

Corporate and Financial Services Regulation Review

Progressing Consultation Topics

A. DRAFT REGULATIONS FOR CONSULTATION

1. Financial Services Regulation

1.1	Repetition of information in a Statement of Advice.	Comments were sought on whether it is appropriate to provide that information already given to a client in a Statement of Advice does not have to be repeated in a subsequent Statement of Advice for further advice that is provided, and whether any conditions should apply.
1.3	Issue of disclosure documents when product or advice is rejected.	Comments were sought on whether the law should specify that if a client clearly rejects a product and/or advice, a Financial Services Guide and Statement of Advice do not have to be provided in respect of that product and/or advice.
1.4	Provision of a Financial Services Guide by a third party custodian or administrator.	Comments were sought on whether it would be appropriate to exempt a third party custodian or administrator of a superannuation fund or managed investment scheme from the Financial Services Guide requirements and, if so, whether any conditions should apply to such an exemption.
1.5	Combining a Financial Services Guide and Prospectus.	Comments were sought on whether a provision should be made to allow a Financial Services Guide to be combined with a disclosure document under Chapter 6D, similar to the provision which enables a Financial Services Guide and Product Disclosure Statement to be combined.
1.6	Updating Financial Services Guides.	Comments were sought on whether it is appropriate to remove the requirement to update a Financial Services Guide where the change would relate to information that is not materially adverse, provided there is disclosure on how access can be made to the updated information.
1.7	Standardised Financial Services Guide.	Comments were sought on whether it is appropriate to allow for a standard Financial Services Guide for community-owned branches of banking licensees and individuals that are sub-authorised by authorised representatives.
1.9	Treatment of superannuation trustees.	Comments were sought on whether it is appropriate to allow for aggregation of funds for wholesale test purposes, where a superannuation fund trustee administers more than one fund.

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1.10 Treatment of employers.	Comments were sought on whether employers operating businesses other than small businesses should be considered to be wholesale clients in respect of the provision to them of financial services relating to superannuation products.
1.11 'Bundled' general insurance products.	Comments were sought on whether it is appropriate to treat bundled general insurance products that are predominantly wholesale as totally wholesale and, if so, what conditions or protections should apply to ensure that genuinely retail clients are not prejudiced.
1.12 'Badging' of disclosure documents.	Comments were sought on whether the issue of 'badging' needs to be clarified and whether conditions should be applied to any exemption from 'badging' being considered the provision of financial product advice.
1.13 Jurisdictional reach. 1.13.1 Australian financial services licence holders acting on behalf of others.	Comments were sought on whether it would be appropriate to extend the new licensing exemption and whether any conditions should apply to ensure those on whose behalf the Australian licensee is acting are adequately protected.
1.13 Jurisdictional reach. 1.13.2 Offshore branches.	Comments were sought on whether the exemptions from licensing and disclosure applying to foreign financial services providers can be extended to offshore branches of Australian financial services licensees.
1.14 Dollar disclosure for general insurance.	Comments were sought on whether specific dollar disclosure requirements should be prescribed for general insurance products.
1.15 Incorporation by reference in disclosure documents.	Comments were sought on the extent to which disclosure documents should be permitted to 'incorporate information by reference', including information provided in other documents required under the legislation and from other sources.

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A. DRAFT REGULATIONS FOR CONSULTATION	
1.16 Exemption from FSR retail client obligations for secondary service providers.	Comments were sought on relieving secondary service providers from their obligations to retail clients in specific situations. Relief could be provided where the intermediary accepts responsibility to the retail client for the financial services provided by both. Comments were also sought on relief in the converse situation where the secondary service provider accepts responsibility for the services provided by the intermediary.
1.20 Oral disclosure.	Comments were sought on the desirability of reducing oral disclosure requirements that apply to Financial Services Guides and Statements of Advice, for products with a cooling-off period.
1.21 Sickness and accident insurance.	Comments were sought on whether any amendments to the legislation are warranted to clarify that a provider of sickness and accident insurance can treat a client as wholesale where cover is for the liability of the employer for the benefit of an employee.

