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Strategic Policy Advisor  
Australian Securities and Investments Commission  
PO Box 4000  
Gippsland Mail Centre  
West Victoria 3841

12 January 2015

## Consultation Paper 224 - Facilitating electronic financial services disclosures

Dear Ashly,

Ernst & Young Australia is pleased to provide our comments on the above Consultation Paper 224 - Facilitating electronic financial services disclosures.

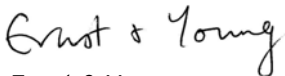
Our summary of responses is set out in Appendix A and our responses to the specific questions are set out in Appendix B to this letter.

Overall, we are supportive of the proposals. However, we have the following comments:

1. We believe that Option (d) - A combination of Options 1 - 3 outlined in the Consultation Paper consideration to be the most aligned in achieving the most benefits of electronic delivery method;
2. We consider that ASIC should assess any implications of the changes and updates of the *Privacy Act 1988* to the proposal identified for implementation; and
3. The Consultation Paper is unclear whether in a situation where a PDS contains a Financial Services Guide ('FSG') issued by a different entity, whether the issuer is required to obtain permission from the interested party that its FSG can be issued electronically.

We would be pleased to discuss our comments further with you. Please contact Denis Thorn  
or Adeline Lim  
if you wish to discuss any of the matters in this response.

Yours sincerely



Ernst & Young

## Appendix A

Summary of our responses on each of the proposals outlined in the Consultation Paper is as follows:

Proposal	Comment	Recommendation
<p>A1 We are considering the threshold options set out in paragraph 18. Depending on feedback, we propose to implement Options 1-3 to further facilitate electronic disclosure. This feedback seeks your overarching views; more detailed questions on the particular proposals are in Sections B and C.</p>	<p>Ernst &amp; Young Australia agree with ASIC's proposals in general.</p> <p>We believe that the following categories of consumers may not be comfortable with this default method of delivery:</p> <ul style="list-style-type: none"> <li>clients who are used to printed form and posted and may not have readily available access to the internet; and</li> <li>clients with incompatible internet software and may not be able to experience the full benefits of electronic delivery of disclosures.</li> </ul>	<p>We recommend that clients continue to be given the option to select electronic or printed form disclosures. We also recommend that ASIC should keep abreast with the update and changes to the Privacy Act 1988.</p>
<p>B1 We are proposing to update our guidance in RG 221 to make it clear that, if a financial services provider has an email address for a client, they do not need consent to use that address to deliver disclosures electronically, in the same way that the provision of a postal address is sufficient consent for the delivery of disclosures to that postal address.</p>	<p>Ernst &amp; Young Australia agree with ASIC's proposals in summary.</p>	<p>We believe that no further guidance is required if the provision is clear that the email address may be used to provide information related to the providers' products.</p> <p>We believe that express consent should be obtained from a client when an email address is indirectly used by suppliers or customers of the providers when consent is not properly understood at the inception of the business relationship with the providers.</p>
<p>B2 We propose to give class order relief to provide an additional method of delivery for most Ch 7 disclosures (where not already permitted), allowing providers to make a disclosure available on a website or other electronic facility, provided clients:</p> <ul style="list-style-type: none"> <li>▶ Are notified (e.g. via a link or a referral to a web address or app) that the disclosure is available; and</li> <li>▶ Can still elect to receive that disclosure via an alternative method of delivery, on request.</li> </ul>	<p>Ernst &amp; Young Australia agree with ASIC's proposals</p>	<p>N/A</p>
<p>C1 We propose to facilitate more innovative PDSs, such as interactive PDSs, by giving relief:</p> <ul style="list-style-type: none"> <li>▶ From various provisions requiring a copy of a PDS to be given to a person on request and instead allowing a provider to give a copy of any current PDS for the relevant product or offer—meaning a provider can give a different printed PDS, even if technically it is not a 'copy';</li> <li>▶ From the shorter PDS regime,</li> </ul>	<p>Ernst &amp; Young Australia agree with ASIC's proposals</p>	<p>We note that the Consultation Paper is unclear whether in a situation where a PDS contains a Financial Services Guide ('FSG') issued by a different entity, whether the issuer is required to obtain permission from the interested party that its FSG can be issued electronically. We recommend that this is either addressed in the Consultation Paper or in the Regulatory Guidance 221.</p>

Proposal	Comment	Recommendation
<p>provided the PDS communicates the same information that is required by that regime; and</p> <ul style="list-style-type: none"> <li>▶ From the requirements for certain language to be included on the cover or 'at or near the front of' a PDS so they can equally apply to a more innovative PDS.</li> </ul>		
<p>C2 We propose to update our guidance in RG 221 to:</p> <ul style="list-style-type: none"> <li>▶ Make it clear that we think Pt 7.9 operates to allow a provider to have more than one PDS for a single financial product or offer, such as a version able to be printed and an interactive version;</li> <li>▶ Make it clear that the requirement that a consumer can identify the information that is part of the PDS is particularly important in the case of more innovative PDSs; and</li> <li>▶ Include further guidance on the use of more innovative PDSs and update our 'good practice guidance' on electronic disclosure to help ensure consumers receive clear, concise and effective information when disclosures are delivered electronically and in electronic form (see Section D of draft updated RG 221).</li> </ul>	<p>Ernst &amp; Young Australia agree with ASIC's proposals</p>	<p>We believe that it would be useful to consider guidance in relation to the retention of electronic records delivered to the clients for a pre-determined number of years. This allows for easy retrieval of historical records by both the providers and clients and no charges should be imposed for the request.</p>
<p>D1 We are considering aligning the treatment of financial services disclosures and credit disclosures in the future.</p>	<p>Ernst &amp; Young Australia agree with ASIC's proposals</p>	<p>N/A</p>

We have not commented on questions A1Q3, B1Q9 - Q11, B1Q15 - 16, B2Q4 - Q5, B2Q7 - 8, C1Q2, C2Q2, C2Q6 and D1Q2 - Q3 as they are related to the estimated costs of implementation of the proposals and recommendations from the interested parties that are directly impacted by the proposal.

