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3rd May 2013

Ms Geraldine Lamont
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Australian Securities & Investment Commission
GPO Box 9827
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Per email: geraldine.lamont@asic.gov.au
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Dear Ms Lamont

CP200: MANAGED DISCRETIONARY ACCOUNTS – UPDATE TO RG 179

I refer to ASIC's *Consultation Paper 200: Managed Discretionary Accounts – Update to RG179* (CP200), released by ASIC in March 2013.

This consultation paper follows ASIC's review of Managed Discretionary Accounts (MDA) as part of an evaluation on the effectiveness of the current Regulatory Guide 179: Managed discretionary account services as well as the accompanying Class Order [CO 04/194] *Managed discretionary accounts*.

The Westpac Group (including BT Financial Group) welcomes the attention ASIC has brought to the roles and responsibilities for MDA operators, investor-directed portfolio service (IDPS) operators, financial product advisers, MDA service providers and other related parties.

Parts of our business use MDA arrangements as a core element of their offering to clients, to drive business efficiencies around the execution of changes to clients' portfolios. In this context we support ASIC's efforts to review the Regulatory Guidance (RG179) and Class Order (CO 04/194).

However, we also believe reform measures should deliver a framework that recognises the unique characteristics of MDAs and their growing importance in the financial services market.

Considering CP 200, we welcome ASIC's recognition in CP200.21 that the basic framework and approach set out in RG179 continues to work effectively and does not require substantial

overhaul. We also acknowledge ASIC prefers that MDAs and MDA operators are brought into alignment with the Best Interests Duty obligations set out in FOFA.

Overall, the proposals ASIC has put forward (summarised at CP200.24) will cause significant changes for those using MDAs. In reply, our submissions (see Attachment A) describe where we believe these proposals should be amended. In this regard, our submission addresses the following matters with respect to advice and platform businesses:

- we disagree with the proposal to remove the no action letter relating to regulated platforms unless this is incorporated into the Class Order;
- removal of the no action relief relating to platforms will lead to increased costs to clients who have relied on the Limited Authority to Operate (LATO);
- clients who need to restructure their arrangements may face significant costs, either to transition to an MDA or through advisers seeking client consents on a per transaction basis;
- compliance costs associated with these changes will pass through to clients;
- we are concerned that the exceptions proposed for MDA providers utilising a platform are insufficient to avoid unnecessary duplication of material and reporting to members;
- we support the proposed financial adequacy requirements for full MDA operators, however, we believe finer calibration is required;
- we disagree with the proposal to introduce new financial adequacy requirements in respect of clients who rely on the LATO;
- we also note the increased financial requirements may be of concern for dealer groups, depending on how ASIC imposes the requirement;
- we recognise ASIC's attempt to acknowledge transitional needs. We believe an appropriate transition arrangement should involve a period of 24 months after the new obligations are finalised and issued by ASIC; and
- we also believe consideration should be given to align transition to financial year commencement. In this regard, and noting the concurrent implementation of the FOFA regime, we suggest a commencement date of 1 July 2015 for all obligations.

Finally, we appreciate the additional time ASIC allowed for us to provide this submission. We are available to discuss any questions ASIC may have. In this regard, please contact me directly on 02 8253 3445 or at jmoyes@westpac.com.au.

Yours sincerely

Josh Moyes
Head of Product & Distribution Regulatory Affairs

Attachment A

(B) NO ACTION POSITIONS

B1 We propose to revoke the family accounts no-action letter and modify [CO 04/194] to continue to exempt AFS licensees from the requirement to obtain 'MDA operator' and 'MDA advice' authorisations on their AFS licence if the only MDA accounts they operate are MDA accounts for their family members or the family members of their representatives.

No response

B2 For the purposes of this relief, we propose to explicitly define 'family' as 'the spouse and/or children (as defined in s995-1 of the *Income Tax Assessment Act 1997*) of an AFS licensee or its representatives'.

No response

B3 We propose that AFS licensees that operate family accounts on behalf of retail clients and rely on our licensing relief will be required to comply with specific conditions, including those listed in Table 1.

No response

B4 We propose to revoke the regulated platforms no-action letter and modify our guidance to specify that:

(a) where AFS licensees or their representatives give instructions at their discretion to regulated platform providers, including instructions to switch between investment options, these arrangements will be regulated as MDAs; and

(b) AFS licensees that wish to undertake this activity will need to obtain the relevant AFS licence authorisations.

