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By email: mdareview@asic.gov.au

Response to ASIC Consultation Paper 200 – Managed Discretionary Accounts: Update to RG179

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 commenced her career at ASX24 when it was known as the Sydney Futures Exchange. A key element of her role was looking after the Participants (including the class of Participant known as Commodity Trading Advisors) offering MDA Services which were at the time regulated by the Sydney Futures Exchange.

In reviewing the proposals outlined in CP200 it was noted that:

- ASIC has failed to address how it will treat providers of Auto trading systems. This functionality is largely available in the OTC market (predominantly FX). Under an Auto trading system a person would open an account with a financial services provider which will be the issuer of all contracts and counterparty to all of its trades. The client can then designate an expert advisor for its accounts which can either be:
 - a software package they purchased and own;
 - a trading algorithm they wrote themselves; or
 - a trading algorithm managed by a third party to which they subscribe (ie. an auto trading system).Under the first two scenarios it is highly unlikely that an MDA is operated for the client. Under the third scenario it appears that an MDA is operated for the client. It is critical that ASIC form a view on whether or not an MDA service is provided to clients under the third scenario as most third parties that manage the trading algorithm are not regulated or even based in Australia. If this matter is ignored then clients that invest in these systems are not afforded the protections they are entitled to under Australian Law.
- PI Insurance policies generally exclude cover for any claim made by a child, sibling, spouse or partner of an insured or a spouse or partner of an insured or any entity which is owned, controlled or managed by an insured or any parent company or other entity which owns, controls or manages any insured. We appreciate ASIC's intent in relation to the implementation of this proposal however we feel that before implementing this proposal ASIC should consider whether the conflicts of interest that arise as a result of designating a family member's account as a client account are acceptable and whether an AFS Licensee can obtain PI Insurance for a reasonable cost to cover family accounts taking into consideration the exclusions currently included in the majority of policies.
- ASIC has not provided any guidance in relation to the reporting requirements and marketing the performance of a strategy used as part of an MDA. This is probably the most widely used marketing tool for an MDA Operator. It is recommended that some guidance be included in RG179 regarding the good practice guidance included in RG234 – Advertising financial products and services (including credit): good practice guidance.

Our specific comments to each of ASIC's proposals detailed 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



Family Accounts not to be regulated as MDAs

B1 proposal: ASIC propose to revoke the family accounts no-action letter and modify [CO 04/194] to continue to exempt AFS licensees from the requirement to obtain 'MDA operator' and 'MDA advice' authorisations on their AFS licence if the only MDA accounts they operate are MDA accounts for their family members or the family members of their representatives.

ASIC Question		Response
B1Q1	Do you agree with the proposal to continue to exempt AFS licensees from the requirement to obtain MDA operator and MDA advice authorisations on their AFS licence if the only MDA accounts they operate are MDA accounts for their family members or the family members of their representatives? Why or why not?	We agree with the proposal and consider that it would be appropriate to treat a family account as a staff account as opposed to a client account and as such the services provided to a family member by a representative would not be classified as the provision financial service. An AFS Licensee that allows its representatives to manage accounts in the name of their family members should not be deemed as providing an MDA service or financial service to these family members as the representative operating the account most likely has a beneficial interest in the account. This would be consistent with the comments raised by ASIC in Section 41 of CP200 whereby it is recognized that an individual who manages their family members' financial affairs would not be deemed to be carrying on a financial services business. Instead ASIC should consider releasing a regulatory guide on the classification and treatment of staff and associated accounts and possibly placing restrictions on a representative's ability to generate income from the operation of such accounts.
B1Q2	Should this proposal be limited to certain types of MDA arrangements or certain types of MDA operators (e.g. MDA operators that are market participants)? If so, please outline the limitations you would recommend and why.	No it shouldn't be limited to certain types of MDA arrangements or MDA operators. For example, being a market participant does not add any further regulatory burden to an AFS Licensee or comfort to an MDA client under these circumstances, especially considering that the regulation of MDAs in relation to market participants will be under ASIC's jurisdiction as per F7 proposal. Small organisations that offer financial services have a high reputational risk to protect and generally provide financial services to clients under strict controls and guidelines. Most small organizations are not willing to risk their financial well being (eg. if a complaint arises) or their reputation in an effort to take unnecessary risks and therefore would comply with any conditions that they need to in order to provide financial services.
B1Q3	Will these proposals result in any costs for your business? If so, please identify the type of costs, their value and whether they would be one-off costs or ongoing.	Likely additional costs would be: • a one off cost relating to updating policies and procedures; • the cost of PI Insurance will most likely increase for those who provide financial services to retail clients when they seek cover for family member accounts; • those AFS Licensee that hold a licence to provide financial services to wholesale clients only will now need to obtain PI Insurance so they will have additional costs which they previously did not have; • an AFS Licensee with a licence to provide financial services to wholesale clients only may need to upgrade their licence to add retail clients to their licence as a result of the formal recognition of family member accounts being classified as clients. So these licensees will have a one off cost to upgrade their licence; • ongoing costs relating to monitoring and supervision which should be minimal as one would expect that these activities are subject to monitoring and supervision anyway.

ASIC Question		Response
B1Q4	If we were to require AFS licensees to obtain MDA operator and MDA advice authorisations on their AFS licence, even if the only MDA accounts they operate are MDA accounts for their family members or the family members of their representatives, would this result in any costs for your business? If so, please identify the type of costs, their value and whether they would be one-off costs or ongoing.	Each AFS Licensee would need to apply for a licence variation which would cost in the range of \$4,000 upwards depending on the service provider/ staff member used to apply for the licence. Some of the licensees may need to employ the services of a person with experience in providing MDA Services to be nominated as the Responsible Manager for MDAs if ASIC is not willing to recognize the experience acquired by the nominated person employed by the AFS Licensee as being adequate for the purposes of the being a Responsible Manager for MDA Services. If this is the case an AFS Licensee may incur an annual cost of \$40,000 upwards over at least the next 3 years. Finally there would be the administration costs associated with complying with RG179 and CO 04/194, ie. issuing the MDA Contract, quarterly reports and annual investor statements. These costs vary from business to business as each business uses a different model for these purposes.

B2 proposal: For the purposes of this relief, ASIC proposes to explicitly define 'family' as 'the spouse and/or children (as defined in s995-1 of the Income Tax Assessment Act 1997) of an AFS licensee or its representatives'.

ASIC Question		Response
B2Q1	Do you agree with our definition of 'family'? If you think 'family' should be defined using an alternative definition, please supply that definition and outline why it is preferred.	No as there appears to be a reasonable definition already in the Corporations Act 2001. I note that s9AA of the Corporations Act 2001 defines 'certain family relationships' and s9 of the Corporations Act 2001 defines 'immediate family member' and 'spouse' which are reasonable definitions and should be considered.

B3 proposal: ASIC proposes that AFS licensees that operate family accounts on behalf of retail clients and rely on our licensing relief will be required to comply with specific conditions, including those listed in Table 1.

ASIC Question		Response
B3Q1	Do you agree with our proposal that AFS licensees that operate family accounts and rely on our licensing relief will need to maintain adequate professional indemnity (PI) and fraud cover, as required by condition 1.27 in [CO 04/194] and by Regulatory Guide 126 Compensation and insurance arrangements for AFS licensees (RG 126), and which covers the provision of family accounts by the licensee or its representatives? If not, please outline why this PI and fraud cover is unnecessary.	No. By requiring an AFS Licensee to have PI Insurance and fraud cover for services provided by a representative to their family account creates an extreme conflict of interest for the AFS Licensee. For example, if a representative has engaged in fraudulent activity which has resulted in losses for their clients some of which are family accounts, then the representative can benefit from the fraudulent activity that they are being alleged to have committed. If the representative has acted in such a way that has resulted in losses to the family member (and hence a loss to themselves) and a claim is made against the PI Insurance Policy and paid by the insurer, then effectively the representative that has engaged in activity which resulted in the loss is being inadvertently rewarded as their family member is getting their money back. The only party being penalized in this circumstance is the AFS Licensee (ie. through increased insurance costs and the payment of the excess) and not the representative who may have caused the issue.

