Submission on discussion document: *Exposure draft: Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2019*

Your name and organisation

Name	Rebecca Sellers, Chief Conduct Officer
Organisation	Partners Life

Responses to discussion document questions

1	Will the proposed record-keeping requirement be workable in practice?

Partners Life strongly supports the principle that records should be kept of all financial advice. However further consideration needs to be given to the practicalities of this.

Failure to comply with the duty to make prescribed information available exposes licensees to the risk of significant penalties. We are concerned that the focus in the regulations on "informing" customers could lead to a legalistic approach to disclosure. Consideration should be given to ways to refocus the regulations to ensure that licensees can focus on customer understanding of relevant information, rather than providing significant amounts of information as a defence to potential liability.

In addition, the following features of the proposals impact their workability in practice:

- Most organisations have well established processes for documenting and storing "personalised advice". Systems and processes for "class advice" are not so well developed.
- The change between the definition of "wholesale client" from the Financial Advisers Act 2008 to the Financial Markets Conduct Act 2013 (as amended by the Financial Services Legislation Amendment Act 2019) (FMCA) will lead to different clients being caught by the scope of the disclosure obligations.
- Further clarity is required around the obligation to keep records for 7 years, particularly where there are multiple interactions with a client.
- Further consideration is required to enable information to be efficiently stored and retrieved. The current requirements to maintain details of the identity, date and all information may be too prescriptive. The cost of implementing this requirement may significantly outweigh any benefit to the customer.
- Further consideration is required regarding the obligation to disclose conflicts of interest in a way that is meaningful to clients.

The differences between the old and new regimes will place a substantial burden on the systems and process of prospective licence holders. Systems and process changes take time to develop, test and embed in an organisation. In the context of a new regime, where the proposed regulations are still in draft form 7 months from commencement and no draft licensing conditions have yet been released, the burden on the industry is disproportionate.

We propose that a transitional period until June 2022 would be appropriate. During the

transition period licence holders should only be required to comply where "personalised advice" is provided to a "retail client". The definitions of "personalised advice" and "retail client" should be as set out in the Financial Advisers Act 2008.

2	Do you have any comments on the drafting of the Regulations that will require information to be made publicly available?

Regulation 229C(5) requires further consideration to ensure that it operates effectively with current and future web-site design practices.

Increasingly websites do not contain a 'home page' of information. This is because the purpose of most websites is not to provide a dossier of information but to generate interest in a brand.

We propose that regulation 229C(5) be amended to remove any reference to a "home page". Alternatively, the requirement could be amended to a reference to a "landing site", but our view remains that the regulation would be better with less technology specific requirements. Section 67 of the Insurance (Prudential Supervision) Act 2010 provides a good example of how such a provision can be future-proofed.

Further consideration should be given as to how these requirements will impact a licensee that trades under a brand name that is not the same as the name of the licensee. For example, some dealer groups may obtain a licence, but will only provide services to customers under a different brand name. It is important to give clarity about brands to ensure customers engage properly with the disclosed information.

Further consideration should also be applied to future-proofing the requirement that information be "available, free of charge – as a hard copy or an electronic copy, on request to P". It should be clear that the licensee can choose to offer only electronic copies of disclosure documents. For environmental and commercial reasons, paper is becoming increasingly redundant.

Schedule 21A

Clause 2 – Meaning of conflict of interest and commission or other incentive

The definition of "conflict of interest" should be firmly aligned to the definition in the FMCA. This is for consistency and because it is not appropriate to disclose non-material conflicts of interest.

3	Do you have any comments on the draft Regulations that will require the disclosure of information when the nature and scope of the advice is known?

Multiple advice interactions with a client over time will have systems and process implications requiring significant work within organisations. Enough transition time must be provided to enable compliance to be assured.

Regulation 299D (3) and (4)

These provisions could be read to encourage disclosure of large amounts of information to ensure clients are well "informed". Our understanding is that this is not the intention of the regulation. Please consider if this provision should include a repetition of the "clear, concise and effective" requirement.

