2nd April 2020

feeconsentsandindependence@asic.gov.au

Dear Sir / Madam

FYG Planners Pty Ltd has held an AFSL since 2001. We currently have 77 Authorised Representatives across Australia.

We value the opportunity to provide feedback to CP 329. Whilst we are in support of the stated aims of the new initiatives, we are concerned that some of the requirements may have some unintended consequences. We also have significant concerns that product providers and our technology provider will be able to get the systems and processes in place to capture the additional data required to comply with the suggested new requirements. Without this we will be forced to resort to inefficient and expensive manual operations to prepare FDS and renewal notices.

In general, we believe the requirements as they are presented in the consultation paper will add significant cost to an advice business. Building systems and processes to include the information that is currently not provided by product providers. This will result in increased costs to consumers seeking advice. One example will be the requirement to breakdown where fees are paid from underlying investments with superannuation. For some clients this may mean a disclosure extending beyond a page, for a single account, just to show this breakdown. FYG do not believe that this provides clarity to clients and will in fact add to confusion and excessive disclosure with no improved value for the client.

The current world environment also makes implementing these changes by 1 July 2020 almost impossible. All our key product and technology providers have implemented work from home policies. We expect that to have an impact on their ability to make the necessary changes.

Our own IT team are also working from home and whilst doing their very best, their capacity to amend systems (on top of already full workloads) is significantly impaired in such a working environment.

The uncertainty of the FASEA exam and impacts that the current environment has will also flow onto advisers and their ability to adapt and deliver these changes.

We must ensure that these changes can be implemented through technology solutions. This will avoid inevitable human errors that resulting in poor outcomes for clients. Without the ability to automate these solutions, the cost to meet the new compliance requirements will ultimately be borne by clients.

We believe it would be prudent to place the change on hold until we have a clearer picture of the impacts of COVID 19. This will also provide ASIC with time to consult broadly & deeply with all relevant parties, advisers, licences, product providers and technology providers to ensure the outcomes of these reforms provide tangible benefits to the consumer.

We have responded to the questions contained in CP 329 where we felt we had some value to add.

Yours Sincerely

Andrew Wootton
General Manager
FYG Planners Pty Ltd
Phone: 03 6440 3530
[redacted]

Consent to the deduction of ongoing fees

B1 Q1 Do you agree with our proposal? If not, why not?

We have no objection to an annual renewal notice; however, we believe that the requirements add additional complexity to the process and also provide significant areas for inadvertent errors to occur. In many cases clients may now be required to provide multiple consents for the same ongoing fee arrangements that already exist.

The detail of the proposal is likely to make a combined FDS, Renewal notice and consent in excess of 10 pages in length. This is not an outcome that would be desired.

Some areas of the requirements will require manual intervention, for example checking that you have the consent from all parties to an account if the consent is provided electronically. As an example, many couples just have the one email address that an adviser uses to communicate with them. If the consent is gathered through a email response, it appears as though there will be require additional confirmations to confirm the consent has come from both parties.

B1 Q2 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?

No, this is a significant duplication as it will also be included in the FDS that is delivered at the same time. This information should only be required once, either in the FDS or the RN.

One question we would seek guidance on; is it acceptable to ASIC to reference the services the client was entitled to in the last 12 months as being the same for the next 12 months, i.e. "you will be entitled to the same services in the next 12 months if you consent to continuing the OFA…" or do ASIC expect the services will be listed again, even where they remain unchanged?

B1 Q3 Should the legislative instrument require any further information to be disclosed in the written consent? If so, what other information should be required?

No, it already contains complex and for some excessive information, much of which may be required to be manually completed, creating significant issues with accuracy and compliance.

For example, requirement 8, providing warnings about benefits ceased or reduced. To personalise this for each consent form would require a major overall of the data that is provided to us by product providers, and potentially also banks, where funds are deducted from a bank account, it will be impossible to determine the terms and conditions on each account to assess whether a specific warning needs to be added here, eg if the balance of your savings account goes below $x the interest paid on your account will reduce from x% to y%, or an account keeping fee of $x will be applied to your account if the balance drops blow $x.

In the case where we invoice a client for the fee, we have no ability to know what account they will pay this from, in these cases the warnings would be pointless.

As for clients that pay direct from product providers, we have completed some analysis (across 21 product platforms for super and non-super accounts of 4 different sizes) and not one showed that our clients would see costs increasing as a result of the fee they pay through platform. Would this mean that we are not required to have these warnings? Or would we still need to have some form of warning that appears to be untrue?

