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30 January 2015

Dear Ms Hope

Subject: Consultation Paper 224: Facilitating electronic financial services disclosures

Mercer is pleased to present its submission to the Australian Securities Investment Commission (**ASIC**) on the proposals in Consultation Paper 224 - Facilitating electronic financial services disclosures (**CP 224**). Our submission follows the form of the questions set out in CP 224 and is set out in the **Annexure**.

Mercer strongly supports enabling the delivery of financial products and services electronically and in new, efficient and innovative ways. As highlighted recently in the recommendations by the Financial System Inquiry, Mercer believes in the principle that regulation should be technological-neutral.

Our submission sets out the views of our Financial Services business, which encompasses product issuers of superannuation and registered managed investment schemes, our superannuation fund administration business and a financial planning licensee.

Having contributed to the submission by the Financial Services Council (**FSC**) dated 22 January 2015, Mercer supports the recommendations it makes. Mercer's submission elaborates on some of the principles in the FSC's submission and examines them further. In particular, we have identified areas that impact employer-sponsored superannuation providers which may require further examination. Mercer would welcome the opportunity to meet with ASIC to discuss this submission prior to ASIC finalising its approach to electronic disclosures. We would also appreciate an opportunity to comment on the draft class order.

Who is Mercer?

Mercer is a global consulting leader in talent, health, retirement and investments. Mercer helps clients around the world advance the health, wealth and performance of their most vital asset – their people.

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Mercer also provides customised administration, technology and total benefits outsourcing solutions to a large number of employer clients and superannuation funds (including industry funds, master trusts and employer-sponsored superannuation funds). We have \$55 billion in funds under administration locally and provide services to over 1.3 million superannuation members and 15,000 private clients. Our own master trust, the Mercer Super Trust, has over 240 participating employers, 226,000 members and more than \$18 billion in assets under management.

Our trustee company, Mercer Superannuation Australia Limited, is the trustee of three superannuation funds.

Yours sincerely

Ellen Liondis
Company Secretary

Annexure

Mercer's response to Consultation Paper 224: Facilitating electronic financial services disclosures

A1Q1	<p>Do you agree that we should further facilitate electronic disclosure, or take Option 5 (i.e. no change)? Please provide reasons.</p> <p>Mercer agrees that ASIC should further facilitate electronic disclosure and recommends that ASIC pursues Option 4. In considering how to implement a combination of Options 1-3, Mercer recommends:</p> <ul style="list-style-type: none">• Option 1 – providers should be able to publish electronically by any means previously notified to the consumers that hold that product. This could include by putting those disclosures on a public or secure website. It should also be flexible enough to accommodate future technologies (ie be technology neutral). <p>Importantly, providers should be able to publish electronically by any means previously notified to the consumers that hold that product. For example, where a provider of a product currently communicates that disclosure by email to each customer, that provider should be able to choose to instead publish that disclosure on its website after first notifying those consumers by email of the new website publication process for the future.</p> <p>Publishing that disclosure on the provider's website would then be effective disclosure for every consumer who has not requested another means of receiving that disclosure.</p> <p>Mercer recommends that providers be able to publish electronically in any way that is reasonably available to the consumers that hold that product (and prospective consumers of that product). This may include putting the disclosure on a website accessible by those consumers.</p> <p>Mercer recommends that providers should not be required to notify a consumer when each new disclosure is published electronically where there is a reasonable expectation that consumers that hold that product would know that that disclosure has been published. For example, where a provider has told consumers that periodic disclosures and confirmations of consumer-requested changes will be published via the member's secure login on the provider's website (and the likely timing of those disclosures), that provider should not have to then notify the consumer each time a disclosure of this kind is published on the website .</p> <ul style="list-style-type: none">• Option 2 – Mercer strongly supports the proposal that if a provider has an email address for a consumer, it should be able to use that email address to deliver disclosures electronically. It should not be necessary for the consumer to consent to receiving disclosures via email (or even for the consumer to "nominate" email as the means for receiving disclosures). <p>The only exception to this proposal may be where a consumer has requested disclosures be delivered by a different means.</p> <p>To ensure technological neutrality, we recommend this proposal be extended to other forms of electronic interaction with consumers – for example, where the provider has an Australia Post digital mail box address for that consumer.</p>
A1Q2	<p>What benefits do you consider will result from our proposed approach?</p> <p>Mercer agrees with FSC's submission in answer to this question. The primary benefits include – the potential to improve the customer experience by reducing costs, by improving the speed, frequency and quality of communication and by driving innovation. Making disclosures available electronically is about 95% cheaper than posting paper disclosures.</p>