ASIC Question		Response
B3Q2	Do AFS licensees who are currently providing family accounts in reliance on our no-action letter already hold PI and fraud cover which covers the actions of their representatives in operating family accounts? If so, how simple or difficult was this cover to obtain?	Most PI Insurance policies exclude cover for any claim made by a child, sibling, spouse or partner of an Insured or a parent of a spouse or partner of an Insured or any entity which is owned, controlled or managed by any Insured; or any parent company or other entity which owns, controls or manages any Insured. As most policies include this exclusion it may be very difficult and expensive for an AFS Licensee to get an insurance company to waive this exclusion. This exclusion would most likely apply to all PI Insurance Policy currently held by an AFS Licensee that has any AFS license including those that are authorized to provide MDA Services and those acting under the no-action letter.
B3Q3	Will the proposed PI and fraud cover impose additional costs on your business? If so, please identify the type of costs, their value and whether they would be one-off costs or ongoing.	Most AFS Licensees would be exposed to higher insurance costs resulting from an increased PI Insurance premium as discussed in the response to B3Q2. The amount of the increase would vary between insurers and I don't think there is a precedent as to how much more expensive it will be as family accounts are generally excluded under the PI Policy.
B3Q4	Do you think the proposed PI and fraud cover will provide compensation arrangements that sufficiently reduce the risk that compensation claims to retail clients cannot be met because of the lack of available financial resources? If you do not think the proposed cover is appropriate, please explain why and identify what cover or other arrangements you think would be more appropriate.	I do not think the proposed cover is appropriate as the proposal is seeking to ultimately cover the services provided by a representative indirectly to themselves. Should a child or partner be protected against a parent or partner who they have authorised to manage their investments and money whereby the representative has most likely funded the account. Our answer is no. Such activity is not generally considered as a financial services business under law and just because an entity holds an AFS Licence the law should not change the way those services are treated. A family member should not be afforded the protections given to retail clients who authorise an independent third party to provide MDA Services to them as the person operating the family account is too closely related to the owner of the account and may have a beneficial interest in the account. If ASIC intends to impose this condition it would need to work with AFS Licensees in discussions with insurance companies to ensure that such cover can be obtained at a reasonable cost.
B3Q5	Do you agree with our proposal that AFS licensees that operate family accounts and rely on our licensing relief will need to maintain adequate monitoring and supervision policies and processes for family accounts? If not, please explain why not.	Yes as the risk involved and the potential conflicts of interest that may arise for the AFS Licensee could be costly and damaging for their reputation and financial well being.
B3Q6	Will the proposed monitoring and supervision arrangements impose additional costs on your business? If so, please identify the type of costs, their value and whether they would be one-off costs or ongoing.	The proposed monitoring and supervision arrangements could be integrated into the policies and procedures of an AFS Licensee, however the costs involved will depend on the size and scale of the operations of the AFS Licensee and the policies and procedures they currently have in place.
B3Q7	Will the proposed monitoring and supervision arrangements provide appropriate safeguards for family members by reducing the risk of inappropriate or unauthorised transactions, and by increasing the likelihood that such transactions will be detected? If you do not think these safeguards are appropriate, please suggest alternative options.	Where a family member has limited the discretion of the representative then such arrangements should be an appropriate safeguard and such procedures should not be a problem to implement. In terms of monitoring inappropriate transactions in circumstances where the AFS Licensee does not have any information about the family member on file (as based on the proposals they do not have to retain any information on file or assess suitability) it will be very difficult to identify an inappropriate transaction as there would be no client profile on file which allows the AFS Licensee to assess what transactions are appropriate or unauthorised.

ASIC Question		Response
B3Q8	Do you agree with our proposal that family account holders should have access to internal dispute resolution (IDR) and external dispute resolution (EDR) arrangements that cover the operation of the family accounts? If not, please explain why not.	Yes however access should be limited to actions taken by independent employees of the AFS Licensee or a failure by the AFS Licensee to act (where such failure has arisen due to the actions of an independent employee of the AFS Licensee). <u>Scenario 1:</u> Person 1 manages the account of Person 2 who is their wife. In this scenario the family member should not benefit from having access to IDR and EDR as Person 1 has a beneficial interest (either directly or indirectly) in the account held by Person 2. <u>Scenario 2:</u> Person 1 manages the account of Person 2 who is the wife of another employee of the AFS Licensee. Person 2 should have access to IDR and EDR as the arrangement is at arms-length and the person controlling the account does not have a beneficial interest in the account. There would be an expectation that appropriate Chinese walls were put in place to manage the potential conflict of interest.
B3Q9	What benefits and disadvantages do you think will result from the implementation of this proposal? Please provide details.	In administering the law ASIC should ensure that it creates a level playing field for all participants. <u>Benefits</u> An AFS Licensee would be required to take a more structured approach to such accounts and will be able to justifiably implement more controls surrounding conflicts of interests arising from the management of such accounts. <u>Disadvantages</u> An AFS Licensee that allows a representative to operate an MDA for a family account will be exposed to increased insurance costs, the potential breach of not being able to acquire PI Insurance that meets the requirements of RG179, extreme conflicts of interests arising from representatives managing family accounts if the AFS Licensee is held directly responsible for their actions. People who do not have an AFS Licence and provide such services only will not be subject to any regulatory regime from a financial services point of view which means they are not subject to the costs associated with holding an AFS Licence.
B3Q10	Do the current IDR and EDR arrangements of licensees whose representatives operate family accounts provide coverage for disputes relating to the operation of these family accounts (including disputes relating to advice, operation and dealing)? Please provide details.	FOS does not appear to have any exclusion in this regard.
B3Q11	If these disputes are not covered under current arrangements, should the responsibility to provide access to IDR and EDR arrangements rest with the licensee? Please explain why or why not.	Yes however access should be limited to actions taken by independent employees of the AFS Licensee or a failure by the AFS Licensee to act (where such failure has arisen due to the actions of an independent employee of the AFS Licensee). <u>Scenario 1:</u> Person 1 manages the account of Person 2 who is their wife. In this scenario the family member should not benefit from having access to IDR and EDR as Person 1 has a beneficial interest (either directly or indirectly) in the account held by Person 2. <u>Scenario 2:</u> Person 1 manages the account of Person 2 who is the wife of another employee of the AFS Licensee. Person 2 should have access to IDR and EDR as the arrangement is at arms-length and the person controlling the account does not have a beneficial interest in the account. There would be an expectation that appropriate Chinese walls were put in place to manage the potential conflict of interest.

ASIC Question		Response
B3Q12	Should the responsibility to pay any compensation arising out of claims settled through IDR or EDR rest with the licensee? Please explain why or why not.	The licensee should be liable for claims arising from actions taken by independent employees of the AFS Licensee or a failure by an AFS Licensee to act (where such failure has arisen due to the actions of an independent employee of the AFS Licensee). Independent employee being someone unrelated to the family member. The licensee should not be held liable for any claims resulting from actions or failure to act by a representative directly managing the family account or responsible for certain actions for a family account as the representative can benefit either directly or indirectly as result of any actions taken by them which have resulted in a loss to the family member. Also if a claim is payable by the AFS Licensee then this would indirectly negate any penalty imposed by the AFS Licensee on the representative if the claim resulted from a breach by the representative.
B3Q13	Will the proposed IDR and EDR arrangements impose additional costs on your business? If so, please identify the type of costs, their value and whether they would be oneoff costs or ongoing.	We do not envisage that an AFS Licensee will be required to pay any additional fees to be a member of an EDR scheme or to maintain an IDR to cover family accounts. However, we can see the costs for an AFS Licensee to defend a case brought against them especially where there is a family grievance or divorce to be very high.
B3Q14	For AFS licensees who are only licensed to provide financial services to wholesale clients, will the proposed IDR and EDR requirements be feasible for your business?	The AFS Licensee would be exposed to additional costs in relation to being a member of an EDR and additional costs relating to the implementation and maintenance of an IDR scheme for retail clients as to date they would not have had to meet these requirements. The bigger consideration is whether or not these licensees will be able to get PI insurance that covers the provision of services to retail clients and family members (refer to exclusions discussed above). Also the licensees will need to apply for a licence variation to allow them to provide financial services to retail clients as to date most of these accounts would have been treated as staff accounts.
B3Q15	Are there alternative mechanisms that would more effectively deliver access to dispute resolution systems and compensation for family account holders? Please identify these mechanisms and explain why they would be more effective.	AFS Licensees that have representatives that operate family accounts should not be required to provide access to dispute resolution systems and compensation for family account holders. Any disputes arising between family members as a result of such activity should be dealt with between the family members in a court of law.
B3Q16	Do you agree with our proposal that AFS licensees that operate family accounts and rely on our licensing relief should obtain written acknowledgement by the family member covering the matters outlined in Table 1? If not, please outline your reasons.	Yes
B3Q17	Do you think this written acknowledgement should cover any other matters? If so, please identify these and explain why.	If such clients are considered to be retail clients then the representative should be required to provide an SOA and investment strategy to the client. They should also give them an FSG and MDA Contract. If these clients are going to be treated as a retail client they should receive all the documentation as per a retail client.
B3Q18	Do you agree with our proposal that, if the AFS licensee is notified that the spouse has become separated from the licensee or its representative, the discretionary authority will cease to have effect, unless, subsequent to the separation, the relevant spouse gives their consent for the discretionary authority to commence or continue? If not, please outline what other requirements, if any, should be in place to manage family accounts in the event of a relationship breakdown.	Yes

Switches on regulated platforms to be regulated as MDAs

B4 proposal: ASIC proposes to revoke the regulated platforms no-action letter and modify its guidance to specify that:

- (a) *where AFS licensees or their representatives give instructions at their discretion to regulated platform providers, including instructions to switch between investment options, these arrangements will be regulated as MDAs; and*
- (b) *AFS licensees that wish to undertake this activity will need to obtain the relevant AFS licence authorisations.*

ASIC Question		Response
B4Q1	Do you agree with our proposal to require AFS licensees offering MDAs through a regulated platform to obtain the relevant AFS licence authorisations? If not, please explain why you think this licensing relief should continue, given the similarity between MDAs operated through regulated platforms and other MDAs.	Yes however there will need to be recognition given to the fact that a third party may be making the investment decisions. Under an IDPS there are investment managers who make the decisions for the model portfolios offered on the platform and then there are advisors who introduce clients to the IDPS Operator and work with the client to decide which model portfolios to invest in and how much to invest. It is our view that the advisor would need to have an AFS Licence with the relevant authorizations relating to an MDA as clients may give them the discretion to choose which model portfolio to invest in and how much should be invested in each model portfolio. The Investment Manager that manages a model portfolio offered by the IDPS Operator on its platform should not be required to have any authorizations relating to MDA's however guidance should be given on what authorization they need in order to make their model portfolio available on the IDPS platform and who their client is, ie. the IDPS Operator with which they have a contractual agreement or the client that opens the account on the IDPS platform for which they ultimately make trading decisions on behalf of.
B4Q2	Will this proposal impose costs on your business? If so, please identify the type of costs, their value and whether they would be one-off costs or ongoing.	Some AFS Licensee would need to apply for a licence variation which would cost in the range of \$4,000 upwards depending on the service provider/ staff member used to apply for the licence. Some of the licensees may need to employ the services of a person with experience in providing MDA Services to be the nominated as the Responsible Manager for MDAs if ASIC is not willing to recognize the past experience acquired by the nominated person employed by the AFS Licensee as being adequate for the purposes of the being a Responsible Manager. If this is the case an AFS Licensee may incur an annual cost of \$40,000 upwards over at least the next 3 years. Finally there would be the administration costs associated with complying with RG179 and CO 04/194, ie. issuing the MDA Contract, quarterly reports and annual investor statements. These costs vary from business to business as each business uses a different model for these purposes.

