FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

18 November 2013

Ai-Lin Lee
Policy Guidance Officer
Financial Advisers
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

Email: policy.submissions@asic.gov.au

Dear Ms Lee

**RE: CP216 Advice on SMSF: Specific Disclosure Requirements and SMSF Costs.**

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide input into the proposed advice on SMSF disclosure obligations and SMSF costs.

The growth of SMSFs has provided many challenges and opportunities both for the industry and the regulators. The FPA supports that participating financial planners and others in the licensed family are appropriately qualified, provide appropriate disclosure and warnings, and the advice is in the client's best interest. However, the FPA is more concerned about those outside the licensing regime. Such operators pose the greatest challenge for regulators and create the highest risks for consumers.

In our response we have considered the benefits and impacts of ASIC's regulatory changes proposed in CP216, to both consumers and industry and would welcome the opportunity to discuss these issues further.

If you have any questions, please contact me .

Yours sincerely

**Dante De Gori**
*General Manager Policy and Conduct*
Financial Planning Association of Australia[1]

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[1] The Financial Planning Association (FPA) has more than 10,000 members and affiliates of whom 7,500 are practising financial planners and 5,500 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
- We have an independent conduct review panel, Chaired by Professor Dimity Kingsford Smith, dealing with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 24 member countries and the 150,000 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 17 Australian Universities for degrees in financial planning. As at the 1st July 2013 all new members of the FPA will be required to hold, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional bodies, eg CPA Australia.
- We are recognised as a professional body by the Tax Practitioners Board

FINANCIAL PLANNING
ASSOCIATION of AUSTRALIA

# Consultation Paper CP216: Advice on Self-Managed Superannuation Funds (SMSFs): *Specific Disclosure Requirements and SMSF Costs*

**FPA submission to:**
Australian Securities and Investment Commission (ASIC)

**18 November 2013**

FINANCIAL PLANNING ASSOCIATION *of* AUSTRALIA

# CP216: SMSF Advice Disclosure

**FPA SUBMISSION TO ASIC | DATE: 18.11.2013**

## Introduction

Self Managed Superannuation Funds (SMSFs) have been a ‘success story’ in the provision of retirement planning for Australians. There has been significant growth with SMSFs surpassing the retail sector with assets now exceeding $500 billion and there are over 900,000 members/trustees within the SMSF sector.

There are a number of benefits and risks associated with establishing an SMSF over membership of an APRA regulated superannuation fund. While SMSF structures offer an individual greater flexibility and control over their superannuation and retirement savings, it comes with increased responsibility of trustee obligations and reduced access to consumer protection measures. These risks and benefits must be clearly disclosed, understood and considered when deciding to establish an SMSF.

SMSF members like the flexibility and control offered by SMSFs to better manage their retirement funds, both in investment choice and with regard to costs and fees, particularly as they can choose the services they use and pay for. The ability to better target investment strategies and undertake sophisticated estate planning strategies are other reasons cited.

From a financial planning perspective, SMSFs provide a legitimate vehicle to provide tailored advice and strategies (investment, insurance, estate planning etc) to meet the goals and aspirations of each member individually, which can lead to a more effective outcome, such as increased levels of adequacy, than might otherwise be the case.

The current arrangements for SMSF regulation and regulatory oversight are generally working well however there are a few areas where greater regulatory oversight would create a more balanced system. Any change to the regulation of SMSFs should:

- Respect and support the choice of those who have chosen to become SMSF members;
- Be consistent between SMSFs and APRA-regulated funds, and
- Remain as stable and predictable as possible so that in the absence of clear and compelling evidence of a problem within the SMSF sector there should be no regulatory change.

A greater impact would be achieved through ensuring high standards of competency and education of service providers and encouraging SMSF trustees to access the relevant services.

Financial planners have been particularly pleased to note the guidance and rulings issued by the ATO. These are very useful and the ATO should be encouraged to continue and expand this service.

Since the changes to the SIS requirements relating to SMSF borrowings made in 2007, there has been increasing promotion of schemes to enable funds to make use of the greater flexibility. The requirements are broader than initially anticipated by industry and are not restricted to traditional

installment warrants.

