6th April 2020

Australian Securities & Investments Commission
Level 5, 100 Market Street
Sydney NSW 2000

Via email: feeconsentsandindependence@asic.gov.au

Dear Sir/Madam,

Response to ASIC Consultation Paper 329 – Xplore Wealth

A. Overview

As the CEO of Xplore Wealth Limited, I am authorised through Xplore Wealth Limited to provide a response to the Australian Securities & Investment Commission's ("***ASIC***") Consultation Paper 329 ("***CP 329***").

Xplore Wealth Limited (ASX: XPL) ("***Xplore Wealth***") is one of Australia's longest serving non-bank owned Specialist Platform Providers (SPP) and investment administrators, with extensive expertise in managed accounts.

Xplore Wealth fully owns an Australian Prudential Regulatory Authority (APRA) regulated Registrable Superannuation Entity (RSE) licence, Aracon Superannuation Pty Ltd (ABN 13 133 547 396, AFSL 507184, RSEL L0003384) ("***Aracon***"), the trustee of Aracon Superannuation Fund (ABN 40 586 548 205).

Xplore Wealth also fully owns Investment Administration Services Pty Limited (ABN 86 109 199 108, AFSL 284316) ("***IAS***"), a Managed Discretionary Account (MDA) Operator providing investment administration and platform services to Retail Clients who have appointed their own third party External MDA Adviser.

Xplore Wealth's Investment Platform, broad Managed Account offer and Superannuation services provide an array of wealth management options for Australia's leading financial advisory firms, full-service stockbrokers and wealth managers.

Xplore Wealth's investment platform is predominantly an "advised only platform", which is currently accessed by over 500 Financial Advisers and Stockbrokers who are Authorised Representatives of Australian Financial Services Licensees (AFSL) to provide personal advice. These 500+ Advisers and stockbrokers, using Xplore Wealth's platform, have an ongoing relationship with over 10,000 clients.

We believe Xplore Wealth is well placed to respond to ASIC's CP 329, to add value and insight, as Xplore Wealth is;

- An advised only investment platform, supporting the Advice industry (Proposals B1 & C1),
- A MDA provider (Proposal C1),
- Fully owns a RSE licence from a market of 110 RSE licensees[1] (Proposal B2),
- It does not directly provide Personal Advice to retail clients, however it supports over 500 advisers using our investment platforms that do (Proposal B3 & C1)

Footnote: [1] *https://www.apra.gov.au/register-of-superannuation-institutions*

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B - Proposals

B1 – Consent to Deductions – Ongoing Fee Arrangements

B1Q1 – We agree fee recipients must receive written consent from their clients before deducting, arranging to deduct, or accepting the deduction of ongoing fees from a client's account.

However, practically we believe that proposed ASIC Corporations (Consent to Deductions – Ongoing Fee Arrangements) Instrument 2020/XX, which deals with the 'express written authority' element of Hayne's Recommendation 2.1, needs to be considered in conjunction with the complete Hayne Recommendation 2.1.

Recommendation 2.1 also deals with, ongoing fee arrangements (whenever made);

- that they must be renewed annually by the client, as opposed to the current biennially requirement, and
- that the current exemption for pre-FOFA clients from the renewal notice obligation should be removed.

These two additional components of Recommendation 2.1 will dramatically increase the volume of renewals that are required to be completed each year as well the associated costs.

As such the Industry will need support to find new, efficient, compliant and cost-effective approaches to agree upon the exchange of value through an ongoing fee arrangement. As the Advice industry professionalises even further, it must be supported by Legislator's and Regulator's in removing duplication and unnecessary requirements to simplify and reduce cost.

As Hayne stated in the Executive Summary of the Interim Report of the Royal Commission into misconduct in the Banking, Superannuation and Financial Services Industry, *"Should the existing law be administered or enforced differently? Is different enforcement what is needed to have entities apply basic standards of fairness and honesty: by obeying the law; not misleading or deceiving; acting fairly; providing services that are fit for purpose; delivering services with reasonable care and skill; and, when acting for another, acting in the best interests of that other? The basic ideas are very simple. Should the law be simplified to reflect those ideas better?"*

One such requirement under the Corporations Act, s962G, annual Fee Disclosure Document (FDS) becomes unnecessary under Recommendation 2.1 and subsequently the Exposure Draft Bill proposes to repeal s962G.

FDS were an important legislative requirement when Future of Financial Advice (FOFA) was introduced as it provided disclosure of services provided and associated ongoing fees paid by the clients annually. It meant that ongoing advice clients pre FOFA where no opt-in takes place, and ongoing advice clients post FOFA where opt-in takes place every two years, are aware of services and ongoing advice fees paid annually.

The renewal, proposed now to be annual for all ongoing fee arrangements, would focus on the immediate year ahead, fundamentally being the advice services required by the client and their associated costs. In each year as part of the renewal process, the most recent ongoing fee agreement should be reviewed to make sure all work was delivered before the client would sign a new ongoing fee arrangement. The renewal could then include the consent to deduct advice fees going forward.

