

04/02/2015

Ashly Hope
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Australian Securities and Investments Commission
email: ashly.hope@asic.gov.au

Dear Ashly,

RE: ASIC Consultation Paper 224, *Facilitating electronic financial services disclosure (CP 224)*.

We are writing in response to the feedback request outlined in ASIC Consultation Paper 224 – Facilitating electronic financial services disclosure. We wish to provide feedback on ASIC’s proposed options for facilitating electronic disclosure.

About AustralianSuper

AustralianSuper is one of Australia’s largest super funds and is run only to benefit members. We don’t pay commissions to anyone to recommend us, nor do we pay dividends to shareholders. We have over 2 million members and manage over \$84 billion of members’ assets. Our sole focus is to provide the best possible retirement outcomes for our members.

We are regulated by ASIC and support transparency, comparability and accessibility of information for superannuation investors as good public policy. We see electronic disclosure as a component that may facilitate this overall objective, not an objective in itself.

We have provided feedback in the order of the questions asked by ASIC, and answered only those questions of relevance to this fund.

A1Q1 Do you agree that we should further facilitate electronic disclosure, or take Option 5 (i.e. no change)? Please provide reasons.

AustralianSuper fully supports Option 4, which includes Options 1-3 and covers the following:

- Giving providers an additional option for delivery of disclosures, which would enable providers to meet the requirements of delivery if they publish disclosures electronically and then notify the client that the disclosure is available;
- Making it clear that if a financial services provider has an email address for a customer, they do not need consent to use that address to deliver disclosures electronically;

- Facilitating the use of more innovative PDSs.

A1Q2 What benefits do you consider will result from our proposed approach?

Giving providers additional options for disclosure such as making information available on the provider’s website is more in keeping with the way that consumers are now seeking to transact with financial service providers. We note that this proposal contains inherent safeguards for consumers as shown in Regulatory Guide 221.

There are also significant cost savings that can be made with this proposal that should enable further administration fee reductions in superannuation to occur.

AustralianSuper fully supports the use of innovative PDSs which can be developed to work with the technology that is currently available and in accordance with consumer preferences for the way they wish to receive information. Our main concern is that comparability of key information across PDSs is not compromised.

A1Q3 What disadvantages do you consider will result from our proposed approach?

We are concerned that the ‘good practice guidance’ contained in RG 221 does not include sufficient consideration of comparability of information, and the reference to the ‘good disclosure principles’ is not sufficient to deal with this concern.

Customers should be able to easily compare fees and performance in innovative PDSs for different offerings, regardless of the medium. Without this key principle being included here, all ASIC’s work on ensuring comparable fee and performance disclosure in the financial services sector will be undermined.

- More innovative PDSs inherently involve having more than one version of a PDS in the market for a financial product at a particular time. This should be reflected in regulatory treatment of PDSs including the lodgement of in-use notices for PDSs, notification of updating of PDSs, and the way stop order provisions apply to PDSs. We assume a review of lodgement of in-use notices will ensure alongside innovative PDS development.

A1Q4 Are there any other options we should consider to meet our regulatory objective of further facilitating electronic disclosures and encouraging the use of more innovative PDSs, while ensuring that consumer choice about the method by which they receive disclosures is not removed?

Not at this stage.

B1Q1 Do you agree with this proposal? Please give reasons for your answer.

AustralianSuper fully supports this proposal but notes also that further guidance is required on use of email addresses provided for default fund members enrolled by their employer.

B1Q2 Are there other barriers to using email addresses for delivery of disclosures?

There are no additional barriers to using email addresses for delivery of disclosures that providers do not already have to consider when delivering information using the physical address of consumers.

Providers will need to embed a process that gives them confidence that customers receive email correspondence and sufficient proof that the email notification was delivered.

B1Q3 What are the consequences of making this change? For example, are there significant numbers of clients who have supplied email addresses and who currently do not have disclosures delivered to those email addresses, but who would be able to under this proposal?

Potentially significant cost saving would arise with this change. AustralianSuper has email addresses for 42% of its members, and only 6.1% specifically opting to receive member statements by email. (There is a process that members undertake to do this).

B1Q4 Do you agree that the provision of an email address means a client or potential client is comfortable with all forms of disclosure being delivered to that email address? If yes, are there any consumers or groups of consumers for whom this might not be the case?

We agree that the provision of an email address means a client or potential client is comfortable with all forms of disclosure being delivered to that email address, unless the client specifically states otherwise.