We disagree with this proposal.

Provided below are a number of aspects we considered:

1. **Costs**

   We estimate an implementation cost of around $3.6m covering licensing, capital adequacy, disclosure changes, new Statements of Advice and dealing with non-grandfathered arrangements. We also anticipate further costs will arise of around $1.5m if platforms need to remove MDA transactions from pooling (paragraph 1.22 – see the response to B6 for a further explanation of this cost). Along with the ongoing costs of the new requirements, these costs are likely to be passed on to investors.

2. **Dealing and Advice Service vs a full MDA**

   Before commenting on the specific proposal in relation to licensing, it is important to make some general observations that are relevant to all of ASIC's proposals relating to switches on regulated platforms (**LATO**). The proposals in their current from do not

sufficiently take account of the very real differences between a LATO and a full MDA. ASIC's regulation of MDAs is essentially on the basis these services are similar to managed investment schemes – i.e. financial products. While we do not necessarily agree with that analysis, we do not propose to argue in this submission against the legislative basis of ASIC's regulatory regime in this area.

Nevertheless, a LATO is a small subset of a full MDA, consisting of a dealing service (dealing in financial products on behalf of another) and an advice service. By definition these services are provided in connection with a third party's financial product (the platform operator). A LATO is better characterised as ancillary services provided in connection with a financial product rather than a financial product in its own right.

While ASIC may regard a LATO as a managed investment scheme that is distinct from the platform in order to regulate LATO in the way it proposes, it does not follow that all requirements of the MDA Class Order are appropriate. The MDA Class Order is premised on the MDA being a financial product and accordingly the operator under ASIC's proposals is responsible for enhanced requirements akin to those that apply to a responsible entity.).

These concepts are not appropriate to the operator of a LATO, as the LATO operator provides a symbiotic service that requires the involvement of, but does not form part of, a platform. Accordingly there is no External MDA Custodian or outsourcing of roles to the platform operator and the platform operators also have their own well-l regulated relationship with the client. We submit that additional changes to those proposed by ASIC to the MDA Class Order are required to reflect this important difference.

3. **Licensing**

Turning to licensing relief, while we understand the reasons that ASIC conceptually groups LATO with MDAs, in truth LATOs are a small subset of a MDA involving a dealing service and an advice service. There is no additional service such as custody or scheme operation.

We accept that LATO providers will need to be licensed to provide dealing and advice services. However, the conditions of these authorisations are sufficient to cover the services that are in fact being provided. The scheme operation aspects of the broader arrangement are provided by the platform operator as is the custody.

The LATO operator has no access to client assets and has limited dealing authority (switches). Given the limited nature of the role, it is submitted that requiring registered scheme or MDA style licence authorisations is unnecessary. For the same reason the financial requirements that apply to responsible entities should not be applicable. A LATO operator is not responsible for how transactional and custody services are provided.

Additionally, given these financial requirements apply to the platform operator; it is unnecessary and inappropriate that they also apply to the LATO provider.

B5 We propose to provide a two-year transition period from the time that our revised regulatory guidance and class order are issued to allow AFS licensees and their representatives who are currently relying on the no-action position time to obtain the relevant AFS licence authorisations or to wind up their MDA business.

We support the proposed transition period.

B6 We propose that, where all of an MDA operator's MDA investments are contained on a regulated platform, the MDA operator must comply with the same operation, disclosure and conduct requirements that apply to other MDA operators, except for the following:

(a) the MDA operator does not have to issue transactional reports for clients if the transactions have been, or will be, reported to the client or MDA operator by the regulated platform operator, as long as the MDA operator ensures that:

(i) the reports generated by the regulated platform are passed on to clients if they are sent via an address of the MDA operator; and

(ii) as soon as reasonably practicable following the reports being provided by the regulated platform operator, the MDA operator reviews the transaction details in the report and reports any exceptions or anomalies to clients; and

(b) the MDA operator does not need to provide its MDA clients with an annual statement from a registered company auditor providing their opinion whether transactional reports have, or have not, been materially misstated.