We would highlight the need to ensure that all parties clearly understand the products offered and the risks associated with these strategies. A lot of promotional material offers attractive opportunities but there is a risk that trustees may not fully understand the nature of products being offered. This could result in trustees not being fully aware of what they are getting into with consequences for the future solvency of fund. Given the uncertainty around the interpretation of the legislation we are concerned that some products may not comply with the legislation.

The FPA welcomes comment made by ASIC that they are aware of and understand the concern with the rise in property spruikers and promotion of purchasing property using a SMSF:

> *More generally, ASIC is also experiencing an increase in reports of misconduct about aggressive marketing of investments, notably direct property, through SMSFs. These reports have come both from retail investors and from professional associations. We are concerned to highlight the risks of inappropriate advice to SMSF trustees or investors who may be considering an SMSF, and we will work with industry participants to improve advice quality.*

Further the FPA acknowledges that ASIC have acted with information to the market and the real estate sector specifically. The FPA recommends that government and regulators implement a review into the borrowing arrangements in SMSFs as recommended in the Cooper Report.

The ATO does not hold statistics on the use of financial planners in making investment decisions. The Investment Trends SMSF 2010 Investor Report stated that 65% of SMSFs surveyed indicated that they had used financial advisory services at least once in the past 6 months.

After a comprehensive examination, the Cooper Review adjudged the regulatory arrangements which govern SMSFs as sound with the need for some minor changes – according to the Review:

> *The SMSF sector is largely successful and well- functioning. Significant changes are not required, but measures relating to service providers, auditors and the regulatory framework are recommended.*

The FPA acknowledges that greater guidance and enforcement of the existing disclosure requirements is needed to ensure the information provided to consumers helps them fully understanding the benefits and the risks prior to commencing a SMSF. However, the proposal to impose additional obligations that are technically already required is not inherently logical. Rather than duplicate existing requirements through the introduction of unnecessary class orders, which would cause confusion, the FPA strongly recommends ASIC instead improve its regulatory guidance for the existing obligations..

Please refer to **Attachment 1** for FPA's complete responses to CP216 consultation questions.

## Accountant's exemption and other unlicensed providers

The issue of exemptions and unlicensed providers has long been a concern as it creates significant uncertainty as to role and function when advising clients on a decision to acquire or dispose of an interest in a SMSF.

The licensing requirements are beneficial as they:

- ensure that appropriate investor protections are in place;
- provide access to compensation mechanisms and external dispute resolution schemes;
- require appropriate disclosures; and
- require the consideration of competing investment strategies, which may be expected to result in a more suitable outcome for the client, than a focus on a single strategy.

The FPA acknowledges the regulations to remove the existing exemption from 1 July 2016 for accountants, meaning that accountants will be required to become licensed should they wish to continue providing advice on establishing a SMSF.

In respect to other unlicensed providers, the FPA is concerned with how they are operating outside of the licensing regime while still being very influential in selling the need and want of property purchases through a SMSF.

We are aware that there is a difficulty to determine where the line is drawn and some may inadvertently over-step the mark. This regulatory uncertainty means that this particular aspect of the regulatory perimeter may be difficult to enforce and there are practical problems for ASIC to determine where legitimate activity becomes unregulated advice.

*The FPA strongly supports a level playing field in this area.*

People who provide financial advice should have consistent, benchmarked standards notwithstanding their professional background. Only then can it be guaranteed that SMSF trustees are provided with appropriate quality advice. It is essential that advice should meet the consistent requirements that operate within a uniform licensing regime.

## Proposed Compensation Warning Requirement

The FPA is supportive of measures to ensure that consumers are appropriately and efficiently informed on all aspect of personal financial advice including that of superannuation advice.

We acknowledge the positive and sensible improvements made by the ATO with the warning required on the ATO Trustee registration form to establish an SMSF .

The consultation paper CP216 proposes to modify the law to require financial planners to warn clients that SMSF investors are not entitled to receive compensation under part 23 of the SIS Act for a loss suffered as a result of fraud or theft.

