Stockbrokers and Investment Advisers Association
Serving the interests of investors

6 December 2023

By email: financialadvice@treasury.gov.au

Lynn Kelly
First Assistant Secretary
Retirement, Advice and Investment Division
Treasury
Langton Cres
Parkes ACT 2600

Dear Ms Kelly

QUALITY OF ADVICE REVIEW: EXPOSURE DRAFT LEGISLATION: STREAM ONE

The Stockbrokers and Investment Advisers Association (SIAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and Advisory firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

The history of the stockbroking profession in Australia can be found here.

SIAA welcomes the opportunity to provide feedback on the exposure draft of the *Treasury Laws Amendment (2024 Measures No 1) Bill 2024* (the draft bill) and the draft explanatory materials.

SIAA is limiting its feedback to the parts of the draft bill that deal with ongoing fee arrangements and flexibility for FSG requirements.

Executive summary

SIAA makes the following recommendations concerning the draft bill:

- The changes that remove the obligation to provide a fee disclosure statement be introduced immediately.
- The draft bill be amended to remove the requirement for advice providers to provide the fee consent form to the product issuer. An exception right be granted to product issuers, who could request a copy of the form actioned between the adviser and the client, should any concerns when reviewing data arise. That is, the product issuer would no longer be interposed between the adviser and the clients, but they would have the right to review a form on an exception basis.
- If the government does not remove the requirement for product issuers to be provided with

the fee consent form, the following changes be made:

  - The content and design of a standard fee consent form must be the result of industry consultation that involves all participants in the financial advice ecosystem, including advisers, licensees and product issuers.
  - Product issuers must accept the fee consent form as agreed by industry. In other words, the use of the form is mandatory.
  - The content of the fee consent form is to be removed from the draft bill.
  - The fee consent form must be technology-neutral and therefore able to be electronically or digitally utilised and executed.

- Amendments be made to the anniversary date provisions to allow for more flexibility on renewals to enable advice providers to better align and reset anniversary dates.
- The 10-day deadline for written notice to be provided to the client of termination be extended to 30 days to take into account the reality of back-office procedures. We also question why an essentially administrative process attracts a civil penalty provision given that there are already penalties for charging a fee when there is not an active fee arrangement in place or the arrangement has terminated.
- For the FSG provision to be adopted more broadly and achieve its intended benefit of reducing red tape, providers must be able to rely on it when providing any financial service to retail clients regardless of the type of financial service being provided.
- The requirement that the client must not have requested a copy of the FSG in order to be able to rely on the information that is publicly available on their website be removed from the legislation. This will make it easier for providers to rely on the provision and remove red tape from the client onboarding process. It will not mean the client cannot ask for and be provided with a printed copy.

Ongoing fee arrangements

FEE DISCLOSURE STATEMENTS

We welcome the removal of the obligation for advisers to provide a fee disclosure statement to their clients. This is a sensible and uncontroversial reform that is urgently needed. As we have stated previously, providing clients with backward-facing and forward-facing fees is confusing for clients, time-consuming and costly for licensees, and administratively duplicative. This reform will reduce red tape and administrative costs for advice providers and reduce the cost of advice for clients as well as improve the client experience. This is a change that can and should be introduced immediately.

ONGOING FEE ARRANGEMENTS AND CONSENT REQUIREMENTS

We have argued strongly for changes that streamline the annual fee estimate and consent process. Our members support the principle that underpins the requirements – that clients are aware of and consent to the fees that are charged for the services they receive. However, the current regulatory

framework has introduced additional cost and complexity for clients; facilitates anti-competitive outcomes; and thus the principle has become obscured.

The first two elements of recommendation 2.1 of the Hayne Royal Commission provided that ongoing fee arrangements must be renewed annually by the client and must record in writing each year the services that the client will be entitled to receive and the total of the fees that are to be charged. This is uncontroversial.

However, the third part of the recommendation that required that the client give express written authority to the entity that conducts the account at or immediately after the latest renewal effectively introduced a third party to the arrangement between the client and the adviser and has resulted in enormous complexity. It requires a client to sign a document that must be sent to and accepted by a product issuer in order for the fee to be paid. It has resulted in legislation that has imposed a considerable administrative and cost burden on advice providers as well as product issuers. It has also resulted in product issuers requiring clients to sign a form particular to that product issuer in order to evidence their express written authority to deduct ongoing fees, rather than accepting consent that is included in the ongoing fee arrangement renewal form created by the advice provider. In doing so product issuers have imposed their own requirements on the design and content of the form that they will accept.

