Response to ASIC Consultation Paper 329 Advice Fee Consents and Independence Disclosure

Thank you for the opportunity to comment on CP 329 regarding Advice Fee Consents and Independence Disclosure. We accept the recommendations of the Royal Commission in spirit and welcome the opportunity to comment on the implementation proposed in ASIC Consultation Paper 329.

Given the disruption to progress caused by COVID 19, we urge that a longer consultation period be provided to address some of the issues arising from the LI and ED, which fall into 3 key areas:

1. Minimising adverse impacts of the proposed disclosure and consent regime on clients
2. Harmonising the operational processes required of licensees, trustees and advisers to achieve disclosure and consent outcomes intended to assist in keeping the cost of providing advice to client down
3. Focusing on material impacts of non compliance on the client rather than technical aspects

About Matrix Planning Solutions (MPS) and ClearView Financial Advice (CFA)

MPS and CFA are AFSL businesses owned by listed entity ClearView Wealth Limited (CWL). The separation of brands and AFS licences is historical; both licences are run by the same management team with integrated compliance, research, APL and business models. In total, they comprise over 225 advisers nationally. The majority of advisers are self-employed, with a small number acting as employed advisers under the CFA licence.

It is important to us that advice remains affordable to our clients and that as a Licensee we can set clear rules for advisers that can be monitored and supervised efficiently to protect clients from detriment.

Executive Summary

We do not think the time frame for the transition to annual consent and the new FDS requirements is workable and we strongly advocate for longer consultation. After renewed consultation, we think giving 1 year from royal assent for the new laws to apply is workable. Further, we think the 2 stage process for achieving annual opt in with existing clients (6 months for pre 2013 clients and 1 year for clients who are subject to biannual opt in) is needlessly complicated and that applying the 1 year timeframe for all clients would allow for transition in line with the normal cycle of client reviews

1. Minimising adverse impacts of the proposed disclosure and consent regime on clients

Timeframe for conducting a review and completing annual renewal process

While OFA's generally outline an annual service package, in reality clients may wish to meet for a review earlier or later than the anniversary date. Bringing a review forward should not reset the anniversary date. Where a client is unable to meet during the 12 month period, some leniency to hold (or complete) a review should be available. We would still expect evidence that the adviser tried to schedule the review, and that it would need to occur within 60 days after the anniversary date. Allowing this flexibility would reduce the number of situations where arrangements inadvertently lapse, and save unnecessary administration costs which otherwise will drive up the cost of advice.

Inadvertent lapse of advice arrangement.

With the transition of all existing clients to annual opt in, care must be taken that agreements with clients who value ongoing advice do not inadvertently lapse, severing the advice relationship. A longer timeframe for implementation of the new annual renewal obligations would allow advisers to contact all existing clients and update agreements for ongoing advice within the normal review cycle. We are concerned that if clients cannot meet with advisers in the short time frame proposed at an out of cycle review, ongoing fee arrangements will lapse, and the advice relationship then also ceases. If this occurs, product providers will cease adviser access to client information, investment details and accounts. Clients may not be aware they are no longer being serviced, and may expect that advisers can assist them as they have always done. The administration work by the product provider and the adviser will increase the cost to provide advice.

Reduce flow-on cost increases to advice

At present, there are two different dates for moving existing clients to annual opt in. This will result in added costs to licensees for monitoring each separate deadline and to advisers who will need to conduct out of cycle reviews in order to meet a specific deadline for obtaining a new agreement. Out of cycle reviews inconvenience clients and add to adviser costs which will also drive up the cost of advice.

2. Harmonising the operational processes required of licensees, trustees and advisers to achieve the disclosure and consent outcomes intended by the Royal Commission Recommendations

Removal of the FDS Requirement as it is superseded by Annual Renewal Notice provisions.

FDS requirements were introduced to make the adviser service fees within superannuation "visible". Where they were paid indefinitely (grandfathered clients) or until the next 2 year opt in notice. "The FDS obligations are designed to help clients ascertain whether they are receiving a service from their fee recipient that is commensurate with the ongoing fees they are paying." (ASIC Regulatory Guide 245.2, 2017).

In a world in which all clients must renew ongoing fee arrangements annually, there is little additional information or value in the content of the FDS.