B1Q5 When a provider is seeking an address from a client or potential client, should there be any information, warnings or advice given about the potential ways the address might be used?

Yes.

B1Q6 Are there particular kinds of disclosure for which consumers might be more or less likely to prefer electronic delivery?

AustralianSuper is able to provide on request some internal research on our members that demonstrates a clear preference across all age groups for tailored/personalised information to be delivered by email, in addition to an increasing preference for electronic delivery.

B1Q7 Does it matter to whom the consumer provided the email address?

Providers would need to follow their obligations under the privacy requirements, and disclose to customers collection of their details from third parties. Of itself this should not be an impediment to the use of an email address by a financial services provider.

B1Q8 Do you have comments or views on our example in draft updated RG 221: see Example 1 at RG 221.35?

We conclude from this example that ‘Big Company’ can send disclosures to the email address provided by the client to the adviser, but the language used in this example seems more equivocal, thus making the example unclear if being used as guidance.

B1Q9 For providers, how do you currently determine that an address (postal or email) has been nominated for the purposes of delivery of disclosures such as PDSs and Financial Services Guides (FSGs)?

We determine whether an email address has been ‘nominated’ for the purpose of delivery of specific disclosures when the purpose for the use of the email address is disclosed alongside the request for the email address.

B1Q10 Do you think that emailed disclosures are more or less likely to be lost (e.g. through changes to email addresses or misdelivery) than posted disclosures? Please provide supporting evidence if possible.

As a product provider we do not collect evidence that specifically supports either contention – for both emails and physical addresses we are only aware of ‘misdelivery’ where we have been advised of it, which does not give the complete picture relating to misdelivery.

Accordingly, we do not see the need to differentiate between these two methods of delivery on this basis.

B1Q11 Do you think that there is an issue with frequency of change of email addresses? Do you have any data to show frequency of change of email addresses?

No.

Please note also that funds are better equipped to deal with email address changes. Receiving changes to email addresses (as opposed to changes to mail addresses) is preferred as it reduces the time that we are likely to send communications using incorrect details, due to the time lag associated with processing return mail.

B1Q12 Are there any particular contexts in which the current requirement for a client to ‘nominate’ an address would provide a barrier to efficient electronic disclosure—for example, obtaining an address for clients who acquire products through a third party such as an employer or other agent?

Any clarifying guidance would be useful, but we note the responsibility that third parties have to advise clients of the purposes for which addresses will be used.

B1Q13 Where there is a provision allowing a disclosure to be notified, sent, given, provided or delivered electronically, do you need any further guidance on whether you can use an email address, that you hold, to satisfy such a requirement?

Any clarifying guidance would assist in this regard.

B1Q14 Is there any other guidance or relief required to facilitate the delivery of disclosures by email to clients?

No

B1Q15 Please estimate any cost savings your business would expect to realise from this change.

The table below outlines the respective costs savings that would be made if communications to our customers were made by email.

Email Send rate	Cost Saving
100%	\$1,011,334
80%	\$809,067
60%	\$606,801
40%	\$404,534
20%	\$202,267
0%	0

B1Q16 Please estimate any additional costs that consumers might be expected to incur as a result of this change.

We are pleased that RG 221 deals with the issue of consumers paying more for requesting disclosure in another format.

In terms of other additional costs that consumers might incur as a result of this change, it really depends on the behaviour of the consumer, and whether they choose to read information on-screen or print out received communications.

B2Q1 Do you support this additional method of disclosure? Please give reasons for your answer.

AustralianSuper welcomes regulatory developments that will enable providers to email customers about disclosures, provided members are notified that the disclosure is available and no additional charges are imposed on customers.

We are of the view that the perceived difficulties can be dealt with appropriately and note that these challenges are essentially the same as those that providers have had to overcome in communicating with their customers using physical addresses.

B2Q2 Should clients be notified each time (via their existing method of communication) of the availability of the disclosure on a website or other electronic facility?

Yes we think this is an appropriate consumer safeguard.

B2Q3 What are acceptable methods of notification (e.g. letter, email, SMS, voice call, or other)?

All of the above

B2Q4 How should notifications be made? Are there any design considerations you would suggest in the notice to help ensure clients do not miss the opportunity to access their disclosures? What guidance should ASIC give on this issue?

There should be flexibility to enable providers to provide information in a size and context relevant to the medium they are communicating in.

B2Q5 Do you have any data on the likelihood of clients printing their own copies of relevant disclosures when they are made available online?

