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Response to ASIC Consultation Paper 214 –Updated record-keeping obligations for AFS Licensees

The following response is provided by Pajeska Group Pty Ltd. The director Marija Pajeska has been involved in the field of compliance for over 15 years and has worked with many financial service providers and advisers in the broking, advisory and dealing sector.

Our specific comments to each of ASIC's proposals in the Consultation Paper are detailed in Annexure A of this letter. If you would like to discuss any of the comments made, please do not hesitate to contact me.

Yours Sincerely

Marija Pajeska
Director



Annexure A: Specific comments to ASIC's Consultation Paper CP 214

Record-keeping obligations when giving personal advice to retail clients

B1 proposal: ASIC propose to modify the law, by way of class order, to require that, when an AFS licensee or its representatives provide personal advice to retail clients, the licensee must retain a record of the following matters (whether in a material, electronic or other form) for at least seven years from the date that the personal advice is provided:

- (a) the information relied on and the action taken by the advice provider that show the advice provider has acted in the best interests of the client for the purposes of s961B(1);*
 - (b) if s961B(2) is being relied on to show that s961B(1) has been complied with, the information relied on and the action taken by the advice provider that satisfy the safe harbour steps in s961B(2);*
 - (c) the advice, including reasons why advice is considered to be 'appropriate' within the meaning of s961G;*
 - (d) where an advice provider knows, or reasonably ought to know, that there is conflict between the interests of the client and the advice provider, or one of their specified related parties, the information relied on and the action taken by the advice provider that show the advice provider has given priority to the client's interest when giving the advice for the purposes of s961J;*
 - (e) any ongoing fee arrangement entered into with the client within the meaning of s962A;*
 - (f) any assignment of an on-going fee arrangement;*
 - (g) a fee disclosure statement given to the client under Div 3 of Pt 7.7A;*
 - (h) a renewal notice given to the client under Div 3 of Pt 7.7A;*
 - (i) any notification from a client given under Div 3 of Pt 7.7A that they elect to renew their ongoing fee arrangement; and*
 - (j) any fees charged after the termination of an ongoing fee arrangement;*
- We propose that the requirements in B1(a)-B1(c) do not apply to.*

- (k) personal advice for which an SOA is not required; or*
- (l) personal advice for which a record of the advice is kept in accordance with s946B(3A), as modified by regs 7.7.09 and 7.7.10AE of the Corporation Regulations.*

ASIC Question		Response
B1Q1	Do you agree with our proposed record-keeping obligations for AFS licensees on the new conduct obligations in Pt 7.7A? If not, why not	Yes
B1Q2	Will our proposed record-keeping obligations require AFS licensees to significantly change their existing record-keeping practices? If so, please describe the changes and the likely costs involved.	It should not as AFS licensees with good record keeping would retain this information anyway.
B1Q3	Are there any practical problems with the implementation of our proposal? Please provide details.	Not that we can foresee.
B1Q4	We propose to update our guidance in Section E of RG 175 and Section C of RG 245 to reflect the update record-keeping obligations. Do you think we should provide any further guidance on our proposed record-keeping obligations? If so, please provide details.	No, unless a view is formed that certain minimum standards must be adhered to, in which case guidance relating to those standards would be beneficial.

Annexure A: Specific comments to ASIC's Consultation Paper CP 214

Record-keeping obligations in relation to remuneration

B2 proposal: ASIC proposes to modify the law, by way of class order, to require that, when an AFS licensee or its representatives provide financial product advice to retail clients, the licensee must retain a record of the following matters (whether in a material, electronic or other form) for at least seven years from the date that the advice is provided;

- a) any arrangement, or any change to an arrangement, on the basis of which the licensee considers that the conflict remuneration provisions in Divs 4 and 5 of Pt 7.7A do not apply to the licensee or its representatives because of the transitional provisions in s1528-1531 of the Corporations Act and the regulations made under those sections;*
- b) any payments made or accepted under arrangements to which the conflicted remuneration provisions in Divs 4 and 5 of Pt 7.7A do not apply to the licensee or its representatives because of s1528-1531 of the Corporation Act and the regulations made under those sections; and*
- c) where the licensee relies on the exemptions in S963B or 963C of the Corporation Act, or Div 4 of Pt 7.7A of the Corporations Regulations, to form the view that a monetary or non-monetary benefit that is given to the licensee or its representatives is not conflicted remuneration, records demonstrating the circumstances on which this reliance is based.*