The current legislation is also difficult to work with due to its prescription and lack of flexibility. Legislation that sets out administrative processes rather than the obligation is expensive and challenging to implement. Our members have been forced to undertake extensive system changes to comply with it.

We welcome any reforms that streamline the requirements for ongoing fee arrangement and fee consents, while ensuring that clients see and agree to the fees they are paying their financial adviser. However, the draft bill does not address the issue of complexity and will not reduce the red tape and costs caused by the current legislation and the imposition of bespoke forms and requirements by product issuers.

The need for a standardised fee consent form

Industry raised concerns in early 2021 that the advice fee consent rules would impose a huge administrative burden if product providers created their own consent forms. Advice associations raised the issue that if providers took it upon themselves to create their own forms, advisers and licensees would be forced to locate and complete a host of consent forms in different formats for each client, increasing dramatically the administrative burden and adding significantly to client confusion. Despite industry associations calling for product providers to work with industry to come up with one form that all sides could use, this has not occurred and advisers and licensees have been forced to chase multiple forms from product providers.

The issue of multiple consent forms from product issuers is the biggest challenge facing our members who have clients holding their investments on platforms. Platform providers require clients to execute/consent using their bespoke consent forms and there is no consistency between platform providers in the format or content of the form. This creates duplication and confusion for clients who are receiving multiple fee consent forms; one from their stockbroker or investment adviser and one or more from their platform provider(s). Clients are finding a product issuer

interposing themselves between them and the advice firm to be confusing and confronting. From the client perspective, their relationship is with their adviser, not a product issuer. And of course this complex and over-engineered process is also a very time consuming exercise for clients.

This is why at its meeting with Treasury on 29 June 2023, the Joint Associations Working Group (JAWG) recommended strongly that legislation must provide for the consent form to be standardised and mandatory. We understand that product issuers will incur costs to implement a standardised form, but the outcome will be efficiencies across the sector, which in turn reduces cost to the consumer. Indeed, advice licensees will also incur costs to implement a standardised form, but they are of the view that the short-term pain of the cost is far outweighed by being able to achieve a much more efficient ecosystem, which reduces cost and complexity for the consumer.

While the draft legislation streamlines the consent requirements to allow for a single consent form, which can be relied on by advisers and product issuers as evidence of a client's consent, we are very concerned that the form will not be mandatory or standardised. We are particularly concerned with the following provision of the draft Explanatory Memorandum:

1.83 …..However the form would not be required or mandatory so as ***not to restrict product issuers who want to apply different rules or practices (in addition to the legislative requirements) to the payment of ongoing fees.*** *Given product issuers discretion whether to use the form allows flexibility to meet a variety of industry needs.* ***Different product issuers may apply different rules to the payment of ongoing fees, for instance some may apply caps on ongoing fees or permit ongoing fees for only certain advice.***

A requirement that a client provide ''express written authority'' for the payment of fees (which essentially is another term for a direction to pay – a form used in many commercial transactions) has morphed into a situation where the product issuer or account holder interposes itself between the adviser and the client and then dictate rules about their agreement.

This has in effect turned platform providers into auditors of fee arrangements between advisers and their clients. Platform providers should not be in the middle of the ongoing fee arrangement. Our discussions with platform operators confirm that they do not want this role either. Any legislation that aims to streamline the consent arrangements must not perpetuate this situation.

It may be difficult for all parties to reach agreement on the form and content of a fee consent form while ever it is serving so many purposes ie ongoing fee arrangement or renewal; disclosure of fees and services; consent to the fees to be charged and the services to be provided; and consent for the fees to be debited from the account provided by the product issuer.

We recommend that the government reconsiders why it is necessary for product issuers to be included in the ongoing fee arrangement at all. We consider that this goes to the heart of the problem with fee consents. In our submission to the Quality of Advice Review Issues Paper we recommended that platforms and product providers be removed from the process of collecting consents. We provided feedback that SIAA members had experienced superannuation funds questioning fees and asking to be provided with statements of advice and records of advice. We pointed out that it was inappropriate for superannuation funds to be asking for these documents and queried how a staff member at a superannuation fund who is not the client's financial adviser could decide whether the advice fee is appropriate for the advice provided.