No

B2Q6 Do you think we should restrict the use of hyperlinks in notifications?

We do not see the use of hyperlinks as being a concern provided that they work and continue to link to the relevant information.

B2Q7 Please provide feedback on the costs to your business of: (a) developing or modifying an electronic facility;

(b) printing and mailing disclosures (including, where possible, volumes and expected changes in volumes based on the proposal); and

(c) any savings you would expect to make were this proposal implemented.

As per B1Q15

B2Q8 Please estimate any costs that consumers might be expected to incur as a result of this change.

This really depends on the behaviour of the consumer, and whether they choose to read information on-screen or print out received communications.

INNOVATIVE PDSs

C1Q1 Do you have any comments on our proposals for relief in proposal C1(a) regarding copies of the PDS?

AustralianSuper is broadly supportive of the stated proposals regarding copies of PDSs.

C1Q2 Do you have any comments on the relief from the shorter PDS regime in proposal C1(b)? Do you have any other suggestions as to how this might be achieved? Do you think communicating ‘the same information’ is an appropriate limitation on a more innovative PDS?

Care needs to be taken in considering how ‘the same information’ may be implemented by providers. It is preferable if some key information in shorter PDSs be presented in the same way, not just that the same figures be used for comparison purposes. Comparative fee information should not be different in ‘innovative’ PDSs compared with the shorter PDS. Equally, performance information should be consistent across all PDSs as well. More consultation is required to consider the logistics of how to implement this and ameliorate any potential reduction in comparability of key information arising from innovative PDSs.

C1Q3 Do you think that our proposed requirement in proposal C1(c) that the mandated language be included ‘at or near the front of the PDS’ will accommodate more innovative PDSs?

We accept that this is needed and will have to be accommodated in 'innovative' PDSs for the purposes of comparability and consumer protection.

C1Q4 Are there any further legislative barriers to your use of more innovative PDSs, including interactive PDSs?

We think that the relevant barriers have been generally captured in the Consultation paper.

We are concerned however, that the good disclosure principles may not be enough and that consideration of sharper regulatory requirements may be needed to ensure comparability of key information in relation to fees and performance across 'innovative' PDSs produced in different mediums. Lack of clarity and comparability in relation to fees and performance impedes competition in the financial services sector.

C1Q5 Do you think any of our proposed relief should be extended to other types of disclosure, such as FSGs and SOAs?

Yes, provided the communication highlights the nature and importance of the document before a consumer decides to view the document or discard it. This is particularly the case regarding statements of advice. Additional consumer measures are required to ensure that consumers actively consider a statement of advice *before* giving an instruction to implement that advice.

C2Q1 Do you agree with this proposal? Please give reasons.

AustralianSuper supports the proposal to update regulatory guidance to make it clear that providers can have more than one PDS for a single financial product. This proposal provides the necessary flexibility in communicating with a diverse client base.

C2Q2 Do you consider that there are any other areas where a lack of clarity of our view would prevent or discourage you from producing a more innovative PDS?

No. However, we do think ASIC should specifically address the issue of ease of comparability of fees and performance in the context of innovative PDSs.

C2Q3 Are there any other risks to consumers that may be more apparent in the electronic environment?

Prominence of information may differ in the electronic environment. Use of innovative PDSs may be affected by the concern regarding prominence of information, and the comparability of information between PDSs may be impeded as well, without appropriate regulatory guidance.

C2Q4 Do you think, where it does not already, any of our proposed updated guidance should be extended to other types of disclosures, such as FSGs and SOAs?

Refer to above comments in relation to SOAs.

C2Q5 Do you agree with our updated good practice guidance in Section D of draft updated RG 221?

Yes we support the principles and intent outlined in this guidance. We are particularly supportive of the proposed measures ensuring that no additional costs are imposed on consumers who request information in hard copy.

We are concerned however, that the good disclosure principles may not be enough when considering innovative PDSs. Consideration of sharper regulatory requirements is needed to ensure comparability of key information in relation to fees and performance across 'innovative' PDSs produced in different mediums. Lack of clarity and comparability in relation to fees and performance impedes competition in the financial services sector.

C2Q6 Do you think complying with our updated good practice guidance would be too onerous?

No. The proposals are reasonable given the nature of the communications about financial products.

C2Q7 Is there anything else you think would be usefully covered in our good practice guidance?

Not at this stage, but this guidance should be reviewed in due course.

If you have any queries in this regard please do not hesitate to contact me

Yours sincerely

Louise du Pre-Alba
Head of Policy