We agree with the exemption on issuing transactional reports and an audit opinions is a sensible exemption as otherwise there would be a duplication of reporting with the costs of unnecessary reporting passed on to the client. We assume that the transactional report and audit exemptions ASIC refers to would mirror the current exemptions from paragraphs 1.29 to 1.31 of the Class Order.

For B6(a)(i) and (ii) we think the requirements should be clarified so as to apply to MDA advisers who receive the reports from the regulated platform on behalf of their client.

We also believe there are further modifications for AFS licensees offering MDAs through a regulated platform that may be warranted. The key differences between a LATO and a full MDA discussed in our answer to B4Q1, justify additional exemptions:

- the asset holding condition in paragraph 1.22 of class order [04/194] is not appropriate for LATO, and if imposed would effectively preclude a LATO from continuing to operate within an IDPS. The restriction on pooling for investment purposes in paragraph 1.22 is mutually exclusive with the definitional requirement of the IDPS Class Order that benefits be derived from pooling for investment purposes. As a more general comment, we believe paragraph 1.22 should be removed for all MDA operators using a platform as it is unclear what policy objective it serves (other than to distinguish IDPS from MDA). This requirement might prevent a full MDA operator from using an IDPS as the transactional and custody "engine" for a MDA, a practice we have understood ASIC is comfortable with.

- the External Custodian provisions in paragraph 1.11(g) of CO [04/194] are not appropriate as there is no external custodian (under a LATO the custody service is independently provided as part of the regulated platform).
- paragraph 1.23 of CO [04/194] is not required for LATO as the assets will be held as part of the platform.
- the additional requirements for professional indemnity insurance with a value linked to the assets is inappropriate given that the LATO provider will not have custody of the assets.
- the new proposals for MDA relating to outsourcing and enhanced financial requirements are based on an assumptions that the MDA operator either holds asset on custody or is responsible for custody under an outsourced arrangement. This is not the case for LATO and hence these proposals should not apply.
- the proposal for disclosure of the style as in Schedule 10 of the Corporations Regulations is not appropriate for what is essentially a financial service. Under current requirements and also ASIC's proposals for IDPS reform, investors will receive this fee disclosure for the platform and for underlying financial products. A third layer of disclosure in the prescribed Schedule 10 format for a financial advice and dealing service would in our view confuse investors as Schedule 10 is designed for financial product disclosure rather than for advice fees. Further it is unnecessary given the existing fee disclosure requirements for an SOA (which is an essential element of a LATO).

B7 For the purposes of proposals B4–B6, we propose to define a 'regulated platform' as 'an IDPS, IDPS-like scheme or superannuation entity'.

A superannuation entity as defined under the Superannuation Industry (Supervision) Act 1993, specifically s.10, includes SMSFs, We therefore seek ASIC's clarification as to whether SMSFs are exempt from the proposals in B4-B6? The reporting requirements for SMSFs are different to those applying to APRA-regulated superannuation funds, IDPS and IDPS-like schemes and applying this proposal to them would put a greater burden on MDA operators in assessing whether they need to meet the provision directly or if the SMSF has adequately provided the required information.

(C) FINANCIAL REQUIRMENTS

C1 We propose that MDA operators should be subject to updated financial requirements that are similar to the financial requirements that have applied to responsible entities of managed investment schemes since 1 November 2012 and that we have proposed to apply to platform operators, as outlined in Regulatory Guide 166 *Licensing: Financial requirements* (RG 166) (revised version forthcoming). We also propose to apply to MDA operators the same financial requirements as proposed to apply to responsible entities having regard to scheme property holding arrangements. In particular, we propose that MDA operators should meet:

(a) the standard solvency and positive net assets requirement that applies to all AFS licensees;

(b) a tailored cash needs requirement similar to the requirement that applies to responsible entities;

(c) a tailored audit requirement similar to the requirement that applies to responsible entities; and

(d) a net tangible assets (NTA) requirement similar to that which is proposed to apply to responsible entities.

See Table 2 for more details of the proposed financial requirements.

We support the proposed financial adequacy requirements for full MDA operators (i.e. where they hold custody); however, we believe finer calibration is required.