As explained in the consultation paper, part 23 of the SIS Act provides that the trustee of an APRA-regulated superannuation fund, or approved deposit fund, ***may*** apply to the Minister for financial assistance if the fund suffers loss because of fraudulent conduct or theft, and the loss has resulted in a ***substantial reduction*** of the fund which makes it difficult for the fund to pay its members' benefits[2].

A key requirement is that the loss has caused substantial diminution of the fund leading to difficulties in the payment of benefits.

> *The 'loss' must be a substantial diminution of the fund: see s229(1) of the SIS Act. That is, the loss must not be 'negligible' or 'trivial'*

It is up to the Minister's discretion whether or not to grant financial assistance and the amount of that assistance. When considering whether to grant financial assistance, the Minister must have regard to whether the 'public interest' requires that financial assistance should be provided and the Minister must also consult with APRA: see s230A and 231(1) of the SIS Act.

As stated the financial assistance paid under part 23 of the SIS Act is funded through a levy imposed on APRA-regulated superannuation funds and approved deposit funds by the Superannuation (Financial Assistance Funding) Levy Act 1993.

The consultation paper correctly points out that SMSFs are not eligible to receive compensation under part 23 of the SIS Act. However, the FPA submits that the proposal as outlined in the consultation paper, by implication, may provide a false sense of security for members of APRA-regulated funds in respect to their expectation of the compensation arrangement under part 23.

Though the FPA supports the need to disclose to investors about the differences on compensation arrangements when considering the establishment of a SMSF, we equally support the need for appropriate disclosure information on how the compensation arrangements actually work for members of APRA-regulated funds.

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[2] *Section 229 of the SIS Act.*

The consultation paper states that it is not current industry practice to warn clients that SMSF investors are not entitled to receive statutory compensation under the SIS Act. The FPA submits that it is not current industry practice to inform/warn members of APRA-regulated funds about the compensation arrangements available under part 23.

According to the submission by APRA[3] to the PJC Inquiry into the collapse of Trio Capital, cases of fraud in the regulated superannuation sector are rare and there have only been 9 applications under part 23. Therefore in the absence of providing appropriate disclosure to all superannuation investors, an APRA-regulated member may assume that they will be compensated for any loss to their superannuation investment.

The recommendation for requiring the disclosure of the non-compensation arrangements for SMSF members may influence APRA-regulated fund members and their approach to investment decision making. Particular risks could include lowered concern for 'due care' considerations, and a greater propensity to pursue higher risk and greater risk taking in their investment portfolio.

The proposal is to require financial planners:

> *To warn clients that an SMSF is not entitled to receive compensation under Part 23 of the SIS Act for any loss suffered as a result of fraud or theft.*

**FPA Recommendation**

The FPA supports the need for clear disclosure to be provided to all superannuation members, whether they are members of an APRA-regulated fund or a SMSF. The disclosure obligations should be a clear explanation of what compensation arrangements are available, in what circumstances the compensation is available and how the arrangement actually works.

The FPA does not support the need for the client to 'sign' a separate document acknowledging the compensation arrangement. Further this information should be able to be incorporated by reference, especially to avoid duplication were such information is already required by the ATO and should be included in any other material/process that the provider feels appropriate.

[3] *APRA submission to the PJC Inquiry into the collapse of Trio Capital, 24 August 2011, paragraph 28, page 8.*

## Proposed Disclosure Requirements

As stated in CP216, the provision of personal advice to retail clients is regulated under the Corporations Act. This includes advice provided to retail clients in relation to establishing or switching to an SMSF.

Generally a person who provides SMSF advice to retail clients must hold an AFS license and comply with the conduct and disclosure obligations in the Corporations Act. These obligations are designed to ensure that retail clients receive appropriate personal advice that is in their best interests and that should enable them to make an informed decision about whether to establish or switch to an SMSF.

Further the FPA submits that the proposed disclosure topics in table 2 (page 21) in the consultation paper are what a financial planner should already be complying with when providing personal financial advice on SMSFs to their clients.