A1Q3	<p>What disadvantages do you consider will result from our proposed approach?</p> <p>Generally, Mercer does not expect there to be any disadvantage to consumers that would arise from ASIC's proposed approach.</p> <p>However, we are concerned that there is a potential for some of the cost savings and efficiencies for the majority of consumers to be eroded by the costs of running a dual system for those few consumers that request paper. It may therefore be appropriate that for some 'electronic only' products, consumers not be allowed to request paper disclosures (or a reasonable fee is imposed to receive paper disclosures) – please see our comments at A1Q4).</p>
A1Q4	<p>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?</p> <p>Mercer acknowledges that customers may not always choose to interact electronically and that an opt-out of certain communication channels may be appropriate for some products and services.</p> <p>However providers should have the ability to set terms and conditions of products that set out the consequences of opting-out of electronic disclosures. For example,</p> <ul style="list-style-type: none"> • the governing rules for a superannuation product that only has electronic channels may include a mechanism whereby a consumer is transferred to another product that does offer paper-based communications; or • alternatively, a reasonable fee could be imposed for consumers who choose not to interact electronically. <p>Without mechanisms like this, the cost and efficiency benefits will not be fully realised by those consumers who receive disclosures electronically. Instead those consumers will continue to subsidise the consumers who request paper disclosures. For some disclosures, a significant part of the potential saving may be lost if providers have to maintain a dual system – electronic and paper – for that disclosure.</p> <p>We recommend that providers have the flexibility to determine the terms and conditions for each product to best align with the consumers holding that product.</p>
B1Q1	<p>Do you agree with this proposal? Please give reasons for your answer.</p> <p>Mercer agrees that if an email address is held by the provider, that it should be able to be used by the provider for the purposes of disclosure. To ensure technological neutrality, we recommend this proposal be extended to other forms of electronic interaction with consumers – for example, where the provider has an Australia Post digital mail box address for that consumer or by a link imbedded in an SMS to that consumer's mobile phone or where the consumer has downloaded a mobile app for that product.</p> <p>Mercer recommends that ASIC clarify some of the circumstances where a disclosure mechanism has been "nominated".</p> <p>In particular, we ask ASIC to confirm in its Regulatory Guide that where an employer gives a superannuation plan provider the contact details (postal, electronic or otherwise) of an employee (who is a member of that plan), then those contact details are "nominated" by that employee member.</p> <p>Almost all consumers in employer sponsored superannuation plans become a member of their plan when their employer enrolls them in that plan. At the time of enrolment, the employer gives the plan provider details of that employee including postal address and work email address. There is often no information received by the provider directly from the employee.</p> <p>In this sense, the employer could be seen as the employee's agent in giving the provider this</p>

	<p>information.</p> <p>Mercer recommends that either:</p> <ul style="list-style-type: none"> the obligation for a consumer to “nominate” a disclosure mechanism is removed and instead a provider be permitted to disclose information through any delivery mechanism it legally holds for that consumer; or ASIC confirm in its regulatory guide that when a provider has received information (such as a postal or email address) from a consumer’s employer, the provider can treat that information (eg that postal or email address) as having been “nominated” by that consumer. <p>A similar outcome should apply for <u>potential</u> employees of an employer so that a provider could disclose information (such as PDSs) to a prospective employee of that employer using electronic communication methods for that prospective employee given to the provider by the employer (for example, postal address, email address, website etc).</p>
B1Q2	<p>Are there other barriers to using email addresses for delivery of disclosures?</p> <p>We agree with the FSC’s submission. We do not envisage any significant barriers in using email addresses for the delivery of disclosures. However, to preserve technological neutrality, we request that the regulatory guide and class order do not focus on email addresses but instead be flexible enough to include other electronic means by which disclosures may be delivered.</p>
B1Q3	<p>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?</p> <p>We agree with the FSC’s comments on this question.</p>
B1Q4	<p>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?</p> <p>We agree with the FSC’s submission on this question.</p>
B1Q5	<p>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?</p> <p>No, we agree with the FSC’s submission on this question.</p>
B1Q6	<p>Are there particular kinds of disclosure for which consumers might be more or less likely to prefer electronic delivery?</p> <p>We agree with the FSC’s submission on this question.</p>
B1Q7	<p>Does it matter to whom the consumer provided the email address?</p> <p>We agree with the FSC’s submission on this question.</p> <p>In addition to the comments by the FSC, Mercer notes that for employer sponsored superannuation plans, often the only postal or electronic address details for a consumer are given to the provider by that consumer’s employer. (Please see our comments at B1Q1).</p> <p>Mercer recommends that (where permitted by privacy laws) providers should also be able to use postal and electronic addresses it has lawfully acquired from trusted sources such as government agencies and the Australian Taxation office.</p>