We do not support the proposed financial adequacy requirements for operators currently operating under a LATO on a platform. As a LATO is a small subset of a full MDA, consisting of a dealing service (dealing in financial products on behalf of another) and an advice service both of these services are covered under existing base level requirements and applicable professional indemnity insurance. Dealing in financial products by the platform operator and custody by the platform operator or its custodian are covered by the platform and custodial capital adequacy requirements.

C2 For the purposes of proposal C1, we propose to define 'client's portfolio assets' as 'financial products and other property that are the client's contributions or that are derived directly or indirectly from the client's contributions' (this is the same definition that is currently used in [CO 04/194]). We also propose to define 'average MDA operator revenue' as:

(a) in the first financial year in which the licensee is first authorised to operate an MDA, the licensee's reasonable forecast of its revenue from the date it was first authorised for the remainder of the first financial year pro-rated to a 12-month period;

(b) in the next financial year after the first financial year in which the licensee was first authorised to operate an MDA, the average of the aggregate of the licensee's:

(i) actual revenue for the second financial year to date, plus reasonable forecast of its revenue for the remainder of the second financial year; and

(ii) revenue in the first financial year from the calculation date pro-rated to a 12-month period;

(c) in its second financial year after the first financial year in which the licensee was first authorised to operate an MDA, the average of:

(i) the aggregate of the licensee's revenue for the financial year to date and reasonable forecast of its revenue for the remainder of the financial year;

(ii) the licensee's revenue for its previous financial year; and

(iii) the revenue in the first financial year in which the licensee was first authorised to operate an MDA from the date of that authorisation pro-rated to a 12-month period; and

(d) for all subsequent financial years, the average of:

(i) the aggregate of the licensee's revenue for the current financial year to date and reasonable forecast of its revenue for the remainder of the current financial year;

(ii) the licensee's revenue for the last preceding financial year; and

(iii) the licensee's revenue for the second preceding financial year.

In determining average MDA operator revenue, an MDA operator should include the revenue of persons performing the functions relating to an MDA for which the MDA operator is responsible (e.g. functions outsourced to other entities).

As above, these proposals should not apply to LATO.

C3 We propose that external MDA custodians must meet the same requirements as those we propose to apply under CP 194 to providers of custodial or depository services that are not incidental providers. This includes the requirement to hold net tangible assets (NTA) of $10 million, or 10% of average revenue, whichever is higher. In determining average revenue, an MDA operator should include the revenue of persons performing the functions relating to an MDA for which the MDA operator is responsible (e.g. functions outsourced to other entities).

We reiterate that in the LATO service custody is performed by the platform operator or the platform operator's custodian.

C4 We propose that MDA operators responsible for holding client portfolio assets must meet the same requirements as those we proposed to apply under CP 194 to responsible entities that hold scheme property. This includes the requirement to hold NTA of $10 million, or 10% of average revenue, whichever is higher, unless the MDA operator arranges for the client portfolio assets to be held by a person licensed to provide a custodial or depository service that is not an incidental provider or a body regulated by the Australian Prudential Regulation Authority (APRA). We propose to exclude MDA operators who are responsible for holding client portfolio assets from the definition of 'incidental custodial or depository services' as defined in CP 194. This means these MDA operators would not be able to fulfil their NTA obligations by meeting the reduced minimum NTA requirements for incidental providers of custodial and depository services. In determining average revenue, an MDA operator should include the revenue of persons performing the functions relating to an MDA for which the MDA operator is responsible (e.g. functions outsourced to other entities).

No response

(D) IMPROVING DISCLOSURE

D1 We propose to refine our conditions relating to the MDA contract, investment program and financial advice to make it clear that:

(a) the investment program that forms part of the MDA contract must contain an investment strategy;

(b) the invest strategy must contain sufficient detail to permit an opinion to formed on the suitability of the investment program for a particular client;

(c) the investment program forms part of the MDA contract;

(d) the MDA operator or an external MDA adviser must provide personal advice about the MDA contract, including the investment program, on an annual basis. This personal advice must meet the conduct and disclosure obligations under Pt 7.7 and Pt 7.7A of the Corporations Act that apply to personal advice (including the obligation for the AFS licensee or its authorised representative to prepare and provide a Statement of Advice (SOA) or record of advice, and the obligation for the advice provider to act in the best interests of the client, provide appropriate advice, warn the client where advice is based on inaccurate or incomplete information, and prioritise the interests of the client), and must contain advice about whether the MDA contract for that client, including the investment program, continues to be suitable in light of the client's personal objectives, needs and relevant personal circumstances.