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Professions such as law and accounting are today representing their future services and associated costs as a ""statement of work", "fee proposal" or "costs agreement" which the client agrees on, signs off on, before any agreed services are commenced.

Our recommendation: As such, we encourage ASIC's approach to consider a combined backward looking FDS and forward looking renewal notice to be combined into one ongoing fee arrangement document, as mentioned in paragraph 63 of CP329. However, it is not clear that ASIC's draft Instrument sufficiently allows for the combination of these obligations into one document.

B1Q2 – No. We believe there is no need for the legislative instrument to be re-written for consent to include information about the services that the member will be entitled to receive under the arrangement. We respect the position in paragraph 60 of not adopting prescriptive standards.

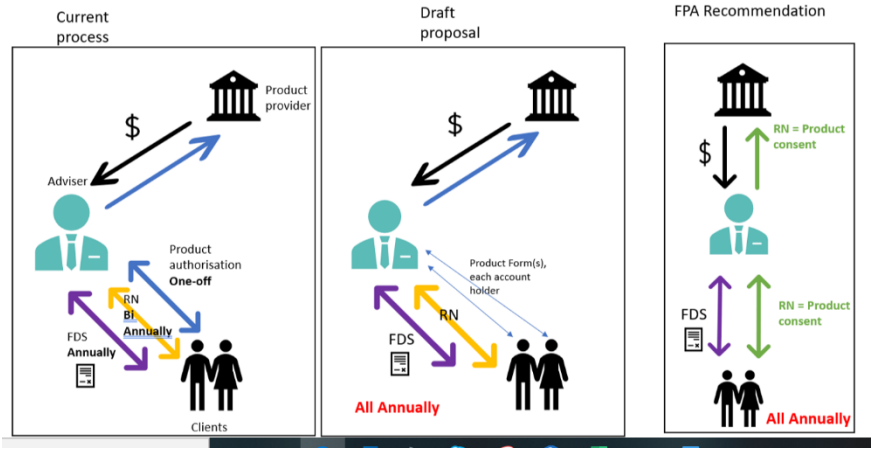
Consent, in the vast amount of cases, will be sought when an ongoing fee arrangement is being entered into, whether it is a new or renewed arrangement. Current legislative instruments and regulatory guides for ongoing fee arrangements cover most of the information mentioned in Table 2, paragraph 61.

As mentioned in paragraph 63, seeking a client's consent for deducting ongoing fees in the same document, such as the renewal notice, is sensible and practical. Combined with the removal of FDS requirements (as discussed in our response to B1Q1) we believe this results in a more practical, sustainable, cost effective, ongoing fee arrangement "system" overall.

We understand from discussions with clients and other industry participants on this issue that for the purposes of the draft legislation, a signed renewal notice/agreement from a client (as obligated at s962K) should be recognised as a valid authorisation form that can be accepted by underlying product providers. From a privacy perspective, disclosures to the client would need to be clear that the renewal notice can and will be provided to relevant product providers as evidence of consent. As such, a duly executed renewal notice must be accepted by all such product providers as evidence of consent.

For instance, the FPA in their 28th February 2020 submission to the Exposure Draft on FSRC Rec 2.1 - Ongoing fee arrangements, illustrated (below) the proposed optimisation of product authorisation. In addition to their recommendation we believe the FDS should be removed as discussed, to further optimise the process and reduce unnecessary red tape and cost.

Diagram B: FPA proposed optimisation of product authorisation form



Our recommendation: We are supportive as mentioned already of ASIC's approach to a combined backward looking FDS and forward looking renewal notice to be combined into one document, being the renewal notice. As such we recommend ASIC's draft Instrument be amended to capture the carried over FDS requirements.

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B1Q3 and B1Q4 - No. As discussed in B1Q2, the legislative instrument should not require any further information to be disclosed in the written consent.

B1Q5 - The requirement for written consent could cause practical problems for clients and/or advisers if a fee is to be deducted from accounts with different third-party account providers. This could be dealt with by the "one" client written consent, being provided to (and must be accepted by) all relevant product providers.

A larger possible issue is where there are multiple accounts held and/or by multiple clients with an ongoing fee arrangement. If the total ongoing fee arrangement for advice covers investments outside superannuation, insurance outside superannuation and superannuation advice, for multiple parties (eg husband , wife, SMSF, etc), the renewal notice, signed each year would need to split the total ongoing fee into the various categories, for each member so as to ensure Recommendation 3.3 can also be implemented effectively.

Further, we believe the requirement for "written consent" could be made simpler for clients if this could in fact be done electronically through online systems and portals available to clients. Having ongoing advice renewal notices in the future signed and submitted online would improve the system greatly. This approach would make the process simpler from an administrative point of view, however still underlines the importance of each client having the ability to understand the fees they pay for the services they will receive, so as to make an informed decision about whether or not to continue the ongoing fee arrangement. This thought is likely to require ASIC to clarify the definition of "written consent".

B1Q6 – A worked up example would be helpful in terms of the comment made in B1Q5. The worked up example should clearly demonstrate what constitutes an electronic form of written consent as well as a combined backward looking FDS and forward looking renewal notice into one document.