ASIC Question		Response
B2Q1	Do you agree with our proposed record-keeping obligations for AFS licensees on the new conduct obligations in Pt 7.7A? If not, why not	Yes
	(a) Do you think there is a more cost-effective way to ensure that AFS licensees comply with the conflicted remuneration provisions in Divs 4 and 5 of Pt 7.7A? Please provide details	No, as keeping records of the analysis conducted of the conflicted remuneration provisions and the licensees remuneration will be the basis on which an AFS licensee can demonstrate that the remuneration it and its representatives receive are not conflicted remuneration.
	(b) Do you think it is appropriate to require AFS licensees to keep records to demonstrate the circumstances on which it relies to form the view that a monetary or non monetary benefit is not conflicted remuneration because of the exemptions stated in Proposal B2(c)? If not, why not?	Yes
B2Q2	Will our proposed record-keeping obligations require AFS licensees to significantly change their existing record-keeping practices? If so, please describe the changes and the likely costs involved.	It should not
B2Q3	Are there any practical problems with the implementation of our proposal? Please provide details.	Yes, the fact that the record-keeping requirements will not extend to the provision of personal advice in relation to financial products listed under paragraph 51(d) of this consultation paper. The wording 'other products' is too broad and creates a loop hole such that if the nature of personal advice contains information relating to general insurance then the record-keeping requirements do not apply.
B2Q4	We propose to update our guidance in Section B of RG 246 to reflect our updated record-keeping obligations. Do you think we should provide further guidance on our proposed record-keeping obligations? If so, please provide details	No

Annexure A: Specific comments to ASIC's Consultation Paper CP 214

Record-keeping obligations when giving intra-fund advice

B3 proposal: ASIC proposes to modify the law, by way of class order, to require that, when the trustee of a regulated superannuation fund (as an AFS licensee) provides personal advice to members of the fund, the trustee must ensure that they retain a record of the following matters (whether in a material, electronic or other form) for at least seven years from the date that the personal advice is provided:

- a) the advice, including a note to identify whether the cost of the advice is allowed to be charged to a member or members other than the recipient and, on what basis-unless the cost is in fact wholly charged or borne in one or more of the following ways:
 - i. charged to the member receiving the advice;*
 - ii. borne by the licensee is not the trustee or an associate; and /or*
 - iii. charged to a person other than the trustee or an associate;**
- b) if the cost of the personal advice is not allowed to be charged to a member or members other than the recipient, a note identifying:
 - i. how much it cost to provide the advice, including details about the method of calculation and why any estimation applied in the calculation is reasonable; &*
 - ii. how much the member receiving the advice was charged for the advice and how the cost was otherwise borne or charged.**

This requirement would also apply to AFS licensees acting under an arrangement with a superannuation trustee, where the licensee or its representatives provide personal advice to members and that advice is charged for collectively.

AFS licensees would also be required to keep records in a way that enables the information to be readily provided for a particular period, if requested to do so by ASIC.

ASIC Question		Response
B3Q1	Do you agree with our proposed record-keeping obligations for superannuation trustees, and AFS licensees acting under an arrangement with a trustee, when providing intra-fund advice to members? If not, why not?	Yes
B3Q2	The objective of our proposal is to give greater certainty to superannuation trustees, and AFS licensees acting under an arrangement with a trustee, about the records they need to keep to comply with the requirements in s99F of the SIS Act. Do you think there is an alternative way for ASIC to meet this objective?	There are always alternatives, however the methodology proposed by ASIC is reasonable.
B3Q3	Will our proposed record-keeping obligations require superannuation trustees, and AFS licensees acting under an arrangement with a trustee, to significantly change their record-keeping practices? If so, please describe the changes and the likely costs involved.	Yes, however these changes would have been required under the FOFA regulations anyway whereby each licensee is required to keep a record showing how it complies with the conflicted remuneration requirements and ongoing fee arrangement requirements.
B3Q4	Are there any practical problems with the implementation of our proposal? Please provide details.	No
B3Q5	We propose to update INFO 168 to reflect our updated record-keeping obligations. Do you think we should provide further guidance on our proposed record-keeping obligations? If so, please provide details.	No