We support the proposal that the MDA operator or an external MDA adviser must provide personal advice about the MDA contract, including an investment program, on an annual basis.

D2 We propose to clarify that the FSG and MDA contract must contain information about the fees and costs of the MDA in a manner that is consistent with Sch 10 of the Corporations Regulations.

Below is a breakdown of the fee information that would be provided to a client in the course of a year from establishment and in an ongoing capacity.

	Example date	Type of disclosure	Fee information
Establishment	12/03/2013	Financial Services Guide	Information about the remuneration (including commission) or other benefits in respect of, or that is attributable to, the provision of any of the authorised services.
	20/03/2013	Statement of Advice	Information about any remuneration (including commission) or other benefits that might reasonably be expected to be or have been capable of

			influencing the providing entity in providing the advice.
	20/03/2013	Managed Discretionary Account Contract	Information about the remuneration (including commission) or other benefits payable in respect of the Managed Discretionary Account.
	20/03/2013	IDPS Guide	Information about any remuneration (including commission) or other benefits payable in respect of the IDPS service including on the MDA in a format consistent with Schedule 10 of the Corporations Regulations.
Ongoing	31/03/2013 then quarterly	Quarterly Statement x4	Information about any fees deducted from the investors IDPS account in the prior quarter.
	30/06/2013	Annual Statement	A consolidation of any fees deducted from the investors IDPS account in the full financial year.
	10/03/2014	Fee Disclosure Statement	A consolidation of any advice fees deducted paid by the investor during the year.

This equates to 10 occasions where fee information is provided or reinforced for investors.

Fee information is already available; however, the format is not as stipulated in Schedule 10. Schedule 10 is better suited to the publication of information on a financial product, like a Managed Investment Scheme, rather than for a service like an MDA. If the general format of Schedule 10 were adopted it would need to allow for greater adaption to individual circumstances to ensure the information was relevant to the MDA. For example, 'management fee' is not a term that is generally associated with a MDA.

D3 We propose to require the FSG for the MDA to provide a description of the operation of outsourcing arrangements that apply to the MDA, where relevant. This description should cover:

(a) the entities involved and the functions they perform; and

(b) how outsourced arrangements will be monitored.

No response

D4 We propose to require both the FSG and the MDA contract to contain information about how the client may terminate the MDA contract including:

(a) how the instruction to terminate must be communicated;

(b) how long it will take for the termination to take effect; and

(c) how the MDA assets will be disposed of, or transferred to the client, if those assets are not held directly by the client.

No response

D5 We propose to require that the length of time required by an MDA operator for the termination to take effect must be no longer than is reasonably necessary.

No response

D6 We propose to require MDA operators to:

(a) formulate a policy outlining the steps they will take to terminate an MDA contract when under the terms of the MDA contract it is to be terminated or when the MDA contract no longer meets our conditions of relief (for example, if an the annual review of the investment program is not completed within the required timeframe); and

(b) disclose the details of this policy to investors in the FSG.

No response

(E) OTHER MODIFICATIONS

E1 We propose to modify our conditions of relief under one of the three options listed below:

(a) in situations where an MDA operator may invest an MDA client's portfolio assets in non-limited recourse arrangements, the MDA operator is required to include a specific risk warning in the MDA operator's FSG and in each client's investment program, which outlines the additional risks to the client as a result of their MDA investing in non-limited recourse arrangements. The MDA operator will also be required to disclose in the investment program the degree of leverage that may be employed, the types of products used and the MDA operator's policies in relation to communicating and meeting margin calls and closing positions at a loss;

(b) in situations where an MDA operator may invest an MDA client's portfolio assets in non-limited recourse arrangements, the MDA operator is required to seek express consent from the MDA client on each occasion when the MDA operator is proposing to invest in such a product or arrangement, and not to invest in any such product or arrangement where express consent has not been obtained; or

(c) MDA operators are prohibited from investing retail client's portfolio assets within an MDA in non-limited recourse arrangements.