To this end the FPA does not support the need for, or the introduction of, the proposed Class Order in respect to additional specific disclosure obligations as outlined in table 2.

The FPA questions the need to invoke a Class Order on any specific financial product, including a SMSF. Rather the existing disclosure obligations, if needed, can include greater guidance with examples on how the obligations should be applied for specific financial product advice.

Further, Trustees are already advised on all of these issues in the ATO documents and Trustee Declaration that they must sign before the SMSF is set up. It would add regulatory duplication and further bulk to SOAs by legislating for the disclosures to be part of the SOA. As a solution, the FPA recommends that a financial planner should be permitted to incorporate by reference the ATO Trustee declaration documents into the appropriate advice document.

**FPA Recommendation**

The FPA does not support the introduction of a Class Order or additional disclosure requirements.

The FPA strongly recommends:

- Better guidance and examples should be provided through existing obligations in Regulatory Guide 175.
- The proposed additional disclosure obligations to be provided in the form of guidance and examples regarding the type of information that should be included when providing advice on SMSFs. Such guidance must be linked back to s947C and RG175, particularly in light of the introduction of the Best Interest duty.
- That ASIC continue to enforce the existing disclosure requirements, as they have done with several AFSL groups on the back of Report 227.

## Proposed Guidance on SMSF Costs

The FPA applauds the intention and research commissioned by ASIC to attempt to gain a better understanding of the minimum cost-effective balance for SMSFs compared with APRA-regulated superannuation funds.

Though the FPA appreciates the intention and agrees that costs can be a major consideration for some investors, the FPA submits that costs are not the only factor in making a decision regarding a SMSF, or in deed any financial investment. The driving factor is generally control over investment decisions and operation of the fund. Notwithstanding the FPA does recognise that it is important to ensure that SMSFs can operate in an environment that is cost effective.

Further, provided the trustees understand the costs and benefits of establishing the SMSF, and wish to proceed, and then it should remain the decision of the trustee. Regulation of SMSFs must not undermine the *choice* made to become a member of an SMSF.

The FPA questions the need to include specific disclosure obligations on specific financial products, as proposed in CP216. As discussed previously, there are already existing disclosure obligations for financial planners to provide the client with personal advice, which includes consideration of costs, and for the information to be documented in the SOA.

In respect to the Rice Warner Report, the methodology does not appear to be reflective of current industry service packages. Other SMSF surveys and comparison reports show this – e.g. Smart Investor survey and the SMSF review. Market place comparisons provide more information per service compared and further we question how ASIC (or others) will keep the costs up to date if released to the market.

The explanatory notes in Table 3 in the consultation paper, appear quite simplistic and may not adequately address the range of reasons that a SMSF may be appropriate for a consumer at moderate to lower balances.

Finally the FPA does not support a prescribed minimum fund balance size for setting up a SMSF.

**FPA Recommendation**

The FPA recommends that ASIC do not proceed with the Rice Warner report as guidance for industry and that any guidance on cost should focus on the type of costs an SMSF may incur, not on actual costs. The guidance or information regarding what type of cost information should be included in the SOA should be connected back to section 947C and RG175.

As an alternative to the Rice Warner report, the FPA strongly supports the ATO and their statistical summary reports. The FPA submits that the ATO is clearly in the best position to continue collecting this information in respect of SMSFs and ASIC should encourage providers to use this data.

## Issues of dual-regulation - ASIC and the Australian Tax Office (ATO)

SMSFs are governed under a system of dual regulation. That is, where two (or more) regulators have regulatory oversight of one industry.

The FPA acknowledges the challenges this creates in avoiding duplication and regulatory overlap, while ensuring effective regulatory cover for consumer protection purposes. However, the FPA is concerned that this is leading to an overlap of the regulatory activity undertaken by the ATO and ASIC which is not only inefficient and a costly drain on Regulator resources, but will create confusion for industry participants and consumers alike.

This is particularly confusing for consumers who are a member or trustee of an SMSF. Further, it has led to a miss-alignment of expectations of the role each regulator has in assisting consumer/trustees when things go wrong.