B1Q8	<p>Do you have comments or views on our example in draft updated RG 221: see Example 1 at RG 221.35?</p> <p>We agree with the FSC's submission on this question.</p>
B1Q9	<p>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)?</p> <p>Currently electronic versions are only provided to consumers and potential consumers with their express consent.</p>
B1Q10	<p>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.</p> <p>We agree with the FSC's submission on this question.</p>
B1Q11	<p>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?</p> <p>We agree with the FSC's submission on this question.</p>
B1Q12	<p>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?</p> <p>Yes, in particular employer-sponsored superannuation plans where new employees are enrolled in the plan by the employer. Please see our comments at questions B1Q1 and B1Q7.</p>
B1Q13	<p>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?</p> <p>We recommend that it be made clear that sending the disclosure to an electronic address held by a provider (where the provider has no reason to believe it is no longer a valid address for that consumer) is sufficient to satisfy provisions requiring disclosures to be <i>notified, sent, given, provided</i> or <i>delivered</i>. This would make clear that (consistent with sending disclosures by post), the provider does not need to be satisfied that the disclosure is received at the electronic address.</p>
B1Q14	<p>Is there any other guidance or relief required to facilitate the delivery of disclosures by email to clients?</p> <p>We agree with the FSC's submission on this question.</p> <p>Please see our comments at B1Q1 and B1Q7 in respect of agents (such as, an employer)</p>
B1Q15	<p>Please estimate any cost savings your business would expect to realise from this change.</p> <p>Mercer expects cost savings to potentially be significant. In our experience, the cost of producing and sending disclosures electronically is approximately 95% cheaper than current costs for printing and sending those disclosures by post.</p> <p>We note that some cost savings would not be immediate due to information technology development costs and process changes.</p>

	<p>For products where consumers can request a paper version of a disclosure, the cost savings will be less (to providers and also to consumers) if providers need to maintain both electronic and paper systems of disclosure.</p> <p>This problem is accentuated if electronic disclosures are delivered in ways that are unique to the technology being used. For example, an interactive electronic disclosure may not be able to be easily translated into a linear “document” that can be printed from page 1 to page 20. Instead that communication may be a series of paths of information a consumer chooses (or that prepopulate with information) depending on how a consumer has interacted with that disclosure tool. In that example, a separate paper version of the information would need to be created for a consumer who requests paper. It would not be a case of just printing the electronic tool and sending it to the consumer. In practise it is likely in these circumstances providers will need to maintain paper versions of all interactive disclosures “just in case” a request for a paper version is received. To do so will erode the cost savings available.</p> <p>It is therefore important that providers are able to set term and conditions for each product (where appropriate to the consumers that hold that product) that will allow the potential savings from electronic disclosures to be captured and protect those consumers who do receive disclosures electronically from subsidising those that choose not to. (Please see our comments at A1Q4)</p>
B1Q16	<p>Please estimate any additional costs that consumers might be expected to incur as a result of this change.</p> <p>Generally, we do not expect consumers will incur additional costs. Rather we expect that over time consumers would benefit from the cost savings expected from providers using electronic disclosure.</p>
B2Q1	<p>Do you support this additional method of disclosure? Please give reasons for your answer.</p> <p>We agree with the FSC’s submission on this question.</p>
B2Q2	<p>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?</p> <p>We agree with the FSC’s submission on this question.</p>
B2Q3	<p>What are acceptable methods of notification (e.g. letter, email, SMS, voice call, or other)?</p> <p>All of the examples should be acceptable methods of communication. To ensure flexibility to adopt new technologies over time, we recommend that ASIC not prescribe acceptable methods of notification.</p>
B2Q4	<p>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?</p> <p>We agree with the FSC’s submission on this question.</p>
B2Q5	<p>Do you have any data on the likelihood of clients printing their own copies of relevant disclosures when they are made available online?</p> <p>We agree with the FSC’s submission on this question.</p>
B2Q6	<p>Do you think we should restrict the use of hyperlinks in notifications?</p> <p>We agree with the FSC’s submission on this question.</p> <p>Providers already have an obligation to manage IT and fraud risks prudently.</p>