No response

E2 For the purpose of all three options outlined in proposal E1, we propose to define a 'non-limited recourse product or arrangement' as 'an obligation imposed on a person under an agreement to pay an amount to another person in the event of the occurrence or non-occurrence of something, where the rights of the other person are not limited to any property that the first person has paid or set aside as security for the payment, including property to be transferred by the other person to the first person on completion of the obligation under the agreement'.

No response

E3 We propose to modify the conditions of our relief so that, when a licensed trustee company who provides traditional trustee company services which include acting as an attorney under an enduring power of attorney (EPA):

(a) is acting as an attorney for an MDA client under an EPA;

(b) is providing an MDA service to the client under [CO 04/194]; and

(c) the client subsequently loses legal capacity as a result of becoming of unsound mind,

we will modify the MDA reporting requirements so that the trustee company who is the MDA operator would be required to maintain and prepare the ongoing disclosure documentation required by [CO 04/194] and retain a copy for seven years and:

(a) give the documentation to the next of kin of the client; or

(b) where there is no next of kin, or it is not appropriate or practicable to give the documentation to the next of kin, the documentation may be provided to a guardian, administrator or manager of the client.

No response

E4 We propose to modify the conditions of our relief to change the breach reporting timeframe from five business days to 10 business days.

No response

E5 We propose to provide guidance that, when an MDA operator breaches our conditions of relief, we will consider the nature, scope and effect of any breach to determine a proportionate regulatory response, which may include exclusion from relief.

No response

E6 We propose to modify the conditions of our relief to make it explicit that the requirements of our class order only apply to an MDA operator when it is providing an MDA to a retail client, or to a custodian in a custodial arrangement under s1012IA that has been given instruction by a retail client.

No response

(F) UPDATED REGULATORY GUIDANCE

F1 We propose to revise RG 179 and to provide revised regulatory guidance on the scope and application of our MDA class order relief—in particular, to:

(a) make it clearer what arrangements are captured by our guidance on MDAs, including by using examples;

(b) clarify in our guidance that, for an arrangement to meet the definition of an MDA, the client and the MDA operator intend that the MDA operator will use client contributions of the client to generate a financial return or other benefit (this aligns with the current class order);

(c) clarify that we consider MDAs to be financial products, which also involve the provision of several financial services;

(d) provide guidance on what AFS licence authorisations are required for:

(i) MDA operators providing MDAs to retail clients only;

(ii) MDA operators who provide MDAs to wholesale clients only;

(iii) MDA operators who provide MDAs to wholesale and retail clients;

(iv) external MDA advisers; and

(v) external MDA custodians; and

(e) clarify that, as well as meeting the PI and fraud insurance requirements in [CO 04/194], MDA operators must also meet the requirements imposed on all AFS licensees in RG 126.

We have no response at this time but will review when the guidance is provided.

F2 We propose to provide more detailed regulatory guidance about our expectations for MDA operators in relation to managing conflicts of interest. This guidance will cover:

(a) the requirement for MDA operators who rely on [CO 04/194] to act in the best interests of the client in providing the MDA services to the client ([CO 04/194], condition 1.12(c));

(b) the requirement for MDA operators who rely on [CO 04/194] to prioritise the client's interests ahead of their own, if there is a conflict between the interests of the client and their own interests ([CO 04/194], condition 1.12); and

(c) specific guidance for all MDA operators in relation to the general obligation to manage conflicts of interest set out in s912A(1)(aa).

This guidance is intended to supplement the guidance provided for all AFS licensees in Regulatory Guide 181 *Licensing: Managing conflicts of interest* (RG 181): see the draft regulatory guidance in paragraphs 104–124 in the appendix to this paper.

We have no response at this time but will review when the guidance is provided.

F3 We propose to provide additional guidance in RG 179 to complement the guidance ASIC is providing on the legislative changes arising out of the FOFA reforms, addressing the specific circumstances of MDAs and MDA operators in relation to:

(a) the best interests duty and related obligations;

(b) fee disclosure statements; and

(c) the opt-in requirement.

We have no response at this time but will review when the guidance is provided.

F4 We propose to provide guidance consistent with our updated Regulatory Guide 175 *Licensing: Financial product advisers—Conduct and disclosure* (RG 175) about the interaction of the new best interests duty and related obligations (which apply to all AFS licensees and their representatives that provide personal advice to clients) and the conditions of relief in [CO 04/194] concerning the provision of financial advice to MDA clients: see the draft regulatory guidance in paragraphs 125–128 in the appendix to this paper.

