ASIC
CONSULTATION

CP224 Facilitating Electronic Financial Services Disclosure

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ABOUT INDUSTRY SUPER AUSTRALIA

Industry Super Australia is a research and advocacy body for Industry SuperFunds. ISA manages collective projects on behalf of a number of industry super funds with the objective of maximising the retirement savings of over five million industry super members. Please direct questions and comments to:

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CP224 FACILITATING ELECTRONIC FINANCIAL SERVICES DISCLOSURE

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Introduction

ISA supports the facilitation of greater financial services disclosure and believes it is possible to apply a balanced approach which both accepts the expressed preferences of individuals and adopts default arrangements which enhance disclosure and encourage consumer engagement.

ISA accepts that due to a lack of consumer engagement and inertia the only viable means by which electronic disclosure can be significantly advanced is through a change in default disclosure settings which reverse current arrangements to require consumers or their agents to request disclosure in a form other than or in addition to electronic delivery. ISA's preferred approach is to make such changes as necessary to allow providers to have a choice of default delivery methods, including printed material, if they believe this is in the best interests of their members.

We are of the view that change can take place that ensures the preservation of consumer rights and privacy whilst reducing costs borne by members and potentially advancing consumer engagement via more accessible methods of electronic disclosure. ISA supports option 4 (a combination of options 1-3 detailed in the consultation paper) which will give providers an additional option for delivery of disclosures; not require consent to use an email address for disclosure and facilitate the use of more innovative PDSs.

ISA concurs with the observations made in paragraph 24 of the consultation paper that disclosure reforms can not effectively address some market problems such as conflicts of interest and supply-driven competition and that the proposed changes do not address these issues.

ISA also supports relief to allow a more flexible approach to the provision of copies of PDSs, the facilitation of more innovative PDS's, the extension of relief to allow the electronic delivery of FSGs and SOAs and relief to allow disclosure via websites. ISA is of the view that adequate consumer safeguards can be implemented to ensure the benefits of electronic disclosure are passed on to consumers.

ISA recognises the desire to align any change with credit services disclosure arrangements. ISA does not make any comment on the electronic delivery of credit disclosures.

ISA response to specific proposals

Section A – Options Considered

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

ISA supports the further facilitation of electronic disclosure and does not support the no-change option.

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

ISA estimates that if its member funds opted for electronic disclosure, tens of millions of expenditure of members' funds would be avoided each year which would directly benefit members as the savings would be passed on.

Many members will be more likely to access information provided electronically, particularly if it is accessible on a mobile device. In some instances a member's email address may have greater longevity than a postal address.

The proposed approach provides flexibility to best meet member needs, which might vary depending upon fund demographics.

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

There are a number of challenges surrounding the balancing of ready access to personal information delivered electronically and privacy and security considerations. Headline or key information provided by printed material has the advantage (for those who receive and choose to open the material) to be amenable to quick absorption. This can be replicated and enhanced by electronic delivery methods; however poor implementation, including the need to onwards click can undermine the advantages of electronic delivery.

We note with approval paragraph 63-64 in the associated Draft Regulatory Guide 221 that the material provided electronically should be clear, concise, effective and that equal prominence should be provided to information; and that in the case of PDSs, potential members should not be 'steered away' from less appealing elements of disclosure. Consumers are often 'directed' through an online experience through the use of distractions, the timing and prominence provided to information and the ease of which information is accessed.

ISA believes that more detailed regulatory guidelines are required to ensure the provision of electronic information is equitably and fairly provided to members and potential members. Principles based guidance is required to ensure electronic disclosure is not used to obfuscate. The delivery of innovative techniques for the provision of information is expected to concentrate around information that is attractive. This could for example involve hover information or hyperlinks associated with returns but not costs.

The provision of personal data will require additional steps to be taken by the viewer to ensure privacy. These steps should not be so onerous as to outweigh the benefits of electronic delivery of the information.

Members of funds may choose or be required to change email contact details or have limited access to electronic information sources. Adequate safeguards would be required to protect consumers.

It is suggested that RG 221 should be reviewed to provide greater detail regarding processes to enable consumers readily and securely access websites to relevant disclosure materials.

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?

Consideration should be given to proposals to allow product providers to further encourage fund members who have previously opted to receive printed material to change to electronic delivery of disclosure materials.

We believe that consumer research and testing would aid the rollout of change and would facilitate the refinement of regulatory settings.

Section B1 – Enabling electronic disclosure to be the default method

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

ISA does agree with the proposal that RG 221 make it clear that where a financial services provider has an email address for a client that they do not need express client consent to use that address to deliver disclosures electronically.

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

No barriers that have not previously been identified.

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?

It is expected that a considerable number of superannuation fund members that have not opted for email notification would receive notification. It is also likely that many fund members with less stable postal addresses would receive notification they would otherwise not receive. A further cohort is more likely to review material provided electronically.

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 are of the view that a superannuation fund member or applicant to join a superannuation fund would be comfortable with all forms of disclosure being delivered electronically. A growing number of member based organisations now have email as their primary form of communications, we are unaware of any substantive issues arising from these changes.