Managing an SMSF is complex. This is exacerbated as trustees must navigate the quagmire of rules and obligations which are spilt between the ATO and ASIC. It is important to keep in mind that many SMSF trustees are consumers, not professionals working in the financial services industry.

This example of dual regulation also highlights the risk of gaps resulting in the rules governing an industry when multiple regulators are involved. We believe this hinders the performance of both the regulators and the regulatory oversight of SMSFs.

| | ATO | ASIC |
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| **Implementation of investments** | The ATO have set a list of rules on investments around the acquisition of assets placed on trustees. | Only until recently, the same knowledge and licensing requirements of professionals giving the investment advice on SMSFs were lacking |
| **Strategic recommendations to trustees** | The suitability of strategic recommendations do not get assessed by the ATO and professionals giving the advice are not accountable whereas the trustees being recommended to are. | ASIC's involvement in SMSFs and its licensing regime of those providing SMSF advice have been lacking. An SMSF structure have not been defined as in itself as a financial product until recently. |
| **Guidance to trustees on rules** | The ATO provides rules and guidelines on SMSFs. However the majority of trustees are not themselves competent to maintain their SMSFs. The penalties to trustees are however as strictly applied to those of a large superannuation fund. | Until recently, ASIC has not provided sufficient guidance to professionals or have a licensing regime to govern those giving SMSF advice. The gap between ATO's expectations of trustees, versus ASIC's role in the SMSF advice space has created industry wide issues including consumer losses and lack compensation. |
| **Responsibility of activities** | The ATO expects trustees to manage their superfunds according to rules set on SMSFs. The penalties of rules on trustees are somewhat more imbalanced towards the consumer compared to the professionals who recommend them. | Until recently Accountants and Advisers who recommend SMSFs are not under ASIC's radar. Requirements on licensing and competence of those initiating the SMSF strategic advice are lacking. |

**Recommendations**

The FPA recommends ASIC and the ATO establish a joint SMSF Committee to minimise duplication and gaps occurring in the regulation of SMSFs and make these minutes and decisions transparent and available to industry. This will help improve the efficiency and effectiveness of the regulatory system for consumers and industry.

## Attachment 1: Responses to specific consultation questions

| Proposal | Questions | FPA Comment |
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| B1 We propose to modify Pt 7.7 of the Corporations Act, by way of class order, to require AFS licensees and their authorised representatives who provide personal advice to clients on establishing or switching to an SMSF:<br>(a) to warn clients that SMSFs do not have access to the compensation arrangements under Pt 23 of the SIS Act in the event of fraud or theft (see Table 1); and<br>(b) to give clients the warning at the same time, and by the same means, as the advice is provided. If the advice is provided in an SOA, the warning can be given by including it in the SOA. If the advice is not provided in an SOA, we expect the warning to be recorded in the SOA when it is later given to clients. | B1Q1 Do you agree with our proposed disclosure requirement in Table 1? If not, why not? | *The FPA agrees that there is a need for disclosure regarding the compensation arrangements for all members including those of a SMSF and APRA-regulated funds.*<br><br>*Further we recommend that it would be appropriate for APRA-regulated funds to disclose that members of all APRA-regulated funds will bear the cost, reflected in their unit values, of compensation arrangements in the event that funds suffer loss through fraud or theft.* |
| | B1Q2 Do you think that the proposed warning will benefit clients who are considering setting up or switching to an SMSF? If not, what other warnings would help clients decide whether it is appropriate in their circumstances to establish or switch to an SMSF? | *The FPA believes that the proposed warning will benefit clients who are considering setting up or switching to an SMSF.*<br><br>*However, the FPA believes that appropriate warnings and explanations will be a significant benefit to all clients deciding between APRA-regulated funds and SMSFs* |
| | B1Q3 Do you think the proposed warning should be given to clients in a prescribed format? For example, should the warning be given in a stand-alone document, or should it feature more prominently in the SOA? If you do not think the warning should be given in a prescribed format, please explain why. | *Provided the warning is given some prominence, the financial planner should have discretion as to whether the warning is part of the SOA, a stand-alone document or incorporated by reference.*<br><br>*Cost and utility may be factors in this choice.* |
| | B1Q 4 Do you think that clients should be asked to sign a document acknowledging that they understand that SMSFs are not entitled to receive compensation under the SIS Act? Are there any alternatives to obtaining client acknowledgement that will help to ensure that investors understand the lack of compensation available to SMSFs? If so, please provide details. | *No. Provided warning is given and assuming the recommendation to enter a SMSF is in the client's best interests, then this should be sufficient. If the recommendation was not in the client's best interests, then they will have recourse for poor advice already. In any event, if some form of sign-off was deemed necessary, it could be incorporated into the "authority to proceed".*<br><br>*However, we note that new trustees are already required to make a* |