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B. SIMPLER REGULATORY SYSTEM BILL PROPOSALS FOR CONSULTATION	
1. Financial Services Regulation	
1.2 Situations where a Statement of Advice does not have to be prepared.	Comments were sought on whether it is appropriate to specify that in a situation where personal advice is given, but no financial product is recommended and no remuneration is received for the advice, a Statement of Advice does not need to be prepared.
1.17 Changes to the scope of general advice.	Comments were sought on the appropriate boundaries for, and between, general and personal advice.
1.18 Exemption from the requirement to provide a Financial Services Guide.	Comments were sought on broadening the definition of 'public forum' to include such forums as employee educational seminars. This would make the exemption from the need to provide a Financial Services Guide more widely available, subject to any necessary conditions.
1.19 Threshold requirements for Statements of Advice.	Comments were sought on whether it is appropriate to provide an exemption from the Statement of Advice requirements for minor advice that falls below a certain threshold and what an appropriate threshold might be.
1.22 Sophisticated investors.	Comments were sought on whether retail investors should be allowed to obtain accreditation that enables them to be treated as wholesale investors with respect to dealing in financial products traded on markets.
1.23 Authorised representatives.	Comments were sought on the scope to refine the cross-endorsement requirements of the legislation, taking closer account of the different classes of financial services that authorised representatives may provide on behalf of their authorising licensees.
1.26 Policy Statement PS 146 – training requirements.	Comments were sought on the streamlining of the training requirements in ASIC's Policy Statement 146.

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B. SIMPLER REGULATORY SYSTEM BILL PROPOSALS FOR CONSULTATION	
2. Company Reporting Obligations	
2.1 Concise reporting requirements.	Comments were sought on separating the remuneration report from the directors' report and requiring it to be a stand-alone report. The concise report would only include summary remuneration information. In addition, comments were sought on whether the concise report should only contain summary information from the directors' report. Comments were sought on what summary information in both cases would be appropriate.
2.2 Executive remuneration – disclosure requirements.	Comments were sought on the most effective means of harmonising and removing duplication in the remuneration disclosure requirements in relation to directors and executives without any dilution of disclosure.
2.4 Thresholds for financial reporting of large proprietary companies.	Comments were sought on whether the revenue and asset thresholds for financial reporting of large proprietary companies should be increased.
2.5 Removal of duplication in notifications.	
2.5.1 Change in officeholders.	Comments were sought on whether the requirement for a company to notify ASIC of a change in officeholder, where the officeholder has already notified ASIC, should be removed.
2.5.2 Maintenance of registered office address.	Comments were sought on whether a single process for notification of an update of a company's service address and registered office, via the information provided by the agent to ASIC, should be implemented.
2.6 Share and member reporting requirements.	Comments were sought on whether the requirement to notify ASIC should be removed, given the availability of the same information from an alternative source.

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B. SIMPLER REGULATORY SYSTEM BILL PROPOSALS FOR CONSULTATION	
2.7 Removal of annual review fees for companies approved for voluntary deregistration.	Comments were sought on whether to remove the obligation to pay the annual review fee for those companies that have applied for voluntary deregistration and had this approved by ASIC.
2.8 Parent entity financial statements.	Comments were sought on whether only summary financial information should be required in relation to the parent entity. Comments were also sought on the type of information that should be required to be disclosed.
3. Auditor Independence	
3.1 Anomalies arising from CLERP 9.	Comments were sought on whether the changes to be implemented through regulation should be reflected in the Corporations Act itself.
4. Corporate Governance	
4.1 Related party transactions.	
4.1.1 Amounts that can be paid to related parties without member approval.	Comments were sought on whether the law should be amended to allow a financial benefit below a prescribed level (for example, \$5,000) to be provided to related parties without member approval. This would avoid member approval of what could be considered minor transactions.
4.1.2 Amounts given to director or spouse without member approval.	Comments were sought on whether the threshold level should be increased to a higher fixed level or to some quantifiable level, for instance, in relation to asset levels or cash flow.