We have no response at this time but will review when the guidance is provided.

F5 We propose to provide guidance consistent with Regulatory Guide 245 *Fee disclosure statements* (RG 245) about the interaction of the requirements to give annual fee disclosure statements to retail clients and the conditions of relief in [CO 04/194] requiring annual financial advice: see the draft regulatory guidance in paragraphs 129–134 in the appendix to this paper.

We have no response at this time but will review when the guidance is provided.

F6 We propose to provide guidance about the interaction of the new opt-in requirement requiring fee recipients to send renewal notices and the conditions of relief in [CO 04/194] which require annual financial advice to be provided by the MDA operator or an external MDA adviser to a retail client who invests in an MDA: see the draft regulatory guidance in paragraphs 135–139 in the appendix to this paper.

We have no response at this time but will review when the guidance is provided.

F7 We propose to withdraw ASX Guidance Note 29, which contains guidance about MDAs for market participants, and incorporate that guidance in the updated RG 179, subject to any modifications arising out of our proposed changes to our guidance or relief.

No response

(G) GUIDANCDE AND RELIEF TO RETAIN

G1 We propose to retain key elements of our current approach to MDAs, including:

(a) our current definition of an MDA;

(b) the enhanced FSG conditions for MDA operators, except where these are modified by the proposals discussed in this paper;

(c) the MDA contract conditions, except where these are modified by the proposals discussed in this paper;

(d) the requirement for an investment program to be formulated and reviewed on an annual basis, through personal advice, except where the current conditions are modified by the proposals in this paper;

(e) the asset holding conditions that currently apply to MDA operators;

(f) the conditions attached to the rights relating to portfolio assets that currently apply to MDA operators;

(g) the prohibition on an MDA operator investing client assets in most unregistered schemes;

(h) the PI and fraud insurance conditions that currently apply to MDA operators (as contained in [CO 04/194] and RG 126);

(i) the requirement to report all transactions to clients on a quarterly basis, or provide substantially continuous electronic access to this information, and report all transactions on an annual basis—except for the proposed modification for MDAs offered through a regulated platform;

(j) the requirement for MDA operators to obtain an audit report on whether the MDA operator:

(i) had appropriate documented measures in place to ensure its compliance with the requirements of the Corporations Act and the class order; and

(ii) had appropriate internal controls and procedures to ensure that transaction reports were not materially misstated;

(k) the specific conditions that apply to MDA operators and custodians when an external custodian is used; and

(l) the specific conditions that apply to MDA operators and dealers when dealers are contracted by the MDA operator.

No response

G2 We do not propose any changes to the regulatory requirements that apply to MDAs that are registered schemes.

No response

G3 We propose to continue to give relief from the requirements that:

(a) an MDA must be operated as a registered scheme;

(b) disclosure must be provided, as required by Pt 7.9 of the Corporations Act, in relation to a financial product that is:

(i) a right to MDA services operated by the MDA operator; or

(ii) held by a client because a legal or equitable interest in the financial product is held on

behalf of the client as part of an MDA; and

(c) disclosure must be provided, as required by Ch 6D of the Corporations Act, for an offer to a client of securities to be held as part of an MDA.

No response

(H) IMPLEMENTAITON AND TRANSITION

H1 We propose that new MDA operators comply with any revised regulatory guidance and conditions of relief in the amended class order(s) from the date on which the guidance and class order(s) are released.

No response

H2 We propose to provide existing MDA operators with staged transition periods to comply with any revised regulatory guidance and conditions of relief in the amended class order. Specifically, we propose that:

(a) established AFS licensees currently offering family accounts under our no-action letter comply with our proposal to require family accounts to be operated in accordance with certain conditions from 1 July 2014;

(b) established AFS licensees currently offering MDAs under our regulated platforms no-action letter comply with our proposal to regulate these MDAs similarly to other MDAs within two years from the time our revised regulatory guidance and class order are issued (see proposal B5);

(c) established MDA operators, including those currently offering MDAs in reliance on either of the two no-action positions, comply with the revised financial resource requirements from 1 July 2014; and

(d) all established MDA operators comply with any other revised requirements and regulatory guidance from 1 July 2014.

No response