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| | | *declaration to the Australian Taxation Office that they understand their responsibilities and obligations.*<br><br>*If it is considered that a specific acknowledgement of the lack of compensation should be required, it would be practical and efficient for it to be incorporated in the ATO declaration.* |
| | B1Q5 Are our proposed disclosure requirements likely to result in additional compliance costs for AFS licensees and their authorised representatives? Please give details, including figures and reasons. | *Costs of complying include legal advice, systems updates and additional time to explain and clarify with staff and clients, particularly where objectives or circumstances of the client are unique.* |
| | B1Q6 Are there any practical problems with the implementation of this proposal? Please give details. | |

| Proposal | Questions | FPA Comment |
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| B2 We propose to modify Pt 7.7 of the Corporations Act, by way of class order, to require AFS licensees and their authorised representatives who provide personal advice to clients on establishing or switching to an SMSF:<br><br>(a) to disclose to clients the matters set out in Table 2. The level of detail about a matter that is required is such as a client would reasonably require to decide whether it is appropriate in their circumstances to establish or switch to an SMSF; and<br>(b) to give clients the disclosures at the same time, and by the same means, as the advice is provided. If the advice is provided in an SOA, the disclosures can be given by including them in the SOA. If the advice is not provided in an SOA, we expect the disclosures to be recorded in the SOA when it is later given to clients. | B2Q1 Do you agree with our proposed disclosure requirements in Table 2? If not, why not? | *Agree that this information should be made available to prospective trustees/members of a SMSF but we do not agree that this should be through a class order to modify to Pt 7.7.* |
| | B2Q2 Do you think the proposed disclosure requirements will benefit clients who are considering setting up or switching to an SMSF? If not, what other disclosures do you think would help clients decide whether it is appropriate in their circumstances to establish or switch to an SMSF? | *Yes and the FPA submits that this should be incorporated as guidance / examples in the existing regulatory guides.* |
| | B2Q3 Do you think that the proposed disclosure requirements in Table 2 should be given to clients in a prescribed format? If not, why not? | *They are already included in the ATO's trustee declaration form that new trustees are required to sign. The need to complete the trustee declaration can be referenced in the SoA, but the SoA does not need to be unnecessarily lengthened to restate all these matters.* |
| | B2Q4 Do you think that clients should also be asked to sign a document acknowledging the responsibilities and risks associated with running an SMSF? Are there any alternatives to obtaining client acknowledgement that will help to ensure that clients understand the risks associated with SMSFs? If so, please provide details. | *No we don't believe it is necessary for clients to sign a document of acknowledgement so long as the responsibilities and risks are clearly spelled out in the SOA. However, if ASIC determines that such a declaration is necessary, it would be best combined with the declaration already required by the ATO.* |
| | B2Q5 Are our proposed disclosure requirements likely to result in additional compliance costs for AFS licensees and their authorised representatives? Please give details, including figures and reasons. | *If ASIC proceed with a modification to Pt 7.7 via a class order then yes.* |
| | B2Q6 Are there any practical problems with the implementation of this proposal? Please give details. | *As discussed above, due to the issues of dual-regulation and because of the significant portion of the SMSF market who utilise exempt advice and service providers such as online trust deed suppliers, solicitors, auditors or tax agents to set up SMSFs, consistent disclosure requirements should be* |

