

Geraldine Lamont  
Retail Investors Policy Officer, Financial Advisers  
Australian Securities and Investments Commission  
Level 5, 100 Market St  
SYDNEY NSW 2000

Sent via email: mdareview@asic.gov.au

5 June 2013

## **SUBMISSION ON MANAGED DISCRETIONARY ACCOUNT CONSULTATION PAPER 200**

Dear Ms Lamont

This submission is made by Colonial First State which is part of the Commonwealth Bank Group. Whilst outside of the formal submission window, Colonial First State appreciates the opportunity to write to you with feedback to ASIC on Consultation Paper 200 regarding the regulation of managed discretionary accounts.

The Commonwealth Bank of Australia (The Group) is one of Australia's leading and largest providers of integrated financial services. The Group's Wealth Management division manufactures and distributes superannuation, insurance and funds management products through Colonial First State, CommInsure and Colonial First State Global Asset Management.

We welcome ASIC revisiting the regulatory framework for managed discretionary accounts (MDA).

We see an update of the regulatory position in Regulatory Guide 179 as an important step to underscore the continuation of responsible growth and regulation of the managed discretionary account operating environment. Our comments are focussed on ensuring a balanced approach that reflects the needs of financial consumers through improved disclosure and financial resource requirements that broadly equates to that applicable to managed funds to ensure a level playing field across the market.

Our submission has a particular emphasis on the preservation of the no action position for limited MDA facilities where regulated platforms are used. This maintains the benefits of the protections already in place for consumers that make use of regulated investment platforms.

11 Harbour Street  
Sydney NSW 2000  
GPO Box 3956  
Sydney NSW 2001  
Telephone 02 9303 3000  
Facsimile 02 9303 3200

Level 1  
385 Bourke Street  
Melbourne VIC 3000  
PO Box 178  
Collins Street West  
Melbourne VIC 8007  
Telephone 03 8628 5600  
Facsimile 03 8628 5608

Level 8  
240 Queen Street  
Brisbane QLD 4000  
PO Box 5725  
Central Plaza  
Brisbane QLD 4001  
Telephone 07 3328 5800  
Facsimile 07 3328 5855

Level 4  
100 King William Street  
Adelaide SA 5000  
Locked Bag 4  
City Delivery Centre  
Adelaide SA 5001  
Telephone 08 8418 5700  
Facsimile 08 8418 5720

Level 4  
55 St George's Terrace  
Perth WA 6000  
PO Box Z5443  
Perth WA 6831  
Telephone 08 9218 5350  
Facsimile 08 9325 5723

Thank you again for the opportunity to contribute to the consultation process concerning the regulation of managed discretionary accounts in Australia.

I would be pleased to discuss the content of this submission with you directly and may be contacted via 02 9303 6092.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L Elkins', with a stylized flourish extending to the right.

**LINDA ELKINS**  
**Executive General Manager Colonial First State**

## **Key points**

Our submission focusses on the issues most relevant to Colonial First State, and is designed to highlight a number of important issues that could arise from the proposals outlined in the consultation paper.

These include a concern that the changes could have on individual dealer groups, including existing arrangements that have operated successfully under the protection of the no action letter for limited MDA facilities.

These arrangements have operated successfully for the benefit of investors for some time, facilitating access to affordable and quality financial advice. We consider the proposed changes in the context of the new FOFA requirements, such as the Best Interests Duty and other measures that are designed to further enhance the consumer protection measures, which would form part of any advice provided under a limited MDA facility.

### **1. No-action position**

We submit that the existing approach that ASIC has made use of over time has been effective in providing a sensible regulatory approach to underpin the market in managed discretionary accounts.

Industry appreciates that the regulatory guide, no-action letters and class order relief taken by ASIC from 2004 has helped provide some certainty to the regulation of the sector. This approach has given industry comfort that ASIC was less likely to take regulatory action under certain circumstances.

The consultation paper proposes a partial incorporation of some aspects of the no-action position, but a repeal of the licensing requirements. This is likely to disrupt some of the current certainty which has been achieved over time in the sector, by altering what advisers can do for their existing clients.

The no action position allowing for licensed financial advisers to operate a limited MDA (allowing for switching client investments) through a regulated platform without the need for a specific MDA license currently provides for advisers to effectively manage their client portfolios. Significant disclosure obligations and client protection mechanisms are retained with this model.

The ability to switch fund managers or assets within the agreed investment program in a timely manner often significantly improves the investment outcomes for the client and allows for the adviser to deliver service efficiently in a more cost effective manner to clients.

This existing model does not compromise client protection as the disclosure obligations and the custody arrangements provide important safeguards for consumers.

We do not see evidence of market failures associated with this model where regulated custodial platforms are used by licensed financial planners. Importantly, where limited MDAs are used there is a general preference for only allowing otherwise commonly used and non-complex investments (e.g. – diversified managed funds) and, for those ultimately permitted, that they have

been through a risk, value and goodness-of-fit assessment process before being allowed onto an advisers list.

It is likely that a significant number of the advice licensees currently utilising this approach would not be prepared to go through the licensing process and meet the financial obligations as proposed. There is a strong argument that to make them would be an unnecessary burden.

The winding back of this no action position would reduce the efficiency which is being achieved, would potentially expose these clients to increased investment risk and would not improve retail investor protection.

**Recommendation:** Maintain the no action position for limited MDA arrangements operating on a regulated platform, and formalise this through the updated Regulatory Guide. For the avoidance of doubt a regulated platform should include a multi-product offering.

## 2. Auto-rebalancing – advice

We note ASIC's comments in relation to differences by operators of MDA services with regard to account rebalancing, particularly on existing accounts. Account rebalancing and remains a crucial part of the flexibility that's inherent to a MDA service, and is an important service which is valued by clients.

Our current assessment of the guidance is that auto-rebalancing will still be permissible, which helps align with the needs of customers. We submit that there would be widespread implications if the proposal sought to disrupt the ability of financial advisers to rebalance client accounts when needed.

The implications include a significant intervention in the service offering that financial advisers offer their clients. At the same time, such a change would run the risk of lowering the level of engagement between advisers and their client. We see such a scenario as particularly detrimental to the needs of consumers, and would welcome ASIC's clarity in the final guidance.

**Recommendation:** Provide certainty through Regulatory Guidance, and Class Order relief if needed, that auto-rebalancing is permissible.

## 3. Need for certainty

Issuers, operators and users of managed discretionary account services benefit from certainty in the regulatory environment. This has been the case through the current reliance upon the no action position for limited MDA operation.

Wherever possible, to assist issuers of MDAs, ASIC should ensure that these reforms are implemented in such a way that promotes a safe-harbour for operators and manufacturers, whilst continuing provide certainty regulatory environment that supports the needs of consumers.

#### 4. Regulatory burden and the needs of consumers

The consultation paper also notes a proposal to harmonise these requirements with the advice requirements, which suggests MDAs would generally be subject to the personal advice requirements. It is somewhat unclear whether this is expected to apply to limited MDAs or all MDA facilities.

Under the FOFA regime, this could increase the costs of operating a model portfolio arrangement for a client, particularly if they have not sought out and do not require specific advice from the operator.

Given other structural changes in the financial advice sector, and the new obligations relevant to financial advisers, we are cautious about the implementation of changes which link the MDA measures to FOFA measures which are still being implemented.

**Recommendation:** We would welcome more information from ASIC as to how MDA offerings which use model portfolios are subject to additional advice requirements. We also seek further information on if, and whether, MDA's could be offered through the general advice regime under the proposed changes. ASIC must consider their approach with respect to the needs of different consumers.