B5 proposal: ASIC proposes to provide a two-year transition period from the time that its revised regulatory guidance and class order are issued to allow AFS licensees and their representatives who are currently relying on the no-action position time to obtain the relevant AFS licence authorisations or to wind up their MDA business.

ASIC Question		Response
B5Q1	Will this transition period assist AFS licensees and their representatives who are currently relying on the no-action position to adjust to the proposed changes to our guidance and relief? Please explain if you think a shorter or longer transition period is needed and why.	Yes it will assist both the AFS Licensee and ASIC in terms of the time required to process the AFS Licence variation as IDPS platforms are becoming more popular and accessible.

B6 proposal: ASIC proposes that, where all of an MDA operator's MDA investments are contained on a regulated platform, the MDA operator must comply with the same operation, disclosure and conduct requirements that apply to other MDA operators, except for the following:

- (a) the MDA operator does not have to issue transactional reports for clients if the transactions have been, or will be, reported to the client or MDA operator by the regulated platform operator, as long as the MDA operator ensures that:*
- (i) the reports generated by the regulated platform are passed on to clients if they are sent via an address of the MDA operator; and*
 - (ii) as soon as reasonably practicable following the reports being provided by the regulated platform operator, the MDA operator reviews the transaction details in the report and reports any exceptions or anomalies to clients; and*
- (b) the MDA operator does not need to provide its MDA clients with an annual statement from a registered company auditor providing their opinion whether transactional reports have, or have not, been materially misstated.*

ASIC Question		Response
B6Q1	Do you agree with our proposal to exempt MDA operators from issuing transactional reports and an audit opinion on those reports to clients when all investments of the MDA are held through a regulated platform and the regulated platform provider reports transactions to clients? If not, why not?	We have no objections with this proposal.
B6Q2	Do you agree with our proposal that AFS licensees offering MDAs through a regulated platform must comply with our MDA guidance and relief in all other respects? If not, please identify any further modifications or concessions that you think are warranted, and explain why.	Yes however ASIC should give further guidance in relation to the documentation of the Investment Strategy to be included in the Investment Program. The Investment Program should include details of the criteria that the advisor will use to decide which model portfolios to include in the clients Investment Program and how much to allocate to each. It should also include details of the strategy underlying each model portfolio. The problem arises in the fact that the Investment Manager is responsible for documenting the strategy underlying each model portfolio, not the advisor. Therefore, ASIC should provide guidance on how the strategy underlying each portfolio should be communicated to clients, ie. via the IDPS Guide or via the Investment Program included in the MDA Contract. If included in the Investment Program of the MDA Contract can it be included by reference to the IDPS Guide? Further guidance should also be provided in regards to: - communicating changes made to the investment strategy of a model portfolio; and - provision of investment strategy of model portfolio when advisor re-balances the client's portfolios by switching between model portfolios during the year.
B6Q3	Are any additional modifications to our conditions of relief needed to address the situation where only some of the assets of a client's MDA are invested through a regulated platform? If so, please outline how you think these modifications should operate.	Yes, the same issues raised in response to B6Q2 should be considered.

B7 proposal: For the purposes of proposals B4–B6, we propose to define a ‘regulated platform’ as ‘an IDPS, IDPS-like scheme or superannuation entity’.

ASIC Question		Response
B7Q1	Do you agree with our proposal to explicitly define ‘regulated platform’ in this way? If not, please suggest an alternative definition.	Yes, however ASIC should consider including systems which offer the expert advisor or auto trader function in the definition of ‘regulated platform’ as well.

Proposed new financial requirements

C1 proposal: ASIC proposes that MDA operators should be subject to updated financial requirements that are similar to the financial requirements that have applied to responsible entities of managed investment schemes since 1 November 2012 and that ASIC has proposed to apply to platform operators, as outlined in Regulatory Guide 166 Licensing: Financial requirements (RG 166) (revised version forthcoming). ASIC also proposes to apply to MDA operators the same financial requirements as proposed to apply to responsible entities having regard to scheme property holding arrangements. In particular, ASIC proposes that MDA operators should meet:

- (a) the standard solvency and positive net assets requirement that applies to all AFS licensees;*
- (b) a tailored cash needs requirement similar to the requirement that applies to responsible entities;*
- (c) a tailored audit requirement similar to the requirement that applies to responsible entities; and*
- (d) a net tangible assets (NTA) requirement similar to that which is proposed to apply to responsible entities.*

ASIC Question		Response
C1Q1	Do you agree with our proposal that MDA operators should be subject to similar financial requirements to those that apply to the responsible entities of managed investment schemes? If not, why not?	We agree with the financial requirements defined in points (a) to (c) of C1 proposal, however think that point (d) as defined in Table 2 has been set too high in circumstances where the legal title to financial products in the client’s portfolio are held by the MDA client. In circumstances where the client holds legal title over their account, the client will open an account with either, a market and clearing participant, a custodian, an IDPS Operator or a retail OTC derivatives issuer. Each of these entities has an NTA requirement that they have to meet which afford the client the protection that is intended under RG166. It is our view that in these circumstances the MDA Operator should have an NTA requirement of \$50,000 regardless of the value of funds under management. This is comparable to the NTA requirements set by ASX24 (previously known as SFE) for the members it regulated pre the financial services reforms in 2002. In those days clearing members which is akin to an MDA Custodian has an NTA requirement of \$5 million whilst under this proposal this will be doubled to a minimum of \$10 million for an MDA Custodian. A Commodity Trading Advisor Associate Member has a NTA requirement of \$20,000 which is akin to an MDA Operator whereby the client holds legal title to its assets and funds which has an NTA requirement of \$150,000 under the current proposal. An Introducing Broker Associate Member has an NTA requirement of \$50,000 which is akin to an AFS Licensee who provides advisory and dealing services who has NTA requirement of zero. I appreciate that the risk parameter have changed over the years but it is unreasonable to say that the risk exposure for a MDA Custodian has doubled whilst that of an MDA Operator whereby clients hold legal title has increased more than 7 times. ASIC needs to take a prudent approach and consider an NTA requirement of \$50,000 which would be more reasonable.
C1Q2	Do you agree that this proposal is appropriate, given the level of risk carried by MDA operators? Why or why not?	We agree that the proposal defined in points (a) to (c) is appropriate given the level of risk carried by MDA operators. We disagree that the proposal defined in point (d) is appropriate given the level of risk carried by MDA operators. The reason being is that no consideration appears to have been given to the scenario where the client retains legal title over their account and the financial products held in the account. In such situation the level of risk carried by the MDA operator is much less than the other scenarios and would be adequately covered by the alternate proposal discussed in our response to C1Q1. The alternate proposal is consistent with the NTA requirement defined for an IDPS operator in Table 9 of Appendix 3 of RG166.

ASIC Question		Response
C1Q3	Are there any practical problems with the implementation of this proposal? If so, please give details.	It is noted that each time ASIC proposed changes to the financial requirements for a class of financial services providers they also included a transitional period of at least 12 months to allow the AFS Licensee to make changes to allow them to meet the requirements. We are of the view that any practical problems that may arise can be resolved during a transitional period.
C1Q4	Are there any circumstances in which the proposed financial requirements should not apply? Please specify.	Yes, refer to the comments made in C1Q1 and C1Q2 in reference to MDAs offered to clients where the legal title to financial products in the client's portfolio are held by the MDA client.

C2 proposal: For the purposes of proposal C1, ASIC proposes to define 'client's portfolio assets' as 'financial products and other property that are the client's contributions or that are derived directly or indirectly from the client's contributions' (this is the same definition that is currently used in [CO 04/194]). ASIC also propose to define 'average MDA operator revenue' as:

- (a) in the first financial year in which the licensee is first authorised to operate an MDA, the licensee's reasonable forecast of its revenue from the date it was first authorised for the remainder of the first financial year pro-rated to a 12-month period;*
- (b) in the next financial year after the first financial year in which the licensee was first authorised to operate an MDA, the average of the aggregate of the licensee's:*
 - (i) actual revenue for the second financial year to date, plus reasonable forecast of its revenue for the remainder of the second financial year; &*
 - (ii) revenue in the first financial year from the calculation date pro-rated to a 12-month period;*
- (c) in its second financial year after the first financial year in which the licensee was first authorised to operate an MDA, the average of:*
 - (i) the aggregate of the licensee's revenue for the financial year to date and reasonable forecast of its revenue for the remainder of the financial year;*
 - (ii) the licensee's revenue for its previous financial year; and*
 - (iii) the revenue in the first financial year in which the licensee was first authorised to operate an MDA from the date of that authorisation pro-rated to a 12-month period; and*
- (d) for all subsequent financial years, the average of:*
 - (i) the aggregate of the licensee's revenue for the current financial year to date and reasonable forecast of its revenue for the remainder of the current financial year;*
 - (ii) the licensee's revenue for the last preceding financial year; and*
 - (iii) the licensee's revenue for the second preceding financial year.*

In determining average MDA operator revenue, an MDA operator should include the revenue of persons performing the functions relating to an MDA for which the MDA operator is responsible (e.g. functions outsourced to other entities).