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B. SIMPLER REGULATORY SYSTEM BILL PROPOSALS FOR CONSULTATION	
5. Fundraising	
5.1 Remove the obligation to produce a prospectus for rights issues of quoted securities.	Comments were sought on whether the requirement to issue a prospectus for rights issues of quoted securities should be removed.
5.2 Review of the fundraising provisions to facilitate certain types of fundraisings.	Comments were sought on whether changes to the fundraising provisions of the Corporations Act are needed to facilitate small-scale securities offerings.
5.3 Review secondary sale disclosure rules.	Comments were sought on whether the secondary sale disclosure requirements relating to circumstances where securities are offered for sale within 12 months of their issue are working appropriately.
5.4 Employee Share Ownership Plans.	Comments were sought on whether the disclosure requirements should be eased for unlisted companies issuing shares to employees.
5.5 Prospectus advertising and publicity.	Comments were sought on ways to achieve greater alignment between the advertising and publicity requirements of the Product Disclosure Statement and prospectus disclosure regimes.
6. Takeovers	
6.1 Telephone monitoring during takeover bids.	Comments were sought on the regulatory utility of telephone monitoring during takeover bids.

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B. SIMPLER REGULATORY SYSTEM BILL PROPOSALS FOR CONSULTATION	
8. Dealing with Regulators	
8.1 Implement 'up front' payment option for ASIC annual fees.	Comments were sought on whether companies should be able to elect to make a lump sum payment to cover their obligations to pay annual statement fees for an extended fixed period, for example 10 years.
8.3 Enhancing communication with ASIC.	Comments were sought on appropriate mechanisms to enhance communication between business, consumers and ASIC.
8.4 Breach reporting requirements.	Comments were sought on the most appropriate way to address inconsistencies between legislation referring to breach reporting requirements to ASIC and APRA.
8.5 Product Disclosure Statement in-use notices.	Comments were sought on an active product monitoring mechanism for ASIC to replace the in-use notice system.

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C. FOCUSED PROJECTS FOR FURTHER SEPARATE CONSULTATION			
1. Financial Services Regulation			
1.25	Overlap of requirements in the Corporations Act and ASX Market Rules.	Comments were sought on the rationalisation by the ASX of the overlapping requirements in the Corporations Act and the ASX Market Rules relating to client order priority, confirmation of trades, managed discretionary accounts, principal trading, staff trading, trading records and trust accounts.	This topic is being progressed through action by ASX.
1.27	Register of sanctioned financial service providers.	Comments were sought on the desirability of establishing a public register of sanctioned financial service providers and where such a register should be made available.	This topic is being progressed through action by ASIC.
2. Company Reporting Obligations			
2.3	CEO/CFO sign-off.	Comments were sought as to whether the obligation in the ASX Corporate Governance Guidelines can be removed and replaced with a cross-reference to the similar requirement in the Corporations Act.	This topic is being progressed through action by ASX.
4. Corporate Governance			
4.2	Remove directors' duties for single-director companies.	Comments were sought on whether members of single director companies can, by resolution, agree to display some of the directors' duties provisions under the Corporations Act. This would not impact on the application of contract, tort and criminal laws which assist in regulating the conduct of a director of such a company.	This topic requires reformulation to remove unwarranted regulatory burden on small incorporated businesses.
4.3	Extend the Business Judgment Rule.	Comments were sought on whether there should be a general protection for directors, excusing them from liability under the Corporations Act, subject to certain conditions.	This topic is being progressed in conjunction with other reviews by Treasury.

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C. FOCUSED PROJECTS FOR FURTHER SEPARATE CONSULTATION		
7. Collective Investments		
7.1 Product rationalisation.	Comments were sought on the possible introduction of a simplified mechanism to allow financial product issuers (specifically of superannuation, managed investments and life insurance investment products) to be able to restructure and rationalise outdated products.	This topic is being progressed through current regulatory impact assessment work by Treasury.
7.2 Investor Directed Portfolio Services.	Comments were sought on removing the ASIC class orders that currently create a special regulatory regime for Investor Directed Portfolio Services products that sits outside the Corporations Act framework. In place of the class orders, these products could be dealt with as a financial service under the existing provisions of Chapter 7 of the Corporations Act.	This topic is being progressed through action by ASIC.
8. Dealing with Regulators		
8.2 ASIC / APRA information exchange.	Comments were sought on the nature and extent of duplicated information currently required and on the most efficient way for businesses to provide information to ASIC and APRA collectively.	This topic is being progressed through action by Treasury, ASIC and APRA.

Topics from the *Corporate and Financial Services Regulation Review Consultation Paper* not included in the above groups did not receive support for further development.