B2Q7	<p>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.</p> <p>We agree with the FSC's submission on this question. Exact costs are difficult to estimate. Developing existing electronic facilities would require an investment of resources. However, initial estimates indicate that over time, considerable efficiencies and cost savings could be realised.</p>
B2Q8	<p>Please estimate any costs that consumers might be expected to incur as a result of this change.</p> <p>We expect that there would be overall cost savings following the development and implementation of electronic disclosures. This would benefit consumers.</p>
C1Q1	<p>Do you have any comments on our proposals for relief in proposal C1(a) regarding copies of the PDS?</p> <p>We agree with the FSC's submission on this question and in particular support the FSC's comments in paragraphs 69-81.</p>
C1Q2	<p>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?</p> <p>Mercer agrees that communicating 'the same information' is an appropriate condition to an exemption from the shorter PDS regime, where an interactive PDS is produced.</p> <p>We support the FSC's submission and in particular the proposal set out in paragraph 75 of that submission.</p>
C1Q3	<p>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?</p> <p>We agree with the FSC's submission on this question.</p>
C1Q4	<p>Are there any further legislative barriers to your use of more innovative PDSs, including interactive PDSs?</p> <p>We agree with the FSC's submission on this question.</p>
C1Q5	<p>Do you think any of our proposed relief should be extended to other types of disclosure, such as FSGs and SOAs?</p> <p>Yes. We agree with the FSC's submission on this question.</p>
C2Q1	<p>Do you agree with this proposal? Please give reasons.</p> <p>Mercer agrees with ASIC's proposal C2. However we note that while providers should have the flexibility to issue multiple PDSs for the same product, it should not be a requirement to issue a PDS in alternative form where an innovative PDS is available.</p>
C2Q2	<p>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?</p> <p>We agree with the FSC's submission on this question.</p>

C2Q3	<p>Are there any other risks to consumers that may be more apparent in the electronic environment?</p> <p>Mercer does not envisage any other material risks to consumers.</p>
C2Q4	<p>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?</p> <p>Mercer supports extending this updated guidance to FSGs and SoAs to minimise the red tape of regulatory compliance and contain costs.</p>
C2Q5	<p>Do you agree with our updated good practice guidance in Section D of draft updated RG 221?</p> <p>Mercer generally agrees with ASIC’s proposed good practice guidance.</p> <p>We agree with the FSC’s concerns about “no more than three clicks” – FSC’s submission para 82.</p> <p>We recommend that Item 4 of Table 1 make it clear that making disclosures available by way of a standing facility or other login-controlled portal amounts to ‘delivery’. This is consistent with our recommendation that current legislative provisions that require disclosure to be <i>notified, sent, given, provided or delivered</i> should be amended by class order to include <i>made available</i>.</p> <p>Similarly, a provider should not have to be satisfied that a disclosure is “delivered” to an electronic address. The obligations for electronic addresses should be no onerous than for postal addresses. That is, a provider should be taken to have made a disclosure to a consumer if:</p> <ul style="list-style-type: none"> • that disclosure is sent to an address (postal or electronic); and • the provider has no knowledge that that address is no longer the current address of that consumer; and • the disclosure does not bounce back and is not returned. <p>A separate notice should not be required to also be given to the customer where a disclosure is made available by way of a facility in circumstances where that a customer would reasonably expect that disclosure to be available on that facility at that time. For example, a confirmation of a consumer-requested transaction.</p>
C2Q6	<p>Do you think complying with our updated good practice guidance would be too onerous?</p> <p>Mercer considers the proposed guidance to be a reasonable set of principles, subject to our answer at C2Q5 above. We would not support any further prescription.</p>
C2Q7	<p>Is there anything else you think would be usefully covered in our good practice guidance?</p> <p>We agree that it would be useful to have guidance on the matters set out in the FSC’s answer to B1Q14.</p>
D1Q1	<p>Do you agree we should align the treatment of financial services disclosures and credit disclosures? Please give reasons for your answer.</p> <p>Mercer makes no further comment in respect of credit disclosures as it does not have an Australian Credit Licence.</p>