ASIC Question		Response
C2Q1	Do you agree with our proposed definition of 'client's portfolio assets'? If you think that 'client's portfolio assets' should be defined using an alternative definition, please supply that definition and outline why it is preferred.	We have no objections with this proposal.

ASIC Question		Response
C2Q2	Do you agree with our proposed definition of ‘average MDA operator revenue’? If you think that ‘average MDA operator revenue’ should be defined using an alternative definition, please supply that definition and outline why it is preferred.	No. We have no issue with the points defined in points (a) – (d) of C2 proposal. However we see problems with the definition of including the revenue of persons performing the functions relating to an MDA for which the MDA operator is responsible (ie. functions outsourced to other entities). For example, an MDA offered via an IDPS platform. Under this definition the MDA Operator would need to include in its average revenue the revenue of the IDPS Operator. Some of the issues are: • do they include 100% of the IDPS Operator’s revenue or just the portion that relates to its business; • how can the MDA Operator ensure that it will be given the correct figures on time; and • the MDA Operator is not entitled to nor can it use the revenue generated by the third party so why should it be included as part of the MDA Operator’s revenue.

Ensuring consistency with financial requirements for providers of custodial and depository services

C3 proposal: ASIC proposes that external MDA custodians must meet the same requirements as those we propose to apply under CP 194 to providers of custodial or depository services that are not incidental providers. This includes the requirement to hold net tangible assets (NTA) of \$10 million, or 10% of average revenue, whichever is higher. In determining average revenue, an MDA operator should include the revenue of persons performing the functions relating to an MDA for which the MDA operator is responsible (e.g. functions outsourced to other entities).

ASIC Question		Response
C3Q1	Do you agree with our proposal that external MDA custodians must meet the same requirements as those we proposed to apply under CP 194 to providers of custodial or depository services? If you disagree, please explain why.	Yes we agree with the proposed NTA requirements for external MDA custodians. However we see problems with ASIC’s proposal that MDA Operators should include the revenue of persons performing the functions relating to an MDA for which the MDA operator is responsible (ie. functions outsourced to other entities). For example, an MDA offered via an IDPS platform which would be the external MDA custodian. Under this definition the MDA Operator would need to include in its average revenue the revenue of the IDPS Operator. Some of the issues are: • do they include 100% of the IDPS Operator’s revenue or just the portion that relates to its business; • how can the MDA Operator ensure that it will be given the correct figures on time; and • the MDA Operator is not entitled to nor can it use the revenue generated by the third party so why should it be included as part of the MDA Operator’s revenue.

C4 proposal: ASIC proposes that MDA operators responsible for holding client portfolio assets must meet the same requirements as those we proposed to apply under CP 194 to responsible entities that hold scheme property. This includes the requirement to hold NTA of \$10 million, or 10% of average revenue, whichever is higher, unless the MDA operator arranges for the client portfolio assets to be held by a person licensed to provide a custodial or depository service that is not an incidental provider or a body regulated by the Australian Prudential Regulation Authority (APRA).

ASIC proposes to exclude MDA operators who are responsible for holding client portfolio assets from the definition of ‘incidental custodial or depository services’ as defined in CP 194. This means these MDA operators would not be able to fulfil their NTA obligations by meeting the reduced minimum NTA requirements for incidental providers of custodial and depository services. In determining average revenue, an MDA operator should include the revenue of persons performing the functions relating to an MDA for which the MDA operator is responsible (e.g. functions outsourced to other entities).

ASIC Question		Response
C3Q1	Do you agree with our proposal that MDA operators responsible for holding client portfolio assets must meet the same requirements as those we proposed to apply under CP 194 to responsible entities that hold scheme property unless the MDA operator arranges for the client portfolio assets to be held by a person licensed to provide a custodial or depository service? If you disagree, please explain why.	Yes, we agree with the proposal that MDA operators responsible for holding client portfolio assets must meet the same requirements as those ASIC proposes to apply under CP 194 to responsible entities that hold scheme property. However we, disagree with this proposal to the extent that it suggests that if an MDA Operator arranges for client portfolio assets to be held by a person licensed to provide a custodial or depository service that is a body regulated by the APRA then the MDA Operator will need to meet the afore mentioned financial requirements as well. It is recognized in RG166 that APRA has set adequate financial requirements for entities it regulates. Therefore, just because an APRA regulated entity holds client portfolio assets for an MDA Operator, the MDA Operator should not be subject to higher NTA requirements.

The investment program, MDA contract and advice about the MDA

D1 proposal: ASIC proposes to refine our conditions relating to the MDA contract, investment program and financial advice to make it clear that:

- (a) the investment program that forms part of the MDA contract must contain an investment strategy;*
- (b) the invest strategy must contain sufficient detail to permit an opinion to be formed on the suitability of the investment program for a particular client;*
- (c) the investment program forms part of the MDA contract;*
- (d) the MDA operator or an external MDA adviser must provide personal advice about the MDA contract, including the investment program, on an annual basis. This personal advice must meet the conduct and disclosure obligations under Pt 7.7 and Pt 7.7A of the Corporations Act that apply to personal advice (including the obligation for the AFS licensee or its authorised representative to prepare and provide a Statement of Advice (SOA) or record of advice, and the obligation for the advice provider to act in the best interests of the client, provide appropriate advice, warn the client where advice is based on inaccurate or incomplete information, and prioritise the interests of the client), and must contain advice about whether the MDA contract for that client, including the investment program, continues to be suitable in light of the client’s personal objectives, needs and relevant personal circumstances.*

ASIC Question		Response
D1Q1	Do you agree with our proposal to introduce an explicit requirement for the investment program to contain an investment strategy? If not, why not?	We have no objections with this proposal.

ASIC Question		Response
D1Q2	Do you agree with our proposed clarification that personal advice about the MDA must state that the MDA contract including the investment program is appropriate to the client's financial situation, needs and objectives? If not, please explain why.	Yes, this will ensure consistency with the FOFA requirements and Section 961B of the Corporations Act 2001.
D1Q3	Are there any other aspects of our investment program, MDA contract or SOA requirements that need clarification or refinement? If so, please provide details.	1. ASIC needs to provide clarification regarding the structure of the Investment Program in the situation where an MDA is setup for a client whereby it is recommended that the client invest in model portfolios offered via an IDPS platform (refer to B6Q2 for further details) or model portfolios offered by an MDA Operator. In both cases the model portfolios are managed by an Investment Manager that has signed a contractual agreement with the IDPS Operator or MDA Operator (as applicable). 2. It is recommended that ASIC stipulate minimum requirements that should be met in documenting an Investment Strategy similar to what is currently detailed in RG179.36(iv).

Fee disclosure

D2 proposal: ASIC proposes to clarify that the FSG and MDA contract must contain information about the fees and costs of the MDA in a manner that is consistent with Sch 10 of the Corporations Regulations.

ASIC Question		Response
D2Q1	Do you agree with this proposal? If not, why not?	We have no objections with this proposal as we believe that the fee disclosure should be clear and transparent. The client should know what fees they are liable for and what the MDA Operator and any other person involved with the management of the MDA will receive.
D2Q2	Do you think that this proposal will assist investors to more easily compare different MDAs, or an MDA and an alternative investment?	No. Investors usually invest in an MDA for the following reasons: 1) The client has invested in a particular investment strategy on a non-discretionary basis and does not wish to have daily contact with their advisor and thus authorize the advisor to trade on a discretionary basis on their behalf pursuant to the Investment Strategy. 2) The potential client is impressed with the performance results achieved by a particular investment strategy and they choose to invest. It just so happens that the investment strategy is offered via an MDA. 3) A financial planner has defined a specific Investment Strategy for a client and such strategy is offered to the client via an MDA structure. In most cases a client's decision to invest in an MDA or an alternate investment is governed by the performance of the strategy rather than the fee and cost structure of the strategy.
D2Q3	Do you think that this proposal will assist investors to make better, more informed decisions about whether to invest in an MDA? Please explain your views.	No as most investors do not look at the fee structure as part of their decision making process. They instead look at the performance results. We note that there is no consistency between the way in which any financial services provider reports its performance results or any requirements for disclosure of assumptions made in reporting performance.

Outsourcing arrangements

D3 proposal: ASIC proposes to require the FSG for the MDA to provide a description of the operation of outsourcing arrangements that apply to the MDA, where relevant. This description should cover:

- (a) the entities involved and the functions they perform; and*
- (b) how outsourced arrangements will be monitored.*

ASIC Question		Response
D3Q1	Do you agree with this proposal? Please explain your response.	Yes. It is recommended that examples of expected disclosure to this extent be included in the revised RG179.