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| | | *developed in media formats such as electronic declarations and the Money Smart website. This may provide the same access and level of information to all groups setting up an SMSF.* |
| | B2Q7 Do you think we should provide further guidance on the disclosure obligations? If so, please provide details. | |

| Proposal | Questions | FPA Comment |
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| B3 We propose that an AFS licensee or its authorised representatives that provide personal advice to a client on establishing or switching to an SMSF should be required to make the disclosures in proposals B1 and B2 six months after we release our class order on the disclosure requirements. | B3Q1 Do you agree with the proposed timeframe for the implementation of proposals B1 and B2? If you think that a transition period of longer or shorter than six months is required, please explain why. | *Should this proceed the FPA would suggest implementation from 1 July 2015 to allow businesses time to implement the changes noting that AFSLs and their financial planners are already under a significant regulatory change burden* |

| Proposal | Questions | FPA Comment |
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| C1 We propose to provide guidance that, when giving advice to clients on establishing or switching to an SMSF, advisers must consider and be able to show that they have informed clients of each of the SMSF cost issues set out in Table 4.<br>Our proposed guidance will take into account Rice Warner's findings and the feedback received in response to it.<br>C1 We propose to provide guidance that, when giving advice to clients on establishing or switching to an SMSF, advisers must consider and be able to show that they have informed clients of each of the SMSF cost issues set out in Table 4. | C1Q1 Do you agree with Rice Warner's findings? In particular, do you agree with:<br>(a) the way that Rice Warner has described SMSF costs in its report? If not, why not?<br>(b) Rice Warner's analysis about the points at which an SMSF becomes cost-effective compared with an APRA-regulated fund? If not, why not? | ***As the costs associated with a SMSF vary so greatly, the FPA strongly recommends a focus on the type of costs, not the actual costs.***<br><br>*We consider the Rice Warner report to may be a useful point of reference (only) for people considering establishing an SMSF. However, SMSF costs will change over time and therefore such cost estimates must be continually reviewed and updated to ensure they remain useful and accurately represent market values.*<br><br>*To control the costs associated with such research, the FPA reiterates its recommendation that the ATO is in the best position to continue collection such data, and that ASIC should encourage to providers to use the ATO data. ASIC should not reinvent the wheel reviewing costly* |

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| Our proposed guidance will take into account Rice Warner's findings and the feedback received in response to it. | | *external research.*<br><br>*It is also important that to recognise the Rice Warner costs are generalisations only, as costs will vary from fund to fund, and between service providers, depending on underlying assets, whether platforms are used, and other individual characteristics of the fund.* |
| | C1Q2 Do you agree that we should provide guidance on the costs associated with setting up, managing and winding up an SMSF? If not, why not? If yes:<br>(a) what are the costs associated with setting up, running and winding up an SMSF?<br>(b) is insurance purchased through an SMSF cost-effective compared with insurance through an APRA-regulated fund? If not, why not?<br>(c) do you think we should provide actual dollar costs (or a range of dollar costs) for the following SMSF costs? If not, why not?<br>(i) the costs associated with setting up, running and winding up an SMSF;<br>(ii) the time cost associated with managing an SMSF;<br>(iii) the cost of an SMSF not having access to compensation under the SIS Act; and<br>(iv) the cost of obtaining insurance; and<br>(d) what are the costs or benefits of SMSF structures compared with other superannuation vehicles? Please provide details. | *Guidance should be on the type of costs, not around actual costs*<br><br>**Do you think ASIC should provide actual dollar costs (or a range of dollar costs) for the following SMSF costs**<br><br>*No. While relevant cost indications would be useful to SMSF trustees, it would be difficult for ASIC to establish actual dollar cost benchmarks as the cost of running a fund will vary according to the circumstances of the fund in terms of type and spread of investments, how actively trustees manage their funds and the tools and services they may source from a competitive marketplace. These factors and the associated costs will be continually changing.*<br><br>*A more appropriate approach would be for the ATO to produce annual reports on the costs incurred by SMSFs in the previous twelve months. The ATO's regulatory focus is on the SMSF trustees, auditors and tax agents. Data related to the actual expenses incurred in establishing, operating and winding up a SMSF would be most effectively sourced from the trustees. Hence, the FPA recommends the ATO and not ASIC be responsible to collecting and producing expenditure data, should it be determined that such data would be a helpful reference for consumers.* |