There are many examples where the provision of the renewal and fee consent to product issuers causes real issues for clients. For example, a client may have many accounts. They may have a superannuation account, an individual account, an account with their spouse, a self-managed super fund and a family trust. They may hold these accounts on different product platforms. Clients usually prefer to deal with matters on a client level, not an account level. For administrative convenience they would prefer their fee renewal and consent form to cover all of their accounts so that they only have to sign one document that sets out the services being provided and the fees being charged. Unfortunately, the requirement to send this document to each and every product issuer on which their assets are held means that privacy issues arise as the details of all their accounts are sent to platform providers who have nothing to do with that particular account. Alternatively, to overcome this issue, the client is required to sign multiple forms for multiple product issuers. This is just one example of the unintended consequences of including product issuers in the ongoing fee arrangement.

We recommend that the draft bill be amended to remove the requirement for advice providers to provide the fee consent form to the product issuer. **We also recommend** that an exception right be granted to product issuers, who could request a copy of the form actioned between the adviser and the client, should any concerns when reviewing data arise. That is, the product issuer would no longer be interposed between the adviser and the clients, but they would have the right to review a form on an exception basis.

If the government wants to retain the existing regulatory framework that includes product issuers then it needs to ensure that the draft bill cuts the red tape that surrounds the consent process. The only way that this will be achieved will be via an industry agreed standardised fee consent form that is actioned between the adviser and the client and that product issuers are required to accept.

A mandatory standardised form facilitates competition, which is to the benefit of consumers, as well as reducing the cost of advice. We consider that continuing with the current voluntary consent form is an anti-competitive measure, given that non-standardised forms offered by product issuers capture the back-office processes of licensees. There is significant cost attached to changing back-office processes to meet the requirements of differing forms in order to move from one product issuer to another. Advisers need to act in their client's best interests and should be able to move clients from one product issuer to another without having to incur and pass on to clients the costs attached to meeting the back-office changes necessary to meet the requirements of a non-standardised form. Some of our members have told us that they are reducing their platform offering to clients to reduce the red tape imposed by the different consent requirements of platform providers. This may not be in the best interest of clients.

Any other option will mean that the complexities and compliance burden created by the current legislation remain.

The draft bill includes a list of the content requirements for a fee consent form, that are currently in the *ASIC Corporations (Consent to Deductions – Ongoing Fee Arrangements) Instrument 2021/124*. Placing these content requirements into primary legislation reduces any flexibility and significantly increases prescription. In order for the industry to reach agreement on a mandated and standardised form, the content requirements should not be 'hard-wired' into primary legislation but should remain in an ASIC instrument. The legislation should deal with the principle and not the

administrative process. We note that the amendments to the *SIS Act* contained in the draft bill that deal with ongoing fee arrangements that are deducted from superannuation funds provide for ASIC to approve a form for request or consent. The draft explanatory memorandum states:

*1.38 ASIC may approve a form for this request or consent. If a form is approved, the request or consent must be in the approved form**. It is important to provide this power to build consistency across industry, and to assist members in managing their superannuation affairs by standardising documentation.***

We agree wholeheartedly with this statement and urge the government to apply the same approach to fee consents outside of superannuation.

We recommend that if the government does not remove the requirement for product issuers to be provided with the fee consent form, the following changes be made to the draft bill:

- The content and design of a standard fee consent form must be the result of industry consultation that involves all participants in the financial advice ecosystem, including advisers, licensees and product issuers.
- Product issuers must accept the fee consent form as agreed by industry. In other words, the use of the form is mandatory.
- The content of the fee consent form is to be removed from the draft bill.
- The fee consent form must be technology-neutral and therefore able to be electronically or digitally utilised and executed.

Anniversary date

Another important issue raised by our members is the overly prescriptive requirements regarding the 'anniversary date' of the ongoing fee arrangement renewal.

Currently, each client account has its own anniversary date based on the date that the ongoing fee agreement is entered into. This impacts on the administrative systems of firms that would normally issue paperwork to clients in a batch on a financial-year basis. Firms are now required to issue ongoing fee agreements and consent forms on a daily basis for rolling anniversary dates, which results in the fee consent mail-out being out of cycle with other client documentation. Rather than one workflow to chase consents, consents are due all the time for different accounts. This results in more work for licensees and advisers and confusion for clients. For example, a client household with multiple accounts will have multiple anniversary dates and will receive their fee agreement for each account on different dates and will have different deadlines for the return of their consents. Another result of the prescriptive requirements for the anniversary date is that a client with a share account and a platform will have multiple anniversary dates as the platform and share account fee arrangements may not necessarily align. Clients are bombarded by paperwork sent by platforms and their stockbroker or investment adviser. Clients get confused and think they are being charged twice, which illustrates how there is no client benefit to these prescriptive requirements.

