibility to give the retail investor the current PDS or ensure the retail investor has been given the current PDS.

An additional option / proposal would be that a digital signature is sent with the order.

An application (or redemption) that is accepted will result in a payment (or receipt) via SWIFT, BECS, BPAY or direct credit and a corresponding increase (or decrease) in the investor's primary registry holding balance of products in the admitted scheme.

Costs

Technology costs to facilitate AMFS are significant. Unit Registry platforms are not historically connected to CHESS and the changes to core process (such as those surrounding the cash settlement) add to the complexity and development expense.

It is strongly recommended that relief should not be limited to this case. Relief should be extended to responsible entities of managed fund products and allow for:

- i. the completion of initial applications online;
- ii. the removal of the requirement for paper based applications; and
- iii. the removal of the requirement for a PDS to prescribe the acceptability of transacting by use of electronic means (this should be allowed irrespective of whether it is prescribed in the PDS or not);

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It appears that the development costs associated with registrars and potentially distribution support and wealth management software applications connecting to CHES for AMFS are likely to be significant. If relief is only provided to one provider, the costs could be exacerbated or at least will be higher than necessary.

There is likely to be a large number of required messages (up to 100) for the service to operate. However the connectivity with CHES does not presently exist in the managed funds industry for most custodians and registrars.

CHES is a proprietary message set - ASX is acting as a secondary market intermediary in a primary market, accordingly the development costs associated with connecting to AMFS are additional costs that would be borne by the industry.

We recommend consideration is given to these matters in order to improve efficiencies and reduce operational risk for the managed funds industry whilst providing competitive neutrality.