Terminating the MDA

D4 proposal: ASIC proposes to require both the FSG and the MDA contract to contain information about how the client may terminate the MDA contract including:

- (a) how the instruction to terminate must be communicated;*
- (b) how long it will take for the termination to take effect; and*
- (c) how the MDA assets will be disposed of, or transferred to the client, if those assets are not held directly by the client.*

ASIC Question		Response
D4Q1	Do you agree with this proposal to require explicit upfront disclosure of how the client may terminate the MDA contract, and the processes for ceasing the MDA arrangement? Please provide details.	We agree that an MDA Contract should include clear and concise terms regarding how a client can terminate the contract. However, we do not agree with the inclusion of such terms or an explanation of such processes in the FSG. We are of the view that providing this information to clients is important, however believe that an alternate method of delivery (ie. as opposed to the FSG) would be the system described in RG165.139 for complaints handling. Under this system the AFS Licensee is required to prepare an easy-to-use guide of the complaints handling procedure to be made available to clients upon request or when a complaint arises. As some MDA Operators have multiple MDAs managed under different structures the termination provisions would vary on a case by case basis. Under the alternate proposal clients will receive specific information that applies to them rather than random information that generally applies (which would be the case for information included in the FSG). We refer to RG175.84 which states that the FSG provisions are designed to ensure that retail clients are given sufficient information to enable them to decide whether to obtain financial services from the providing entity. Therefore any provisions relating to the termination of an MDA arrangement would not assist the client in deciding whether or not to obtain financial services from the providing entity.
D4Q2	Will this proposal assist retail clients to better understand the operation of their MDA contract, how they can terminate that contract and the impact of any termination? If not please explain why.	The proposal will not assist retail clients to better understand the operation of their MDA contract as termination provision do not deal with how the MDA is operated whilst it is active. The proposal will assist the client to understand how they are able to terminate their MDA Contract and the impact of any termination. However we are of the view that the inclusion of such terms should be limited to the MDA Contract and a 'Termination of Account Guide' (which would be a document similar to the Complaints Handling Guide referred to the MDA Operator is not entitled to nor can it use the revenue generated by the third party so why should it be included as part of the MDA Operator's revenue.RG165.139).

ASIC Question		Response
D4Q3	Are there any other conduct or disclosure requirements that should be imposed on MDA operators to ensure that retail investors are able to terminate the MDA if they so choose?	Generally an AFS Licensee will allow for the termination of an agreement on the condition that a specific notice period has been adhered to. An AFS Licensee should clearly detail any applicable notice periods and explain the impact of such notice periods.

D5 proposal: ASIC proposes to require that the length of time required by an MDA operator for the termination to take effect must be no longer than is reasonably necessary.

ASIC Question		Response
D5Q1	Do you agree with our proposal to require that the length of time required by an MDA operator for the termination to take effect must be no longer than is reasonably necessary? If not, please explain why.	We have no objections with this proposal.

D6 proposal: ASIC proposes to require MDA operators to:

- (a) formulate a policy outlining the steps they will take to terminate an MDA contract when under the terms of the MDA contract it is to be terminated or when the MDA contract no longer meets our conditions of relief (for example, if an the annual review of the investment program is not completed within the required timeframe); and*
- (b) disclose the details of this policy to investors in the FSG.*

ASIC Question		Response
D6Q1	Do you agree with our proposal to require MDA operators to formulate a policy outlining the steps they will take if a client opts out of receiving ongoing advice? If not please provide details	The proposal outline in D6 appears to have nothing to do with the MDA operator formulating a policy outlining the steps they will take if a client opts out of receiving ongoing advice, it actually deals with the steps the MDA operator will take to terminate an MDA contract when under the terms of the MDA contract it is to be terminated or when the MDA contract no longer meets our conditions of relief. We believe that the MDA Operator should have a policy which outlines the steps it will take to terminate an MDA Contract, the steps it will take to close or transfer any open positions or assets held in the MDA and the steps it will take to close the client's account. We are of the view that the MDA Operator should put together an easy-to-use guide of the termination procedures to give to clients upon requesting an account to be terminated. This is recommended instead of including the information in the FSG.
D6Q2	Do you agree with our proposal to require disclosure of this policy in the FSG? If not, please explain why.	No, predominantly because pursuant to RG175.84, the FSG provisions are designed to ensure that retail clients are given sufficient information to enable them to decide whether to obtain financial services from the providing entity. Therefore any provisions relating to the termination of an MDA arrangement would not assist the client in deciding whether or not to obtain financial service from the providing entity. We do however believe that the client would benefit from knowing the process involved and think that the structure employed by ASIC in relation to complaints handling would better suit this proposal. In RG165.139 ASIC states that an AFS Licensee should provide a copy of the complaints handling procedures to all relevant staff and that a simple and easy-to-use guide to the procedures should also be made available to consumers, either on request or when they want to make a complaint or dispute. The procedure relating to the termination of an MDA arrangement could be better communicated to clients by requiring the AFS Licensee to have a simple and easy-to-use guide of the procedures relating to the termination of an MDA arrangement which is made available to clients, either on request or when they want to terminate their MDA arrangement.

Investing in arrangements where recourse is not limited

E1 proposal: ASIC proposes to modify our conditions of relief under one of the three options listed below:

- (a) in situations where an MDA operator may invest an MDA client's portfolio assets in non-limited recourse arrangements, the MDA operator is required to include a specific risk warning in the MDA operator's FSG and in each client's investment program, which outlines the additional risks to the client as a result of their MDA investing in non-limited recourse arrangements. The MDA operator will also be required to disclose in the investment program the degree of leverage that may be employed, the types of products used and the MDA operator's policies in relation to communicating and meeting margin calls and closing positions at a loss;*
- (b) in situations where an MDA operator may invest an MDA client's portfolio assets in non-limited recourse arrangements, the MDA operator is required to seek express consent from the MDA client on each occasion when the MDA operator is proposing to invest in such a product or arrangement, and not to invest in any such product or arrangement where express consent has not been obtained; or*
- (c) MDA operators are prohibited from investing retail client's portfolio assets within an MDA in non-limited recourse arrangements.*

ASIC Question		Response
E1Q1	Do you agree with our proposal to modify our conditions of relief to impose specific conditions when a client's MDA operator has discretion to invest in products or investment strategies with non-limited recourse? If not, why not?	We only agree with the proposal presented under E1(a). ASIC originally gave class order relief to Sydney Futures Exchange (SFE) participants (now known as ASX24) to operate MDA services under ASIC class order relief [CO 01/1598] and [CO 02/186], and ex-associate participants of SFE to operate MDA services under ASIC class order relief [CO 02/1022] allowing them to provide MDA Services to their clients. All of these class orders were then absorbed into ASIC class order relief [CO 04/194]. The financial products traded on the ASX24 are futures contracts which are financial products with non-limited recourse. Therefore, by including the condition under proposal E1(b) or E1(c) in the revised class order relief for Managed Discretionary Accounts, ASIC is effectively prohibiting an AFS Licensee from providing MDA Services to clients where the financial product traded is a futures contract traded on a regulated exchange. By seeking the express consent from the client on each occasion the service effectively provided to the client is not an MDA Service and is rather the provision of financial advice and dealing service to the client. Under E1(b) an AFS Licensee will not be able to provide MDA Services to clients where the only product traded is an Exchange Traded Derivative (ie. a futures or options on futures contract) as seeking express approval from the client for each trade means that no MDA Service is provided to the client. ASIC needs to clearly articulate what its intent is. If the intent is to ensure that an MDA Operator can't offer an investment strategy that deals in Contracts for difference and like products then the condition should be limited to financial products with non-limited recourse traded as an over-the-counter product. The other issue that needs to be considered is the services offered by an AFS Licensee which allows clients to link trading robots to their account. The products traded on these systems are margin FX transactions or CFD transactions. If such a condition is included in the revised class order, ASIC will need to assess and provide guidance on how these products will be regulated as currently they are not and ASIC will find it very difficult to impose the conditions proposed under E1(b) and E1(c) when it comes to auto trading systems due to global nature of these operations.

ASIC Question		Response
E1Q2	Do you think option (a), (b) or (c) would be most effective in addressing the additional risks faced by retail clients when an MDA operator has discretion to invest in products or investment strategies with non-limited recourse? Please outline your reasons for preferring that option.	Option (a) would be the most effective in addressing the additional risks faced by retail clients under these circumstances. The reason being is that: 1) it is the only option that seeks to recognize that there is a risk however allows the client to decide whether that risk is acceptable for them; 2) options (b) and (c) give rise to the risk of MDA Operators classifying clients as wholesale clients pursuant to S761GA of the Corporations Act 2001 to circumvent the restrictions as a result of clients insisting on opening an MDA that invests in non-limited recourse products; 3) it is the only option that does not inadvertently exclude the only legal MDA Service offered in Australia historically; 4) it is the only one that allows ASIC to address a sector which is yet to be addressed by ASIC, ie. forex robots. The other two options effectively prohibit such platforms and yet in reality there is no way that ASIC can prevent an Australian resident from using a forex robot as there are too many available and it is a readily accepted methodology used in the FX market.
E1Q3	Do you think option (a), (b) or (c) would be most effective in promoting confident and informed consumer and investor decision making and investment in MDAs?	Option (a) as it serves to educate clients and it allows clients to learn how to trade the market rather than deciding to trade the market themselves without really knowing the risks involved. The derivatives market is now accessible by retail clients and clients are better served by a professional trader dealing in these markets on their behalf rather than they dealing in the market without knowing the product, underlying exposure and the risks involved.
E1Q4	If you prefer option (a), do you think the wording of the risk warning should be standardised or should MDA operators be able to tailor the warning to suit their particular MDA offering?	At a minimum ASIC should provide some guidance on the issues that should be covered in the risk warning and the AFS Licensee should tailor the warning to suit their particular MDA offering. In the past the risk disclosure statement was prescribed by the ASX24 (previously known as the SFE) and clients were required to acknowledge that they have read, understood and received it. This system could also be adopted and would address any issues that ASIC has with regards to risk warnings. A practical approach would be to require such a risk disclosure to be included by the product issuer in the PDS. All clients would benefit from such a risk disclosure.
E1Q5	Do you think any other measures need to be taken to address the risks faced by retail clients when higher-risk investments are included within an MDA? If so, what measures would be the most effective?	A condition should be included whereby the PDS of the issuer of the financial product must be issued to the client and that the MDA Operator must retain on file evidence that the client has received, read and understood the PDS. Where no evidence is retained by the MDA Operator, the MDA Operator will be in breach of the ASIC Class Order relief.
E1Q6	Do you think there are any other classes of investment products or strategies that should be subject to the same conditions outlined in this proposal? Please identify which investments or strategies, and why.	Yes we think the following should be included: • any MDA that includes a margin loan; and • leveraged foreign exchange contracts. Basically any financial product that has a component of leverage.
E1Q7	Will any of the three options impose costs on your business? If so, please identify the type of costs, their value and whether they would be one-off costs or ongoing	Option (a) will only have a one off cost relating to updating the MDA Contract. This will have to be done anyway so it is not a cost that can be avoided or is unforeseen due to changes arising from FOFA. Option (b) and (c) may in some circumstances result in the AFS Licensee offering the MDA Service having to close the MDA. This will effectively result in a loss of income being the fees that they were earning from delivering such services.

