The Association of Superannuation Funds of Australia Limited
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Maria Hadisutanto
Lawyer
Strategy and Policy
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

Email: submissions@asic.gov.au

Dear Ms. Hadisutanto,

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

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to ASIC Consultation Paper 214 – Updated record-keeping obligations for AFS licensees (CP214).

ASFA has consulted with its members and reviewed CP214. Our comments are set out in this submission.

About ASFA

ASFA is a non-profit, non-politically aligned national organisation. We are the peak policy and research body for the superannuation sector. Our mandate is to develop and advocate policy in the best long-term interest of fund members. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

General comment

As an overall comment, 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).

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Record-keeping obligations when giving intra-fund advice

ASFA agrees with the Government's objective to ensure that:

- superannuation fund members receive advice that is appropriate, in their best interests and un-conflicted; and
- the retirement savings of superannuation fund members are not diminished through excessive fees and the type of advice contemplated in paragraph 99F(1)(c) of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) is not charged for collectively across all members of the fund.

For these reasons we believe the proposed record keeping obligations associated with intra-fund advice contained in Proposals B1, B2 and B3(a) are not unreasonable.

Notwithstanding the Government's objective to ensure that trustees charge individual members for the full cost of advice that is provided to them, where the trustee is not allowed under s99F of the SIS Act to collectively charge all members for that advice, we believe that the record keeping obligations contained in Proposal B3(b) are unreasonable in the circumstances and will not achieve the desired regulatory outcome.

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. The record-keeping requirements contained in Proposal B3(b) will increase costs to funds in an environment where funds are already being stretched to pay the costs associated with Stronger Super and in many cases building up the operational risk reserves required under the APRA Prudential Standard over a relatively short time frame.

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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. This would be sufficient to meet the desired regulatory \ policy outcome - that of evidencing whether non-intra-fund advice is being charged for correctly and is not being cross-subsidised by fees received for intra-fund advice. There is no need for this to be done on a case by case basis.

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.

We trust that the information contained in this submission is of value. We would be pleased to meet with you to discuss our submission.

If you have any queries or comments regarding the contents of our submission, please contact ASFA's Policy Adviser, David Graus,

Yours sincerely

Fiona Galbraith
Director, Policy