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| | | *Apart from these practical considerations, we question whether it would be appropriate for ASIC to publish dollar costs which would then be taken as an indication of officially approved costs, which is verging on regulatory price setting.*<br><br>**The cost of setting up, managing and winding up an SMSF?**<br>*As mentioned above, apart from giving an indicative range (as per the Rice Warner report), it will be difficult for ASIC to provide actual dollar costs given variations in the asset mix, degree of self-management by trustees and their use of the suite of products offered competitively by service providers. If these costs could be quantified accurately, they would need to be updated periodically, which would e costly. ASIC would need to consider whether publishing dollar costs would imply these to be officially approved*<br><br>**The time cost associated with managing an SMSF?**<br>*It would be difficult to assess this given variations in the mix of fund assets, the expertise of trustees and the degree to which they might seek professional advice and management. While we have no research insights on this question, we believe that most trustees would expect that in taking on the responsibility of a self-managed fund they should be prepared to spend some time attending to the good management of the fund and its compliance with the law. Whether this is an economic use of their time is for them to judge.*<br><br>**The cost of an SMSF not having access to compensation under the SIS Act?** |

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| | | *Apart from pointing out that SMSFs are not covered by compensation in the event of fraud or theft, it would be difficult to give an indication of the cost since this would depend on the circumstances and extent of each instance of theft or fraud.*<br><br>***Exit Costs****; we have some concerns about the parity of this suggestion in line with what other funds disclose when they are set up. Will Industry and basic retail funds disclose to consumers that they charge CGT even though they do not have to (this can be thousands of dollars on a moderate account balance The majority of SMSFs have balances, which are sufficient to achieve cost savings. Economies of scale are not the only mechanism to reduce costs, and in fact, it can be possible for larger funds to be cost inefficient compared to smaller funds. The Statistical Summary (p15) indicates that over the 2006, 2007 and 2008 financial years respectively, there was almost a 20% reduction in the average operating expense ratio across the SMSF sector.* |
| | C1Q3 Should advisers be required to consider and inform clients of the costs in Table 4 before establishing an SMSF? If not, why not? | *This is already a requirement under best interests. Advisers should provide clients of the categories of costs involved in setting up, managing and winding up an SMSF and the scale of these costs to extent they can reasonably be known, in order to assist clients to make an informed decision.*<br><br>*However, the FPA is concerned that the major fault with this area around both the Rice Warner report and proposals in CP216 is that it is are too focussed on costs. The focus must be – not what is in the client's best interests, (as required under Corporations Law). Sometimes* |

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| | | *what is in their client's best interests may costs more, and to focus on costs as the primary driver / consideration runs the risk of advice that is not in the client's best interests.*<br><br>*Costs are only one factor that is relevant to the ultimate decision.* |
| | C1Q4 Are there any other SMSF costs that need to be disclosed to clients? If so, should they be disclosed in actual dollar costs (or a range of costs)? Please provide details. | *As stated above, the focus should not be on the disclosure of cost information. Risks and benefits are equally important. However, it is vital that the advice details why the SMSF recommendation is in the best interests of the client, given the client's circumstances and goals. This is already a requirement under s961B of the Corporations Act and Regulatory Guide 175.* |
| | C1Q5 Do you think that any other disclosures about the costs of setting up, running and winding up an SMSF need to be made to clients before establishing an SMSF? If not, why not? | *No. See response to C1Q3 and C1Q4.* |
| | C1Q6 Is our proposed guidance likely to result in additional compliance costs for advisers? Please give details, including figures and reasons. | |
| | C1Q7 Are there any practical problems with the implementation of this proposal? Please give details. | *Yes – costs are not the only factor in considering the suitability and appropriateness of a SMSF.* |