Schedule 21A

Clause 5(2)(c)

We submit that clause 5(2)(c) should be clause 5(2)(b)(iii). Clause 5(2)(a) is about the financial advice provider. Clauses 5(2)(b) and 5(2)(c) are about the individual giving advice. Therefore, the drafting would be clearer if these were both part of 5(2)(b). The regulation would then read:

> *"Identifying information*
>
> (a) P's name and, if the information is given as a hard copy or an electronic copy, P's contact details:
>
> (b) if A will give advice to the client on behalf of P,—
>
> > (i) A's name and, if the information is given as a hard copy or an electronic copy, A's contact details; and
> >
> > (ii) a statement that A gives advice on behalf of P:
> >
> > (iii) if A is a financial adviser, a statement that A is a financial adviser:"

Clause 5(2)(e)

Further consideration should be applied to the disclosure of conflicts of interest to ensure that the information provided is meaningful for clients. This may be an area where the Financial Markets Authority could provide guidance to the industry during a transitional period.

4	Do you have any comments on the draft Regulations that will require the disclosure of information when the financial advice is given?

Multiple advice interactions with a client over time will have systems and process implications requiring significant work within organisations. Enough transition time must be provided to enable compliance to be assured.

Regulation 299E(3) and (4)

These provisions could be read to encourage disclosure of large amounts of information to ensure clients are well "informed". Our understanding is that this is not the intention of the regulation. Please consider if this provision should include a repetition of the "clear, concise and effective" requirement.

Schedule 21A

Clause 6(1)(c)

We submit that clause 6(1)(c) should be clause 6(1)(b)(iii). Clause 6(1)(a) is about the financial advice provider. Clauses 6(1)(b) and 6(1)(c) are about the individual giving advice. Therefore, the drafting would be clearer if these were both part of 6(1)(b). The regulation would then read:

> *"Identifying information*
>
> (a) P's name and, if the information is given as a hard copy or an electronic copy, P's contact details:
>
> (b) if A will give advice to the client on behalf of P,—
>
> > (i) A's name and, if the information is given as a hard copy or an electronic

	copy, A's contact details; and (ii) a statement that A gives advice on behalf of P: (iii) if A is a financial adviser, a statement that A is a financial adviser:" *Clause 6(1)(e)* Further consideration should be applied to the disclosure of conflicts of interest to ensure that the information provided is meaningful for clients. This may be an area where the Financial Markets Authority could provide guidance to the industry during a transitional period. *Clause 6(1)(g)-(i) Complaints procedure and Dispute resolution process* Inclusion of this information is not necessary and will increase the volume and complexity of information received by a client. It would be more appropriate to reference the existence of such procedures and processes and provide details of where more information can be located (e.g. on the licensee's website).
5	Do you have any comments on the draft Regulations that will require the disclosure of a provider's complaints handling and dispute resolution processes when a complaint is received?
	Our view is that in this legislation a "complaint" should be limited to a complaint about the financial advice service. As currently drafted 229F(b) is too wide as it refers to any "service". Other complaints will be caught by the provisions of the Financial Services (Registration and Dispute Resolution) Act 2008 and any new legislation concerning the conduct of financial institutions.
6	Do you have any comments on the draft Regulations that set the manner in which information must be disclosed?
	To future-proof the regulations, please clarify that a business can choose to only provide electronic copy documents. As set out in our answers to questions 3 and 4 above, Partners Life strongly supports the requirement that disclosure is clear, concise and effective. We suggest that this is linked to the purpose section of each regulation. It may be appropriate for the FMA to develop guidance to ensure that the disclosure responds to the client's information needs and does not become overly legalistic.
7	Are there instances in your business when regulation 229D might apply to someone who is not the one to give advice to the client? Please give examples and provide any comments on how the draft Regulations apply in such scenarios.
	No comment.
8	Do you have any further comments on new regulation 229A to 229H of the draft Regulations?
	We have no further comments.

9	Do you have any further comments on new Schedule 21A in the draft Regulations?

We have no further comments.

10	What (if any) transitional provisions should be included in the regulations?

Partners Life strongly supports the principle that records should be kept of all financial advice. However further consideration needs to be given to the practicalities of this.

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