E2 proposal: For the purpose of all three options outlined in proposal E1, we propose to define a ‘non-limited recourse product or arrangement’ as ‘an obligation imposed on a person under an agreement to pay an amount to another person in the event of the occurrence or non-occurrence of something, where the rights of the other person are not limited to any property that the first person has paid or set aside as security for the payment, including property to be transferred by the other person to the first person on completion of the obligation under the agreement’.

ASIC Question		Response
E2Q1	Do you agree with our proposed definition of a ‘non-limited recourse product or arrangement’? If you think an alternative definition should be used, please supply that definition and outline why it is preferred.	We have no objections with this definition.
E2Q2	Should the definition specifically exclude certain types or classes of non-limited recourse products or arrangements that involve lower risks for investors? If so, which investments should be excluded?	If Option (a) is adopted, we do not see the need to exclude any particular types of non-limited recourse products or arrangements. If Option (b) and (c) is adopted then we see the need to exclude Exchange Traded Derivatives from the definition as the proposed conditions effectively reverse the original exemptions issued by ASIC in relation to MDA arrangements.

MDA client that become non compos mentis or of unsound mind

E3 proposal: ASIC proposes to modify the conditions of our relief so that, when a licensed trustee company who provides traditional trustee company services which include acting as an attorney under an enduring power of attorney (EPA):

- (a) is acting as an attorney for an MDA client under an EPA;*
- (b) is providing an MDA service to the client under [CO 04/194]; and*
- (c) the client subsequently loses legal capacity as a result of becoming of unsound mind,*

ASIC will modify the MDA reporting requirements so that the trustee company who is the MDA operator would be required to maintain and prepare the ongoing disclosure documentation required by [CO 04/194] and retain a copy for seven years and:

- (a) give the documentation to the next of kin of the client; or*
- (b) where there is no next of kin, or it is not appropriate or practicable to give the documentation to the next of kin, the documentation may be provided to a guardian, administrator or manager of the client.*

ASIC Question		Response
E3Q1	Do you agree with our proposal to formally incorporate the above relief for trustee companies who are licensed to provide traditional trustee company services and who hold EPAs for MDA clients who subsequently lose capacity? If not please explain why.	We have no objections with this proposal and believe that this should be the minimum requirement set across the board for all MDA Operators or any person or entity that provides a financial service to a client.

ASIC Question		Response
E3Q2	Do you think our proposal to give MDA operators who are licensed to provide traditional trustee company services alternative options for the delivery of MDA documentation is appropriate in these circumstances? If not, please explain why.	In responding to this question we have assumed that the MDA documentation ASIC is referring to is the disclosure documentation to be delivered to the next of kin. We agree with this proposal and think it would be appropriate that the MDA Contract include terms for the client to designate who documents should be delivered to, ie. nominate a next of kin.
E3Q3	Are there any alternative options that should be made available to MDA operators who are licensed to provide traditional trustee company services? If so, please outline what other options should be available and why?	An alternative would be to require the MDA Operator to include in the MDA Contract terms and provisions that deal with what the MDA Operator should do if the client becomes non compos mentis or of unsound mind. These terms and provision should include the nomination of person to contact in such circumstances and the instructions that need to be followed to deal with the client's assets, property and funds which are managed by the MDA Operator. Additionally, the MDA Operator should include an additional risk disclosure explaining the risks involved when they give the traditional trustee company an EPA and the risks that arise if the client becomes non compos mentis or of unsound mind. The issue that needs to be addresses is should the MDA Operator continue managing the clients account if the client becomes non compos mentis or of unsound mind. Within the futures industry if an account owner becomes non compos mentis or of unsound mind the account is deemed to be in default as the client is not contactable and all positions would be liquidated so as to manage the risk for the participant and the client. We think this is a prudent approach in safeguarding the client's funds and positions.
E3Q4	Are there any other alternative requirements or modifications that should be imposed on MDA operators who are licensed to provide traditional trustee company services when a client loses legal capacity because they are of unsound mind? If so, please outline what other requirements or modifications should apply and why?	Refer to comments given for E3Q3.
E3Q5	Aside from MDA operators who are licensed to provide traditional trustee company services, do other MDA operators ever act under enduring powers of attorney for some or all of their MDA clients and how common is this? Please provide details.	Most MDA Operators that we work with act under the authority given to them by the client within the MDA Contract or a limited power of attorney given to them by the client to allow them to give instructions to the execution and clearing broker. We are not aware of any other MDA Operators working under an enduring power of attorney although some representatives may be acting under an EPA given to them by a family member.
E3Q6	Should the proposed reporting arrangements also apply to MDA operators who are not licensed to provide traditional trustee company services, provided that they are also acting under an enduring power of attorney? If so, please outline who this should apply to and why. If not, please outline why not.	Yes all MDA Operators should meet the above requirements regardless of whether or not they operate under an enduring power of attorney. The reason being is that every MDA Operator has the authority to act on behalf of the client and should the client become of non compos mentis or of unsound mind, the MDA Operator needs to report to someone and needs to follow guidelines which are consistent across the industry to deal with these situations. This will protect the client from the MDA Operator making inappropriate investment decisions and it will protect the MDA Operator from the client as the client will not be able to accuse the MDA Operator from releasing their personal information to a third without their authority. We believe that prescribing terms and conditions to be included in the MDA Contract will best service the industry as the client retains control of the situation by nominating a person they trust and the MDA Contract has instruction from the client so the MDA Operator know what it needs to do.

ASIC Question		Response
E3Q7	Will implementing this proposal impose additional costs for these MDA operators? Please give details of any initial and/or ongoing costs that would result.	We do not believe it will, however we feel it will be difficult for MDA Operator's to identify when the client is non compos mentis or of unsound mind. The MDA Operator will have to rely on information provided to them by the client's next of kin or alternate contact.
E3Q8	Should ASIC address any other issues in our terms of relief in relation to MDA clients that lose legal capacity due to unsoundness of mind? Particular issues include: when ASIC should address relief for arrangements that have effect only on loss of capacity; when it is appropriate to provide information to the next of kin or guardians; nomination of alternative recipients in advance of incapacity; the obligations that should apply if a client resumes legal capacity; and whether the same provisions should apply to MDAs involving trusts rather than powers of attorney. Please outline why or why not these issues should be addressed.	Relevant issues have been discussed in response to the above questions. In summary issues that should be considered and applied to all MDA Operators are: • How should all other MDA Operators deal with clients who become of non compos mentis or of unsound mind? There should be a condition requiring such terms to be included in the MDA Contract. • Should clients be given the right to nominate who should be the point of contact if they become of non compos mentis or of unsound mind? There should be a condition requiring such terms to be included in the MDA Contract. • How should notice be given to the MDA Operator to advise them that a person has lost legal capacity due to unsoundness of mind and when the client resumes legal capacity? There should be a condition requiring such terms to be included in the MDA Contract. • How should the client's assets, property and funds managed by the MDA Operator be dealt with under such circumstances? There should be a condition requiring such terms to be included in the MDA Contract.

Breaches of the conditions of relief

E4 proposal: ASIC proposes to modify the conditions of its relief to change the breach reporting timeframe from five business days to 10 business days.

ASIC Question		Response
E4Q1	Do you agree with our proposal to increase breach reporting times to correspond with the breach reporting requirements in s912D(1B)? If not, why not?	We have no objections with this proposal.

E5 proposal: ASIC proposes to provide guidance that, when an MDA operator breaches its conditions of relief, ASIC will consider the nature, scope and effect of any breach to determine a proportionate regulatory response, which may include exclusion from relief.

ASIC Question		Response
E5Q1	Do you agree with our proposed guidance concerning breaches of our conditions of relief? If not, why not?	We have no objections with this proposal.

Providing MDAs to wholesale clients

E6 proposal: ASIC proposes to modify the conditions of our relief to make it explicit that the requirements of our class order only apply to an MDA operator when it is providing an MDA to a retail client, or to a custodian in a custodial arrangement under s1012IA that has been given instruction by a retail client.