B1Q7 Yes. ASIC should provide clear instruction through its Regulatory Guidance which will help fee recipients comply with the legislative instrument. Guidance that may assist includes:

- A worked up example as mentioned in B106,
- The practical implications if a client does not sign their ongoing fee arrangement on or before their anniversary,
- A clear directive from ASIC that product providers must accept a duly executed consent,
- The practical implications of a third party turning off a fee when no consent is received. If aligned to renewal notice processes, confirming a timeline after which the fee is to be turned off, and
- The practical implications of returning a fee if paid incorrectly and then the client doesn't sign the agreement.

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B2 – Consent to Pass on Costs of Providing Superannuation Advice

ASIC Proposal B2 relates to "consent to pass on costs of providing Superannuation Advice, written consent that superannuation trustees must receive from members before **non-ongoing fees** are passed on to a member's account". As such the below responses for B2Q1 to B2Q5 only focus on non-ongoing fees.

In relation to ongoing fee arrangements, our responses to B1Q1 to B1Q7 above are relevant for Advice within Superannuation also. There are some subtle issues regarding ongoing fee arrangements that need clarifying.

As mentioned in B1Q5, if the ongoing fee arrangement for advice covers investments, insurance outside superannuation and superannuation, the renewal notice, signed each year would need to split the total ongoing fee into the various categories, making it clear what the cost for superannuation advice is, for each member.

B2Q1 – Yes. We agree that superannuation trustees must receive written consent from members before non-ongoing fees are paid from a members account. These initial and one off advice fees, will be consented by clients as part of the application process in most cases and built into Application Forms.

B2Q2 – No, the legislative instrument shouldn't require any further information to be disclosed. As long as the superannuation product Application Form, clearly allows for the non-ongoing fee to be shown and agreed upon by the client signing, we believe this constitutes consent.

In some circumstances the superannuation advice may be strategic, once off, eg structuring advice, which there would be no Application Form. In these cases, written consent would need to be provided to the Trustees separately.

As outlined in our response to B1Q5, flexibility regarding the definition of "written consent" to the renewal notice could provide for more flexible solutions to obtaining this consent, such as electronically via online portals.

B2Q3 - No. We respect the position in paragraph 60 of not adopting prescriptive standards.

B2Q4 – No, if signed Application Forms are deemed as consent for superannuation trustees. Superannuation trustees would just need to ensure the amount of the non-ongoing superannuation fee is clearly disclosed and agreed upon. A Regulatory Guide may be useful for Trustees to ensure the inclusion of wording in Application Forms are consistent and best practice.

B2Q5 – Yes as mentioned in B2Q4. This could be an opportunity to clarify further the joint APRA/ASIC letter sent to superannuation trustees regarding advice fees, one off and ongoing, in April 2019.

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B3 – Disclosure of lack of Independence

In relation to the 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, Xplore Wealth supports the notion of Independence and has no additional comments to what is being prescribed.

C1 – Guidance on ongoing advice arrangements (a) to (i)

C1Q1 – No for C1(a) through to C1(e). As stated in B1Q1, we believe the requirement under the Corporations Act, s962G, annual Fee Disclosure Document (FDS), becomes unnecessary with Hayne's Recommendation 2.1, when considered in its complete form.

FDS's were an important legislative requirement when FOFA was introduced as it provided disclosure of services provided and associated ongoing fees paid by the clients annually. It meant that ongoing advice clients pre FOFA, where no opt-in takes place and ongoing advice clients post FOFA, where opt-in takes place every two years, are aware of services and ongoing advice fees paid annually.

The renewal, proposed to be annual for all ongoing fee arrangements, would focus on the year ahead, fundamentally being the advice services required and the associated costs. Each year as part of the renewal process the previous fee paid is likely to be reviewed to make sure all work was delivered, before the client signs a new renewal.

Therefore, a combined FDS (backward looking) and Renewal Notice (forward looking) is a practical solution to deal with client opt-in. It is imperative that the due dates for this combined notice and consent are aligned to allow its practical implementation.

As such when the client signs the renewal notice the 12-month period going forward starts from that date, which will in many cases result in shifting anniversary dates for clients and advisers. Therefore, systems of advice AFSL and product providers need to capture these shifting dates.

As an MDA Operator, our response for C1(i) is yes.

The renewal notice requirements would be required by MDA operators, such as ourselves, to ensure we have client authority to deduct ongoing advice fees from client accounts as per Recommendation 2.1.

MDA Operators currently obtain the Statement of Advice (SoA) for initial advice for MDA clients to ensure we meet our obligations under ASIC RG179.174(a). IAS maintains online portals for advisers and clients that allow for these SoAs to be captured, reviewed and stored.

As such MDA Operators are well placed to also capture, review and store the annual renewal notice to confirm client consent to deduct ongoing advice fees. As outlined earlier in our submission, the form of "written consent" could be defined by ASIC to permit flexibility in how this is provided (ie via online portal).

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C1Q2 – Not that we are aware of.

Thank you for taking our submission on CP329 and we would be happy to discuss our comments further with you.

Sincerely,

Mike Wright
Chief Executive Officer
[redacted]

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