We propose that the obligation to provide an FDS (whether as per current or proposed legislation) be removed and replaced by the annual renewal notice and consent requirements. This reduces the cost and administrative burden and results in a less confusing arrangement for the client. Harmonisation reduces the chance of inadvertent FDS breaches and addresses many of the issues raised in ASIC report 636 regarding the widespread inconsistency in FDS management by licensees. While we have invested in external technology for many years to manage the FDS obligation, we do not believe continuing to impose this obligation in an era of annual opt in serves any purpose and indeed, will add to the costs of advice unnecessarily. The objective of the Hayne recommendations is that fees, and the services to be provided, be visible to clients. We must ensure that clients wanting and paying for advice receive it, as well as that those who do not wish to renew can easily cease the arrangement. While a great deal is achieved by moving to annual opt in for all ongoing fee clients, we should remove as much duplication of information as possible to make it simpler for clients and reduce the administrative burden of compliance. This could be done by removing the specific FDS requirement and incorporating relevant information into the annual renewal.

Prospective services must be outlined in the OFA and must be delivered. If they are not delivered (or the adviser cannot prove that they were delivered), then the client should be entitled to a refund of fees for that period.

The initial OFA and consent form would be adequate to disclose the prospective services and fees for *new* clients, and the Annual Renewal Notice would be used with *all* clients to include the details regarding fees paid for the last period and relevant services to be provided for the upcoming period. This makes the fees and service expectations very clear to the client without the need for an additional FDS document.

Single agreed format for recognising client consent. ASIC and APRA (in its regulation of superfunds/trustees) should consider whether consent and disclosure could be provided for in one document to provide a seamless and straightforward experience for consumers. We believe that there should be a common format for consent which can be used by all trustees/product providers to record the client's consent. For clarity, the form should allow the client to specify consent to multiple arrangements, and the same form should be able to be used with multiple product providers/trustees.

Trustees are currently seeking their own consent forms in a different format to the adviser ongoing fee agreement. This leads to confusion for clients who may provide a consent to the trustee but neglect to send the opt in renewal acceptance to the adviser, because they have already notified the trustee. A common method of consent that satisfies both trustees and licensees should be adopted to prevent confusion, double handling and additional cost to super funds, clients and advisers.

As a consumer protection measure, the form adopted should make it clear that the client understands that should they not respond or should they withhold consent, they will no longer receive advice services.

Unless a common format is achieved, we foresee client and adviser confusion – clients may return some but not all forms; advisers will have to determine whether this was inadvertent or assume that clients wish to cease receiving advice about those products.

3. Focusing on material impacts of non compliance

At present, under the FDS/Annual Renewal regime there is no concept of the materiality of a defect; even 'immaterial' defects cannot be ignored. ASIC report 636 lists a range of defects, many of which would have no adverse impact on the client. The presence of a defect, no matter how minor, may incur statutory penalties under the Corporations Act, and (for post-2013 OFAs) result in the termination of the OFA.

A commonsense approach to materiality is needed for FDS and Opt In. Such an approach should distinguish instances in which a breach of the obligation can be corrected without penalty, for example where remediation might be re issue of documents but not a cessation of the OFA.

B1 We propose to prescribe the requirements set out in draft ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument 2020/XX for the written consent that fee recipients must receive from clients before deducting, arranging to deduct, or accepting the deduction of ongoing fees from a client's account.

These requirements are explained in Table 2.

B1Q1 Do you agree with our proposal? If not, why not?	Not entirely. We think some aspects are likely to add unnecessary administration and cost for little net benefit to the client. We see a major opportunity for harmonising the complex and largely unworkable FDS proposal into the renewal and consent process. We propose that the obligation to provide an FDS (whether as per current or proposed legislation) be removed and replaced by the annual renewal notice and consent requirements. This reduces the cost and administrative burden and results in a less confusing arrangement for the client. In a world in which all clients must renew ongoing fee arrangements annually, there is little additional information or value in the content of the FDS. Harmonisation reduces the chance of inadvertent FDS breaches and addresses many of the issues raised in ASIC report 636 regarding the widespread inconsistency in FDS management by licensees. While we have invested in external technology for many years to manage the FDS obligation, we do not believe continuing to impose this obligation in an era of annual opt in serves any purpose and indeed, will add to the costs of advice unnecessarily.
B1Q2 Should the legislative instrument require the written consent to include information about the services that the member will be entitled to receive under the arrangement? Will this lead to unnecessary duplication given the consent will often be sought at the same time that an ongoing fee arrangement is being entered into or a fee disclosure statement is given?	There is unnecessary duplication of many aspects. • Under the proposal, a **new client** will receive an ongoing service agreement which lists services to which they are entitled. They will also need to sign a consent form allowing fees to be deducted from the relevant account. • Under the proposal, a **renewing client** will receive an FDS, renewal notice and consent form. We propose: • Removal of FDS obligation entirely • Requirement that the initial OFA and consent form include relevant details of services to be provided