ASIC Question		Response
E6Q1	Do you agree with this proposal? If not, why not?	We agree with ASICs approach, however believe that ASIC needs to address a further issue being the licensing requirements relating to the provision of MDA Services to Wholesale clients. Currently there is no consistency in ASIC's approach or industries approach in relation to the licence authorisations held by an AFS Licensee trading on a discretionary basis on behalf of wholesale clients. Some licensees have been granted an authorization to provide MDA Services to wholesale clients only whilst others provide such services with no authorization on their licence. ASIC needs to clearly define in RG179 its position regarding whether or not an AFS Licensee or person acting on a discretionary basis on behalf of a wholesale client needs to hold an authorization to provide advice and deal by issuing MDA Services to wholesale clients. We note that under the F1 proposal ASIC is intending to clarify this however ASIC has no indicated what the requirements are likely to be.

Clarification of ASIC's guidance

F1 proposal: ASIC proposes to revise RG 179 and to provide revised regulatory guidance on the scope and application of our MDA class order relief—in particular, to:

- (a) make it clearer what arrangements are captured by our guidance on MDAs, including by using examples;*
- (b) clarify in our guidance that, for an arrangement to meet the definition of an MDA, the client and the MDA operator intend that the MDA operator will use client contributions of the client to generate a financial return or other benefit (this aligns with the current class order);*
- (c) clarify that we consider MDAs to be financial products, which also involve the provision of several financial services;*
- (d) provide guidance on what AFS licence authorisations are required for:*
 - (i) MDA operators providing MDAs to retail clients only;*
 - (ii) MDA operators who provide MDAs to wholesale clients only;*
 - (iii) MDA operators who provide MDAs to wholesale and retail clients;*
 - (iv) external MDA advisers; and*
 - (v) external MDA custodians; and*
- (e) clarify that, as well as meeting the PI and fraud insurance requirements in [CO 04/194], MDA operators must also meet the requirements imposed on all AFS licensees in RG 126.*

ASIC Question		Response
F1Q1	Do you agree with our proposals to provide revised regulatory guidance on the scope and application of our MDA relief and guidance? If not, please explain why.	We have no objections with this proposal.

ASIC Question		Response
F1Q2	Are there any other topics which relate to the scope and application of our MDA relief and guidance where revised guidance is needed? Please provide details.	1) ASIC should consider providing regulatory guidance in relation to MDA's operated via an IDPS platform and MDA's specifically setup to give investors multiple Investment Options. In particular it is noted that guidance is required in relation to responsibility and service offering of the financial advisor and Investment Manager. Under both of these structures there are essentially three parties involved: • The MDA Operator or IDPS Operator that provides the reporting and structural framework. • The financial advisor which is responsible for setting up the investment program which includes details of the investment options or model portfolios which they have selected as being appropriate for the client to invest in and for giving the client the SOA and Investment Program; • The Investment Manager has a relationship with the MDA Operator or the IDPS Operator to setup an investment strategy and to manage the model portfolio or investment option offered to clients. Under both scenarios there are likely to be multiple Investment Managers and model portfolios and multiple financial advisors. 2) ASIC's interpretation of auto trading systems (eg. Forex robots) which are accessible by Australian residents and are managed worldwide by various people some of which are licenced internationally or locally and others which are not. 3) Under the current RG179 a MDA operator is required to conduct an annual review and give to the client an SOA once it has completed the annual review. Within 3 months of the financial year end the MDA Operator must give to the client an annual investor statement which includes a copy of the annual review. This means that the Annual Investor Statement could include a copy of the SOA which was issued as part of an annual review conducted six months prior to the Annual Investor Statement being issued. It would be prudent for ASIC to reconsider the timing of the annual reviews and issuance of the annual reports to ensure that the information included in the Annual Investor Statement is relevant and current. A framework already adopted by ASIC which could work in this situation are the principles underlying the disclosure day for Fee Disclosure Statements as detailed in RG245.
F1Q3	Do you agree with our proposals to provide revised regulatory guidance on what licence authorisations are required for different MDA activities? If not, please explain why.	Yes, this will ensure there is consistency industry wide which is important.

Conflicts of Interest

F2 proposal: ASIC proposes to provide more detailed regulatory guidance about its expectations for MDA operators in relation to managing conflicts of interest. This guidance will cover:

- (a) the requirement for MDA operators who rely on [CO 04/194] to act in the best interests of the client in providing the MDA services to the client ([CO 04/194], condition 1.12(c));*
- (b) the requirement for MDA operators who rely on [CO 04/194] to prioritise the client's interests ahead of their own, if there is a conflict between the interests of the client and their own interests ([CO 04/194], condition 1.12); and*
- (c) specific guidance for all MDA operators in relation to the general obligation to manage conflicts of interest set out in s912A(1)(aa).*

This guidance is intended to supplement the guidance provided for all AFS licensees in Regulatory Guide 181 Licensing: Managing conflicts of interest (RG 181): see the draft regulatory guidance in paragraphs 104–124 in the appendix to this paper.

ASIC Question		Response
F2Q1	Do MDA operators need ASIC guidance to assist them to comply with their obligations under [CO 04/194] and under s912A(1)(aa) in relation to conflicts of interest management?	We have no objection with the proposal. We think that some of the comments detailed in the draft could be included in RG181 next time it is updated.
F2Q2	Do you agree with our proposed approach to guidance on conflicts of interest management by MDA operators?	We have no objection with the proposal.
F2Q3	Are there any other topics relevant to conflicts of interest management by MDA operators that our guidance should cover? If so, please identify the topics where further guidance is needed.	1) In relation to MDA Services whereby model portfolios are offered to clients with different investment managers. In some circumstances the Investment Manager and the financial advisor may be the same person. A conflict of interest may arise in their role as the Investment Manager (ie. responsible for making trading decisions for the model portfolio without taking into consideration the specific circumstances of each client who invests in the model portfolio) versus the financial advisor (ie. responsible for assessing which model portfolios are appropriate for the client to invest in). 2) When MDAs were regulated by the ASX24 (previously known as SFE) there was a specific requirement for the disclosure of conflicts of interest in the disclosure document. Based on the current structure clients would benefit if there is a specific requirement to disclose conflicts of interest in the MDA Contract (possibly via the Investment Program).
F2Q4	Where an MDA operator has a material conflict of interest in relation to a specific transaction, should they be required to obtain the express consent of the client before undertaking that transaction? Please explain why or why not this should be an explicit requirement.	Yes we feel that this would be more appropriate than obtaining approval from the Compliance Officer. A Compliance Officer generally is not RG146 compliant nor do they have trading experience so generally they would not be the most appropriate person to nominate to approve investment decisions. Therefore, we feel that the proposal under paragraph 115(b) should be amended to 'the requirement for all investment decisions to be approved by the client or by the Investment Committee or Responsible Manager responsible for the provision of MDA Services.' This is extremely important considering that personal advice is deemed to be provided when offering MDA Services.

FOFA reforms and MDAs

F3 proposal: ASIC proposes to provide additional guidance in RG 179 to complement the guidance ASIC is providing on the legislative changes arising out of the FOFA reforms, addressing the specific circumstances of MDAs and MDA operators in relation to:

- (a) the best interests duty and related obligations;*
- (b) fee disclosure statements; and*
- (c) the opt-in requirement.*

ASIC Question		Response
F3Q1	Do you agree with our proposals to provide MDA-specific regulatory guidance on the FOFA reforms? If not, please explain why.	We have no objections to this proposal.
F3Q2	Are there any other aspects of the FOFA reforms where specific guidance from ASIC is needed on applying these provisions to advice about or the operation of MDAs? Please identify which aspects, if any, and why additional MDA-specific guidance is needed.	When providing personal advice to clients an AFS Licensee will need to ensure that the advice provided is appropriate for the client. We note that in reference to an MDA the MDA Operator or external MDA advisor is considered to be providing personal advice to the client and we note that at the time of issuing the SOA to the client the MDA Operator and/ or the external MDA advisor will need to ensure that the advice is appropriate. We are of the view that MDA Operators, external MDA advisors and Investment Manager of model portfolios will need to know how Section 961G of the Corporations Act (ie. the requirements to provide appropriate advice) applies to them each and every time they make a trading decision for the client. More specifically what documentation, if any, does the MDA Operator, financial advisor and Investment Manager, need to retain to evidence that the trades entered for the client were appropriate at the time.

Best interests duty and related obligations

F4 proposal: ASIC proposes to provide guidance consistent with our updated Regulatory Guide 175 Licensing: Financial product advisers—Conduct and disclosure (RG 175) about the interaction of the new best interests duty and related obligations (which apply to all AFS licensees and their representatives that provide personal advice to clients) and the conditions of relief in [CO 04/194] concerning the provision of financial advice to MDA clients: see the draft regulatory guidance in paragraphs 125–128 in the appendix to this paper.

ASIC Question		Response
F4Q1	Do MDA operators need specific ASIC guidance to assist them to comply with their obligations under the best interests duty and related obligations?	Yes in particular the requirement to provide appropriate advice when making trading decisions for the client on a discretionary basis (refer to comments provided in response to F3Q2)
F4Q2	Do you agree with our proposed guidance on the best interests duty and related obligations as they specifically apply to MDAs operated under [CO 04/194] and RG 179? If not, please provide details.	We believe that more guidance needs to be provided in reference to section 961G which relates to the provision of appropriate advice (refer to comments provided in response to F3Q2 and F4Q1).