The previous legislation that covered ongoing fee arrangements allowed for more flexibility on anniversary dates. No reason was ever provided why the legislation implementing the Hayne Royal Commission recommendations prescribed the anniversary date in such an inflexible way.

SIAA recommends that the draft bill be amended to provide for more flexibility on renewals to enable advice providers to better align and reset anniversary dates.

Termination

The draft bill provides that if an ongoing fee arrangement terminates because it is not covered by a written consent, the advice provider must give written notice to the client of the termination within 10 days. Failure to comply with that deadline attracts a civil penalty, and as a consequence requires the licensee to report under the reportable situations regime. Feedback from our members is that a failure to comply by the deadline could easily occur due to administrative challenges and errors. This is particularly the case where a platform provider is involved and correspondence has to flow from one entity to another. We also note that there have been recent outages on telecommunication platforms which have caused significant delays in actions between parties and this too can cause a failure to meet a tight deadline.

We recommend that the 10-day deadline be extended to 30 days to take into account the reality of back-office procedures. We also question why an essentially administrative process attracts a civil penalty provision given that there are already penalties for charging a fee when there is not an active fee arrangement in place or the arrangement has terminated.

Flexibility for FSG requirements

We welcome the amendments to the Corporations Act that allow providers of personal advice to either continue to give their clients a FSG or make the FSG information publicly available on their website. Member feedback is that close to all licensees have their most recent FSG publicly available on their website. We agree that as this is an alternative to providing the client with an FSG, no transition time is required for the implementation of this change.

However, there are some aspects of the provision that limit the effectiveness and usefulness of the reform. These relate to the requirements that must be met in enable for the advice provider to be able to rely on the provision.

The first requirement is that the financial service provided to the client must be personal advice. As pointed out by Michelle Levy in the Quality of Advice Review Final Report (at page 133) AFS licensees and their authorised representatives are currently required to provide an FSG whenever they provide a financial service to a retail client, and not merely when they provide financial product advice. SIAA's members provide a range of financial services to retail clients, including personal advice, general advice and dealing. As currently worded, it appears that the provision can only be relied on when the advice provider is providing personal advice. This means that an advice provider with a personal advice client may be unable to rely on the provision when they provide that client with general advice (for example, by sending them a research report) and will be required to provide an FSG in accordance with the current law. Similarly, the advice provider may not be able to rely on that provision when providing that client with dealing services. In the Quality of Advice Review Final Report, the reviewer highlighted the importance of maintaining consistency in the FSG provisions and the undesirability of separate FSG content requirements for providers of advice and providers of other financial services. The reviewer also noted that while a comprehensive review of the FSG requirements was beyond the scope of the Terms of Reference there was merit in undertaking such

a review in future.

We recommend that for the provision to be adopted more broadly and achieve its intended benefit of reducing red tape it would need to allow providers to rely on it when providing any financial service to retail clients regardless of the type of financial service being provided.

We note that the second requirement is that the client must not have requested a copy of the FSG.

The object of this Quality of Advice Review recommendation is to increase the flexibility and efficiency of the regulatory framework by offering providers the flexibility to decide how they disclose information and allow them to satisfy their FSG disclosure obligations by making the information publicly available on their website. The requirement that, in order to rely on this provision, the client must not have requested a copy of the FSG places an additional obligation on the provider. It will have the practical effect that the provider will need to prove that the client did not request a copy of the FSG to rely on the provision. From a compliance perspective, providers will need to make a record that the client did not ask for a copy of the FSG to prove compliance with the obligation. We consider that adding this extra step to the client onboarding process runs counter to the intention of the bill to deliver better financial outcomes by reducing red tape.

Essentially, advice providers should be able to rely on the use of their website with the proviso that they are only required to provide a physical copy if requested by the client.

We recommend that the requirement that the client must not have requested a copy of the FSG in order to be able to rely on the information that it is publicly available on their website be removed from the legislation. This will make it easier for providers to rely on the provision and remove red tape from the client onboarding process. It will not mean the client cannot ask for and be provided with a printed copy.

Conclusion

If you require additional information or wish to discuss this matter in greater detail, please do not hesitate to contact SIAA's policy manager, Michelle Huckel whose details are in the covering email.

Yours sincerely

Judith Fox
Chief Executive Officer