## Appendix B

We have summarised our responses to the specific questions and comments related to the specific proposals as below:

A1 We are considering the threshold options set out in paragraph 18. Depending on feedback, we propose to implement Options 1-3 to further facilitate electronic disclosure. This feedback seeks your overarching views; more detailed questions on the particular proposals are in Sections B and C.

Ernst and Young Australia support the proposal as we note that a majority of the financial services providers already have the appropriate mechanism to implement the proposal and they are in the best interest of the Australian business community. We also believe that from the providers' perspective, the proposals would result in costs savings with potential significant reduction in physical storage space, administrative resources and more timely delivery of disclosures nationally and to international clients. In addition, most clients have an email address and accept emails as a mode of business communications compared to the conventional method of printed form and posted.

B1 We are proposing to update our guidance in RG 221 to make it clear that, if a financial services provider has an email address for a client, they do not need consent to use that address to deliver disclosures electronically, in the same way that the provision of a postal address is sufficient consent for the delivery of disclosures to that postal address.

Providers should still be satisfied that if the relevant provision requires the address to be 'nominated', that the email address has been nominated. We think in most circumstances this would be clear from the context (see draft updated RG 221.33), such as when a client provides an email address as part of an application.

Ernst & Young Australia agree in principle 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. However, we believe that the following categories of consumers may not be comfortable with this default method of delivery:

- a. Clients who are used to printed form and posted and may not have readily available access to the internet; and
- b. Clients with incompatible internet software may not be able to experience the full benefits of electronic delivery of disclosures.

We believe that the consent by clients in the proposal should only be applied in relation to the inception of a business relationship with the providers and within the framework of the *Privacy Act 1988*. The example provided in RG221.33 is appropriate on the assumption that the client was informed at the application of the business relationship that the financial planner is acting as the client's authorised agent and may use the email details in connection to the investment in Big Company. This procedure acts as a safeguard measure and demonstrates that the providers place high security to personal information obtained from the client. Express consent should be obtained from a client when an email address is indirectly used by suppliers or customers of the providers, i.e. when personal details are requested by a third party.

We also believe that challenges exist in maintaining an up to date email address and therefore, it is imperative that the providers establish an effective mechanism to update the information on a regular basis.

B2 We propose to give class order relief to provide an additional method of delivery for most Ch 7 disclosures (where not already permitted), allowing providers to make a disclosure available on a website or other electronic facility, provided clients:

- (a) Are notified (e.g. via a link or a referral to a web address or app) that the disclosure is available; and
- (b) Can still elect to receive that disclosure via an alternative method of delivery, on request.

Ernst & Young Australia believe that clients should be notified each time of the availability of the disclosure on a website or other electronic facility. This could act as a mechanism to validate that the clients' email address is correct and satisfy the providers' delivery obligations under the law. We note that SMS or email may be a more effective method of notification compared to other methods of notifications.

However, the email method of notification may create challenges to clients who do not have readily available access to the internet. We also note that the use of hyperlinks in notifications may lead to issues such as in situations where the clients do not have the relevant applications for electronic devices and hyperlinks may not be appropriate to access large size documents.

C1 We propose to facilitate more innovative PDSs, such as interactive PDSs, by giving relief:

- (a) From various provisions requiring a copy of a PDS to be given to a person on request and instead allowing a provider to give a copy of any current PDS for the relevant product or offer—meaning a provider can give a different printed PDS, even if technically it is not a 'copy';
- (b) From the shorter PDS regime, provided the PDS communicates the same information that is required by that regime; and
- (c) From the requirements for certain language to be included on the cover or 'at or near the front of' a PDS so they can equally apply to a more innovative PDS.

Ernst & Young Australia support the proposals and are not aware of any further legislative barriers as to the use of more innovative PDSs.

C2 We propose to update our guidance in RG 221 to:

- (a) Make it clear that we think Pt 7.9 operates to allow a provider to have more than one PDS for a single financial product or offer, such as a version able to be printed and an interactive version;
- (b) Make it clear that the requirement that a consumer can identify the information that is part of the PDS is particularly important in the case of more innovative PDSs; and
- (c) Include further guidance on the use of more innovative PDSs and update our 'good practice guidance' on electronic disclosure to help ensure consumers receive clear, concise and effective information when disclosures are delivered electronically and in electronic form (see Section D of draft updated RG 221).

Ernst & Young Australia agree with this proposal. We recommend that the guidance paper considers the following:

- a. Retention of electronic records delivered to the clients for a pre-determined number of years. This allows for easy retrieval of historical records by both the providers and clients should the need arises. We recommend that these requests should not impose a retrieval charge fee; and
- b. More examples to manage security risks, which we believe are more apparent than other risk in the current business environment where a majority of communications are conducted in electronic form. An example of such guidance would be automatic log out after a set inactive time is recorded.

D1 We are considering aligning the treatment of financial services disclosures and credit disclosures in the future.

Ernst & Young Australia agree with this proposal.