	• Requirement that a renewal OFA consent contain the relevant details of services to be provided Rationale: • The objective of the Hayne recommendations is that fees, and the services to be provided, be visible to clients. This is achieved by moving to annual opt in for all ongoing fee clients, and we should remove as much duplication of information as possible to make it simpler for clients and reduce the administrative burden of compliance. • The initial OA and consent form are adequate to disclose the services and fees for new clients, and the Annual Renewal Notice should be used to include the details regarding fees and relevant services to be provided for the upcoming period. This makes the fees and service expectations very clear to the client without the need for an additional FDS document.
B1Q3 Should the legislative instrument require any further information to be disclosed in the written consent? If so, what other information should be required?	
B1Q4 Should the legislative instrument take a more prescriptive approach to specifying the information required in the written consent? If applicable, please explain where further prescription would help. For example, should we prescribe a maximum length for the consent form?	We believe the written consent should make it clear that the client understands that should they not consent, or if in future they cease the ongoing arrangement, they will no longer receive advice services. We also foresee difficulties with the following aspects of the detail specified: • **Statement of frequency, amount and timing of each ongoing amount** – we anticipate difficulty in stating the exact timing of the deduction, as different product providers and banks may each use widely different timing for each product. We propose that the requirement to state the timing of the deduction be removed. Clients will still be told the frequency and amount. • **Warning of the benefits to which the account holder is entitled that may**

	cease or be reduced due to deduction of ongoing fees – this requires significant customisation on a product by product basis. We propose that this be a generic statement about these impacts rather than require a statement tailored to the client's holdings.
B1Q5 Will the requirement for written consent cause practical problems for clients or advisers if a fee is to be deducted from accounts with different third party account providers (i.e. product issuers)? If so, please outline these problems and set out any views on how ASIC or industry can address these problems	We believe that there should be a common format for consent which can be used by all trustees/product providers to record the client's consent. For clarity, the form should allow the client to specify consent to multiple arrangements, and the same form should be able to be used with multiple product providers/trustees. Unless this is achieved, we foresee client and adviser confusion – clients may return some but not all forms; advisers will have to determine whether this was inadvertent or assume that clients wish to cease receiving advice about those products
B1Q6 Do you think worked examples of the written consent would be helpful? If so, what examples do you think should be provided?	Worked examples are helpful.
B1Q7 Do you think ASIC should provide other guidance to help fee recipients comply with the legislative instrument? If so, what guidance?	We think the following guidance would be helpful: • That ASIC expect fee recipients to accept a common form of consent which can be reasonably understood and executed by the client to ensure continuity of service and advice, and to reduce the pressure on the cost of advice arising from unnecessary administration burden • If FDS requirements are not removed, we would appreciate confirmation that the disclosure of fees can be based on either the actual amounts taken from client accounts or from records held by the fee recipient (such as CommPay or other payment systems) so long as the form of disclosure is consistent, reasonable, and does not seek to mislead the client

B2 We propose to prescribe the requirements set out in draft ASIC Superannuation (Consent to Pass on Costs of Providing Advice) Instrument 2020/XX for the written consent that superannuation trustees must receive from members before non-ongoing fees are passed on to a member's account.

These requirements are explained in Table 3.

B2Q1 Do you agree with our proposal? If not, why not?	We would like ASIC and APRA to specify that trustees/RE's can accept a common consent form and that trustees do not need to create separate forms. We also are not sure why in item 7, there is a reference only to 'non ongoing fees'? see below: 7 If the cost is passed on to the member by way of deduction of fees from their superannuation interest, the consent must include: • the amount of non-ongoing fees, in Australian dollars, that the member is consenting to pay; • the superannuation account or accounts from which the cost will be deducted; and • if applicable—a breakdown of the proportion of cost that will be deducted from any investment option(s): see s5(3)(f)(i) and 5(g)(i).
B2Q2 Should the legislative instrument require any further information to be disclosed in the member consent form?	
B2Q3 Should the legislative instrument take a more prescriptive approach to specifying the information required in the member consent form? If applicable, please explain where further prescription would help. For example, should we prescribe a maximum length for the consent form?	The consent form should be as concise as possible.
B2Q4 Do you think worked examples of the written consent would be helpful? If so, what examples do you think should be provided?	
B2Q5 Do you think ASIC should provide other guidance to help superannuation trustees comply with the legislative instrument? If so, what guidance?	