Fee disclosure statements

F5 proposal: ASIC proposes to provide guidance consistent with Regulatory Guide 245 Fee disclosure statements (RG 245) about the interaction of the requirements to give annual fee disclosure statements to retail clients and the conditions of relief in [CO 04/194] requiring annual financial advice: see the draft regulatory guidance in paragraphs 129–134 in the appendix to this paper.

ASIC Question		Response
F5Q1	Do you agree with our proposals to provide MDA-specific regulatory guidance on the requirement to give annual fee disclosure statements? If not, please explain why.	No. An MDA Operator generally charges a management fee (ie. this generally covers the costs of administering the account eg. reporting requirements) and a performance fee (ie. this is based on the performance of the MDA). An MDA Operator generally does not charge a client for the provision of advice unless it is deemed that advice is provided each and every time a trade is placed, in which case the performance fee would be the fee for giving advice. In saying all of this the wording proposed in paragraphs 129 – 134 actually confuses and complicates things. A better option would be to synchronise all the reports that need to be sent to the client and require the MDA Operator to include the Fee Disclosure Statement in the Annual Investor Statement. This will ensure clients are getting one clear and concise report at the start of each financial year which is when they most need that information for tax purposes anyway. ASIC should aim to ensure that the clients get all the information they need in a clear and concise manner and ensure that it is presented in a manner which they will read and understand rather than many reports randomly sent throughout the year.
F5Q2	Would our proposed guidance on the requirement to give annual fee disclosure statements assist MDA operators to comply with the new requirements that will be introduced as a result of the FOFA reforms? If not, please explain why.	Yes to the extent that it allows the MDA Operator to disclose the whole amount of the fee. This is important as essentially fees charged for an MDA are not structured specifically to be paid for the provision of advice unless a performance fee is deemed to be a fee for the provision of advice. What may further assist MDA Operators is the inclusion of examples of what ASIC and consequently industry consider to be fees for the provision of advice in the case of an MDA.
F5Q3	Do you agree with our proposed guidance on the requirement to give annual fee disclosure statements as they apply to MDAs operated under [CO 04/194] and RG 179? If not, please provide details.	Yes however they should be integrated and issued as part of the Annual Investor Statement so as to ensure the process is streamlined and clients are receiving the information they require in a clear and concise manner.

Opt-in requirements

F6 proposal: ASIC proposes to provide guidance about the interaction of the new opt-in requirement requiring fee recipients to send renewal notices and the conditions of relief in [CO 04/194] which require annual financial advice to be provided by the MDA operator or an external MDA adviser to a retail client who invests in an MDA: see the draft regulatory guidance in paragraphs 135–139 in the appendix to this paper..

ASIC Question		Response
F6Q1	Do you agree with our proposals to provide MDA-specific regulatory guidance on the interaction of the opt-in requirement and the conditions of relief in [CO 04/194]? If not, please explain why.	Provided that the opt-in provisions can be met by including the renewal notice in the Annual Investor Statement then administratively the process should be easy to streamline into the processes adopted by the MDA Operator. The other matter that should be considered is informing clients of the purpose of the Fee Disclosure Statement and the process involved with renewing ongoing fee arrangements. Such disclosure should be done via the MDA Contract and a risk warning should be included to inform clients that a failure to sign and return the renewal notice could result in the MDA Contract being terminated and as a result the positions held in the MDA could be liquidated at an unfavourable price resulting in losses for the client.
F6Q2	Would our proposed guidance on the opt-in requirement and the conditions of relief in [CO 04/194] assist MDA operators to comply with the new requirements that will be introduced as a result of the FOFA reforms? If not, please explain why	Yes
F6Q3	Do you agree with our proposed guidance on the opt-in requirement and the conditions of relief in [CO 04/194]? If not, please provide details.	Generally yes, however we believe that further clarification is required surrounding disclosure to clients regarding the risks of loss relating to a failure to opt-in (refer to comments included in response to F6Q1).

ASX Guidance Note 29

F7 proposal: ASIC proposes to withdraw ASX Guidance Note 29, which contains guidance about MDAs for market participants, and incorporate that guidance in the updated RG 179, subject to any modifications arising out of our proposed changes to our guidance or relief.

ASIC Question		Response
F7Q1	Do you agree with our proposal to withdraw ASX Guidance Note 29 and to incorporate the guidance contained in the guidance note in the updated RG 179? If not, please explain why.	We have no objections with this proposal.

Continuing guidance and relief

G1 proposal: ASIC proposes to retain key elements of our current approach to MDAs, including:

- (a) our current definition of an MDA;*
- (b) the enhanced FSG conditions for MDA operators, except where these are modified by the proposals discussed in this paper;*
- (c) the MDA contract conditions, except where these are modified by the proposals discussed in this paper;*
- (d) the requirement for an investment program to be formulated and reviewed on an annual basis, through personal advice, except where the current conditions are modified by the proposals in this paper;*
- (e) the asset holding conditions that currently apply to MDA operators;*
- (f) the conditions attached to the rights relating to portfolio assets that currently apply to MDA operators;*
- (g) the prohibition on an MDA operator investing client assets in most unregistered schemes;*
- (h) the PI and fraud insurance conditions that currently apply to MDA operators (as contained in [CO 04/194] and RG 126);*
- (i) the requirement to report all transactions to clients on a quarterly basis, or provide substantially continuous electronic access to this information, and report all transactions on an annual basis—except for the proposed modification for MDAs offered through a regulated platform;*
- (j) the requirement for MDA operators to obtain an audit report on whether the MDA operator:*
 - (i) had appropriate documented measures in place to ensure its compliance with the requirements of the Corporations Act and the class order; and*
 - (ii) had appropriate internal controls and procedures to ensure that transaction reports were not materially misstated;*
- (k) the specific conditions that apply to MDA operators and custodians when an external custodian is used; and*
- (l) the specific conditions that apply to MDA operators and dealers when dealers are contracted by the MDA operator.*

ASIC Question		Response
G1Q1	Do you agree with our proposal for continuing guidance and conditions of relief in the areas outlined above? If not, which guidance and/or conditions of relief do you think need to be reviewed and why?	We have no objections with this proposal.
G1Q2	Are there any contradictions or inconsistencies that arise out of retaining these elements of our guidance and conditions of relief while implementing some or all of the proposals contained elsewhere in this consultation paper? If so, please give details.	We note that Part (l) of the G1 proposal makes reference to specific conditions that apply to MDA operators and dealers when dealers are contracted by the MDA operator will be retained. We advise that there are no specific conditions in the current regulatory guide that apply to dealers. We also note that the term dealers is not mentioned in the current regulatory guide. It is recommended that ASIC explain what specific conditions it is referring to and what type of entity it intends to capture by the word dealer’.

G2 proposal: ASIC does not propose any changes to the regulatory requirements that apply to MDAs that are registered schemes.

ASIC Question		Response
G2Q1	Do you agree with our proposal not to make any changes to the regulatory requirements that apply to MDAs that are registered schemes? If not, please outline what changes are required and why.	We have no objections with this proposal.

G3 proposal: ASIC proposes to continue to give relief from the requirements that:

- (a) an MDA must be operated as a registered scheme;*
- (b) disclosure must be provided, as required by Pt 7.9 of the Corporations Act, in relation to a financial product that is:*
 - (i) a right to MDA services operated by the MDA operator; or*
 - (ii) held by a client because a legal or equitable interest in the financial product is held on behalf of the client as part of an MDA; and*
- (c) disclosure must be provided, as required by Ch 6D of the Corporations Act, for an offer to a client of securities to be held as part of an MDA.*

ASIC Question		Response
G3Q1	Do you agree with our proposal for continuing relief in the areas outlined above? If not, why not?	We have no objections with this proposal.
G3Q2	Are there any contradictions or inconsistencies that arise out of retaining these elements of our relief while implementing some or all of the proposals contained elsewhere in this consultation paper? If so, please give details.	We are not aware of any contradictions or inconsistencies.

New operators

H1 proposal: ASIC proposes that new MDA operators comply with any revised regulatory guidance and conditions of relief in the amended class order(s) from the date on which the guidance and class order(s) are released.

ASIC Question		Response
H1Q1	Do you agree with this proposal? If not, why not?	We have no objections with this proposal.
H1Q2	Is the proposal for new MDA operators to start complying with the new requirements when they are released reasonable? If not, why not?	Where an AFS Licensee receives its AFS Licence after the release of the regulatory guide we have no objections with this proposal.

Established operators

H2 proposal: ASIC proposes to provide existing MDA operators with staged transition periods to comply with any revised regulatory guidance and conditions of relief in the amended class order. Specifically, ASIC proposes that:

- (a) established AFS licensees currently offering family accounts under our no-action letter comply with our proposal to require family accounts to be operated in accordance with certain conditions from 1 July 2014;*
- (b) established AFS licensees currently offering MDAs under our regulated platforms no-action letter comply with our proposal to regulate these MDAs similarly to other MDAs within two years from the time our revised regulatory guidance and class order are issued (see proposal B5);*
- (c) established MDA operators, including those currently offering MDAs in reliance on either of the two no-action positions, comply with the revised financial resource requirements from 1 July 2014; and*
- (d) all established MDA operators comply with any other revised requirements and regulatory guidance from 1 July 2014.*

ASIC Question		Response
H2Q1	Do you agree with the proposed timeframe and transitional arrangements? If not, please indicate what timeframes you think are more appropriate.	We have no objections with this proposal.