Will ASIC provide some guidance on how these warnings should be constructed in situations where the information is unknown, unknowable or requires significant manual confirmation each time the consent is required? For example will the FDS and RN be regarded as defective if a warning is missed because the adviser had no way of knowing what the warning consequence would be or the cost to gather this information outweighs the perceived benefit of including it?

B1 Q4 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 that the current requirements as documented in CP329 are already excessively prescriptive and will result in documents over 10 pages in length.

B1 Q5 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 are already aware of at least one product provider that is insisting the consent (as it relates to deductions from superannuation accounts) be provided on their form. This will create unnecessary confusion for clients as it may not be clear that the two separate consents they provide are for the same fee. It will also result in timing issues of the consent from the product provider being providing at one point and the consent from the adviser at a different, potentially showing slightly different $ amounts.

We believe that the product providers should accept the consent provided by the client to the adviser as the evidence and where required seek confirmation from the adviser / licencee if that consent is varied or terminated.

Do ASIC intend that this consent should be provided to a bank where the client pays the OFA from a bank account? How do ASIC believe this will work where the client will more than likely set up a DD themselves? If the fee is being paid from a company account, is it ASIC expectation that all Directors, or trustees for a trust would need to sign the consent, or just the person(s) that have authority to transact on the account? (We know of instances where a person such as a financial controller has authority to transact on business bank accounts and they are not even parties to the investment or superannuation accounts for which fee arrangements are put in place).

We also see an issue with how this requirement is currently drafted as the consent expiry date will ultimately depend on when the Renewal Notice is given to the client. Therefore, the consent expiry date will only be the longest period the consent can be in effect for if the adviser gives the client the Renewal Notice and FDS on the last day of the 60 days that is available to them. As the adviser will

not know when the consent will be returned it would be difficult to have the consent expiry date in the consent form. This creates the potential to confuse the client.

B1 Q6 Do you think worked examples of the written consent would be helpful? If so, what examples do you think should be provided?

Unless ASIC would like us to provide worked examples for all possible scenarios, providing unrelated examples would add to the confusion in cases where you don't provide specific relevant examples.

B1 Q7 Do you think ASIC should provide other guidance to help fee recipients comply with the legislative instrument? If so, what guidance?

The two main areas of confusion and difficulty concern the amount disclosed and the timing. ASIC could provide guidance to allow the FDS to disclose either the $ the client has paid, or the $ the adviser has received. This avoids errors in the FDS and allows the adviser to be clear what is being disclosed. Some providers deducted the full GST amount from the client and pay this to the adviser, and then credit the difference back to the clients account, whilst others only deduct 2.5% GST but pay the adviser the full GST amount.

In order to avoid confusion about what is being disclosed and what amount the fund may have deducted from the clients account. We have asked our provides to include this information in the data they provide us, but none are willing to make changes to their system to include this amount, where it is different from the amount that is paid to the AFSL.

The second issue ASIC could clarify is the timing, it is common for the product provider to deduct the money from the clients account on a given day (assume 6th of the month), however this may not be paid to the AFSL for several days (10th), it may take another day or two for the product provider to provide the AFSL with the breakdown of the $ paid so that they can allocate it correctly.

The AFSL may then not pay these funds to the adviser for a few days (17th). This creates a gap allowing an error if an FDS is generated within that time.

Once again most product providers do NOT provide the date that they deduct the funds from the clients account in the data they provide.

We would expect ASIC to provide some "common sense" based guidance on how this issue can be addressed to ensure that advisers to safely rely on the data provided to the them and ensure they are able to use technology to generate this information.

Consent to the deduction of non-ongoing fees

B2 Q1 Do you agree with our proposal? If not, why not?

As noted in our response to B1 Q1 and Q5 we have concerns that some superannuation funds are creating their own forms and are insisting that this be completed, the confusion that this will create for clients in signing two separate forms for the same fee deduction at potentially different times during the year, we believe, will create more uncertainty and concerns than the initial intent of the requirements are attempting to solve. In many cases clients pay fees for the ongoing service form multiple accounts, including super, investment and bank accounts, breaking this down to meet the specific requirements listed would potentially require manual intervention, this will create potential for error.

Seeking the client to consent to the ongoing deduction of fees for the service provided by their financial adviser is a good outcome, however the duplication of forms and consents that a client will now be presented with, will not result in a better outcome or enjoyable experience for the client.

B2 Q2 Should the legislative instrument require any further information to be disclosed in the member consent form?

No

B2 Q3 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?

No, please note our response to B1Q4. The same issues apply.