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 ways the address might be used?

Consumers should be made aware of when and what limitations apply to the use of all personal information.

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

No.

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

When personal information is provided it should be made clear to the consumer who the information can be used by and why it may be used.

B1Q8 Do you have comments or views on our example in draft updated RG 221: see Example 1 at RG221.35?

We have no issues with and support the example provided.

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)?

In the superannuation industry addresses and distribution preferences are generally provided via application and other nomination forms or via input into fund websites.

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.

In the superannuation industry fund member demographics will have an impact on successful delivery rates. Provided a financial services provider has within a reasonable time frame received an email address from a client, it is suggested that electronic delivery should be equally if not more reliable on average than standard postal delivery.

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 to email addresses? &

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?

There is an issue with the frequency of email address changes. There are various reasons for an email address to change, including closure of service providers and work and family changes. One means by which this problem is mitigated is the request for alternative email addresses. In some instances service providers can provide a unique member account login with webmail access. Clients are more likely to have an alternative electronic address than an alternative postal address. The provision of alternative email addresses also mitigates the problems associated with those clients that receive disclosure materials via third parties where their relationship with those parties may alter.

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?

No.

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

The provision of material electronically, particularly by 'innovative means' raises issues regarding the ability of consumers and regulators to replicate electronic information provided at a point in time. Additional guidance regarding issues associated with data storage and retrieval may be required.

RG 221 could provide further guidance regarding what practices constitute 'reasonable' alternative steps to contact a fund member when it is clear that information has not been received.

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

We offer no estimate of cost savings other than to state that it is expected that the direct cost savings would be in the tens of millions. There would be opportunity cost savings and other indirect benefits to members and funds flowing from higher levels of engagement.

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

Consumers who choose to print or request disclosure materials will incur the cost of printing or making contact with the disclosing entity. Provided the savings of electronic disclosure are passed on to the member, this cost should be heavily outweighed by the benefits. It is expected that at the very least not for profit funds will pass cost savings on to their members in the form of lower ongoing costs and higher returns.

Section B2 – Provision of disclosures on a website or other electronic facility

B12Q1 Do you support this additional method of disclosure? Please give reasons for your answer.

ISA agrees with the proposal to provide class order relief to allow certain disclosures available via websites provided clients are notified and can still elect to receive disclosure via alternative means. Notification should be clear and readily accessed.

The provision of notification via websites is cost effective and allows for greater control and accessibility of information.

B12Q2 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?

ISA supports the proposed guidance for notification on each occasion.

B12Q3 What are acceptable means of notification (e.g. letter, email, SMS, voice call, or other)?

Any form of communication that is capable of being verified, stored and readily accessed.

B12Q4 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?

We refer to our answer in A1Q3.

B12Q5 Do you have any data on the likelihood of clients printing their own copies of relevant disclosures when they are made available online?

No.

B12Q6 Do you think we should restrict the use of hyperlinks in notifications?

No. However the use of hyperlinks and pop-up boxes should not be used in a manner that would have the likely effect of deflecting attention from important disclosure information.

B12Q7 Please provide feedback on the costs to your business of:

- developing or modifying an electronic facility

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

- any savings you would expect to make were this proposal is implemented.

Costs and savings will be dependant upon a number of variables, including the extent of electronic disclosure currently in use or available. The implementation of the proposals is expected to achieve considerable savings. See B1Q15.

B12Q8 Please estimate any costs that consumers might be expected to incur as a result of the change

See B1Q16

Section C - Facilitating the use of more innovate PDSs

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

ISA supports the granting of relief to facilitate the use of static and interactive PDSs with relevant safeguards. Providing superannuation funds with the flexibility of providing a copy of any current PDS in use for the relevant product is supported.

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?

ISA believes the same information should be provided and the information given the same priority. This should not necessarily limit innovative means of communication.

C1Q3 Do you think 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 see no difficulties. The emphasis should be on what information is highlighted or prioritised. This placement may differ between print and electronic delivery of the same information.

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

Not that we are aware.

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 necessary safeguards are provided.

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

Yes. ISA believes that the proposed change will benefit funds and members.

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 comment provided.

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

None that have not been identified above.

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?

ISA supports the extension of updated guidance to FSGs and SOAs.

C2Q5 Do you agree with our updated good practice guidance in Section D of draft updated RG221?

Yes.

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

No.

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

Not at this stage.

Section D – Electronic delivery of credit disclosures

ISA has no comment on the proposed relief dealt with in this section other than to generally support uniformity of provisions where possible.

Conclusion

ISA supports the proposed relief to facilitate the provision of electronic financial disclosures. The reduced costs of such measures should be passed on to consumers. In the case of not-for-profit superannuation funds it is expected that the benefits to funds will flow through in their entirety to members.

The proposals are sufficiently flexible to allow superannuation funds to adopt processes that they believe are in the best interests of their members and to, if they so wish, provide more innovative and flexible means of disclosure delivery. ISA believes that a further review should be undertaken 12-24 months following the granting of relief to review emerging practices and to ensure consumer safeguards are adequate.

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