B3 We propose to prescribe in draft ASIC Corporations (Disclosure of Lack of Independence) Instrument 2020/XX that the FSG or Supplementary FSG include a statement about a providing entity's lack of independence. This statement must appear in a box under a heading, in bold, titled 'Not Independent', on the first substantive page of the document. The statement must not be in a smaller font size than the predominant font size used in the document and must not be in a footnote.

B3Q1 Do you agree with our proposal? If not, why not?	Broadly we agree.
B3Q2 Should the statement appear on the first substantive page of the FSG or Supplementary FSG in all cases? If not, how should we ensure that the statement is 'prominent' in the manner recommended by the Royal Commission?	
B3Q3 Will the statement be prominent to clients when the FSG or Supplementary FSG is provided in an electronic form? If not, should different requirements apply to electronic FSGs and Supplementary FSGs?	There should be no difference, the form should be the same.
B3Q4 Should the legislative instrument take a more prescriptive approach to specifying the information required in the statement? If so, why?	No.
B3Q5 Is there a risk that firms will be able to undermine the intent of the obligation? If so, how should ASIC address this risk?	There is always a risk, but we do not see an additional risk to existing FSG obligations.
B3Q6 Do you think ASIC should provide guidance to help a providing entity comply with the legislative instrument? If so, what guidance?	An example may be helpful.

C1 We propose to issue guidance on ongoing fee arrangements that includes information about:

(a) whether an FDS can be issued before the end of the 12-month period to which it relates;

(b) whether an FDS must specify the 12-month period to which it relates;

(c) when a defect in an FDS or renewal notice will be such that the document is no longer an FDS or renewal notice;

(d) the fees that should be included in an FDS;

(e) the services that should be identified in an FDS as services the client is entitled to;

(f) the scope of the definition of an ongoing fee arrangement—for example, whether the scope covers:

(i) agreements that have a period of longer than 12 months, but are cancelled before 12 months have elapsed; or

(ii) a series of substantially similar agreements that each have 12-month terms;

(iii) whether an ongoing fee arrangement must only be renewed through a renewal notice;

(iv) when an ongoing fee arrangement commences; and

(v) whether the FDS and renewal notice requirements apply to MDA operators.

C1Q1 Do you agree with our proposal? If not, why not? (a) whether an FDS can be issued before the end of the 12-month period to which it relates; (b) whether an FDS must specify the 12-month period to which it relates; (c) when a defect in an FDS or renewal notice will be such that the document is no longer an FDS or renewal notice; (d) the fees that should be included in an FDS; (e) the services that should be identified in an FDS as services the client is entitled to; (f) the scope of the definition of an ongoing fee arrangement—for example, whether the scope covers: (i) agreements that have a period of longer than 12 months, but are cancelled before 12 months have elapsed; or (ii) a series of substantially similar agreements that each have 12-month terms; (iii) whether an ongoing fee arrangement must only be renewed through a renewal notice;	Regarding items (c) and (d), further guidance is only useful if it can be practically complied with. For example, we are concerned with comments in ASIC report 636 which might require fee recipients to: • report on fees prior to when they are received by either licensee or adviser (e.g., from the date the client's account is debited rather than the date the licensee's account is credited – we do not receive the right data to be able to comply) • take account of RITC adjustments (for which we do not receive data) • disclose an exact dollar amount rather than rounding to the nearest dollar (a method commonly used by the ATO). Regarding item (f) -It would be our opinion that current legislation and guidance cover many of the issues in C1 above already through the definition of what constitutes an ongoing fee. From our perspective if the arrangement does not continue past the 12th month it is not an

(iv) when an ongoing fee arrangement commences; and (v) whether the FDS and renewal notice requirements apply to MDA operators.	ongoing arrangement. Some Licensees are concerned that ASIC may interpret arrangements which do not meet the definition of ongoing fee as being 'avoidance'. As stated, our preference is for the harmonisation of the disclosure/renewal regime in which the FDS is no longer a standalone obligation.
C1Q2 Are there any additional areas relating to ongoing fee arrangements where we could provide guidance?	