One additional issue that will create complexity is Requirement 7 to provide a breakdown of the proportion of the fee that will be deducted from any investment options. This requirement will be difficult to meet as in many cases the fee is paid from the cash account, although at times the cash account may need to be topped up to cover this fee and other costs. In would be difficult to show that proportionally. In these cases, we would expect to be able to just comment that the fee will be paid from the cash account.

In relation to Requirement 9, whilst the adviser will know if the super fund has insurance, it is not always available to know what $ balance might reduce or cancel the cover, without this information being provided regularly by the super fund into our software through a data feed the accuracy of this information would not be guaranteed and again would add cost as the adviser would be required to manually insert this information.

It is also possible that financial market movements, such as we have experienced lately, could cause an account balance to reduce below an insurance cancellation threshold and these would have nothing to do with the impact of a fee on the account. Would ASIC expect such a further warning to be included?

We believe that product providers should be instructed to accept the consent form that the adviser obtains rather than having their own separate form.

B2 Q4 Do you think worked examples of the written consent would be helpful? If so, what examples do you think should be provided?

Unless you intend to provide worked examples for all possible scenarios, providing examples would add to the confusion in cases where you don't provide the example

B2 Q5 Do you think ASIC should provide other guidance to help superannuation trustees comply with the legislative instrument? If so, what guidance?

As noted above we believe ASIC should be clear in its guidance that the RN and consent provided to the adviser by the client should be all that the trustees need to comply with the legislative instrument.

Proposed Regulatory Guidance

C1 Q1 Do you agree with our proposal? If not, why not?

There are no specific proposals to agree with or not agree, we have commented on each of the proposals

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

Is ASIC proposing to allow the FDS to be issued before the date? For example, the disclosure date is 1 July, however I generate the FDS on 10th June as I am seeing the client on 11th June. The FDS lists all the fees paid and the services the client was entitled to, and those delivered, but still covers the 12-month period from 1 July – 30 – June? Or does ASIC expect that the FDS produced earlier covers a different 12 months period, i.e 1 June – 31 May. Our understanding is that the second option is already available to us, if the FDS includes a statement that it covers periods covered in a previous FDS.

If ASIC are proposing to allow the former option what is your guidance on fees paid by the client in the period between 10 June and 30 June in the example?

In principle we support the concept that an adviser should be able to provide clients with FDS and Consent Forms at any time, and at intervals of less than 1 year, provided no period where the client pays fees is missed.

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

We believe it should, or at least have a statement to indicate the period, eg this FDS covers the 12 months up to 1 July 2020.

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

We believe that ASIC should provide some guidance on this, there are many cases as noted in our responses above on timing and the actual amount paid, along with the challenges of delivering to clients.

Client relationships are dynamic they don't occur at fixed periods and services can be delivered in varying timeframes.

There are cases where an annual review is delayed, ASIC should be clear on how this works in practice, can the adviser delay the delivery of the FDS and RN to include the review or show 2 reviews delivered in the following year?

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

As mentioned above ASIC should provide guidance on whether the adviser can disclose fees paid by the client or fees received by the adviser.

ASIC's current instance that the fee paid by the client is what most be shown is not supported by technology and forcing many advisers to either issue FDS's that may be deemed defective or incur significant additional costs to manually collect this data, this cost is ultimately paid by the client.

We believe that disclosing the amount the adviser receives is more meaningful to the client in any event as it would align with the amount they have signed to in the initial SOA or OFA.

Additionally, based on over 100 years of combined experience, the FYG directors believe the vast majority of clients want to know "the bottom line total" of what they are paying not a series of multiple amounts from multiple accounts and an even greater multiple of investment options.

We have already identified 1 client who's fee amounts would result in over 80 lines of fee amounts and to provide this in any clearly readable format will take at least three pages to produce.

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

We have no issues with this, however, we would like some guidance on whether ASIC believe that the FDS should also contain other services delivered that may not be part of the OFA.

(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;

ASIC should provide guidance on cases where the OFA is terminated before the due date of the FDS and RN, whether the FDS is required.

If we were to just have annual agreements, where the fee payment arrangement actually has a termination date, would this exclude us from the requirement to send FDS and RN, or does ASIC view these as an ongoing arrangement, if they were to continue for re-contracted over multiple years

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

There should be options for clients to re-engage for a further period without the need for a RN, for example a client in the middle of an insurance claim, or other significant event they are working through with their adviser should not be subjected to having to sign and return a RN when it is clear the relationship with the client is ongoing until the completion of the situation they are working through.

(h) when an ongoing fee arrangement commences; and

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

We believe they should apply to MDA's

C2 Q2 Are there any additional areas relating to ongoing fee arrangements where we could provide guidance?

N/a