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**ASIC relief for super fund trustees (and their authorised representatives)**

The Australian Securities and Investments Commission (ASIC) has released a new Class Order [CO 09/210] for superannuation trustees. This Class Order aims to provide relief from section 945A of the *Corporations Act 2001* to superannuation fund trustees (and their authorised representatives) who provide personal advice to fund members about their existing superannuation fund. This Class Order is not mandatory and trustees do not have to rely on the relief if they choose not to.

This ASIC Class Order commenced on 9 July 2009.

**What are the obligations under section 945A of the Corporations Act?**

Under section 945A (the 'suitability rule'), an adviser must only provide personal advice if:

- they make reasonable inquiries about and determine the investor's relevant personal circumstances;
- having regard to information obtained from the investor about those personal circumstances, the adviser gives such consideration to, and conducts such investigation of, the subject matter of the advice as is reasonable in all of the circumstances; and
- the advice is appropriate to the investor having regard to that consideration and investigation.

Where personal advice is given, a Statement of Advice (SOA) is generally required. The SOA allows the investor to make a considered and informed decision about whether to act on the advice. It also provides a record of the advice, which may be important in case of a dispute or for a compliance review.

**What does the class order propose? (see table 1 on page 3)**

The Class Order proposes relief from the requirements in section 945A above for trustees of regulated superannuation funds and their authorised representatives where:

1. The trustee has an Australian financial services licence (AFS licence) that authorises them to provide personal advice about superannuation.
2. They have informed the member that the advice is limited to the member's existing interest in the trustee's superannuation fund.

3. The advice relates to the member's existing interest in the superannuation fund and does not also relate to:

- ⊘ any other financial product (except eligible insurance in relation to the member's interest in the fund); or
- ⊘ anything mentioned in subsection 765A(1) of the Corporations Act that would be a financial product but for that subsection (except eligible insurance in relation to the member's interest in the fund).
- ⊘ The fund is not a self-managed super fund.

### **What are the conditions of the relief? (see table 2 on page 3)**

For trustees to rely on the relief set out in the proposed Class Order, they must comply with a number of conditions. These are:

- ⊘ They must inform the member in writing that they have provided the advice in reliance on the instrument of relief and, accordingly, the advice provided is limited to the member's existing interest in the fund. This does not need to be in the form of an SOA.
- ⊘ If acting on the advice would result in an increase in any fees, costs, charges, insurance premiums or other remuneration (including commission) or other benefits payable, they must notify the member of this increase **in writing and in dollars**. This notification could occur in a SOA.

### **What type of advice does this relief apply to?**

ASIC's proposal only covers **personal advice** to a member about their **existing interest in a superannuation fund**, for example:

- ⊘ choosing an investment option the fund offers;
- ⊘ increasing voluntary contributions;
- ⊘ buying life insurance within the fund; and
- ⊘ accessing superannuation early if the member experiences financial hardship.

### **What type of advice this relief does not apply to?**

The proposal **does not cover** advice about superannuation that goes beyond the member's existing interest in a superannuation fund. For example, it does not cover advice about:

- ⊘ switching superannuation funds;
- ⊘ consolidating money held in several funds into one fund;
- ⊘ more complex retirement planning issues;
- ⊘ insurance a member holds outside their superannuation fund; and
- ⊘ allocating money between superannuation and other financial products.

### **What impact does the relief have on trustees?**

If trustees chose to rely on the relief, the relief may:

- ⊘ facilitate provision of intra-fund advice by the superannuation fund trustees or their authorised representatives;
- ⊘ require them to have an AFSL licence authorising them to provide personal advice; and
- ⊘ require them to have adequate processes and procedures in place to comply with licensing and disclosure obligations.

## What impact does the relief have on providers of financial advice?

Entities that are not superannuation fund trustees, such as financial advisers or outsourced advice providers of superannuation fund trustees are not eligible to rely on the ASIC proposed relief.

Those entities need to comply with s945A if they choose to provide intra-fund advice.

**Table 1**

All of these circumstances must apply to rely on the relief:	
Your role	You must be the trustee of a regulated superannuation fund or an authorised representative of the trustee.
AFS licence	The trustee must hold an AFS licence authorising the provision of personal advice about superannuation.
Scope of the advice	<p><b>The personal advice provided must only be about a member's existing interest in the trustee's fund.</b></p> <p>You must inform the member that you are limiting the scope of the advice to their interest in the trustee's fund.</p> <p>The personal advice must not relate to:</p> <ul style="list-style-type: none"> <li>⊘ An investment strategy that involves a financial product that you are required to provide disclosure about under s101.21A; or</li> <li>⊘ An election by the member to receive a pension from their superannuation interest in the accumulation phase; or</li> <li>⊘ The issue of a new interest in the fund, which is taken to occur because of a change to the member's interest in a sub-plan, where the member has an option, choice or election about the change under the governing rules of the fund.</li> </ul>
Type of fund	The fund must not be a self-managed superannuation fund.

**Table 2**

You must meet all of these conditions to rely on the relief:	
Relying on the relief	<p>You must inform the member in writing when, or as soon as practicable after, you provide the advice that:</p> <ul style="list-style-type: none"> <li>⊘ you are providing the advice relying on the relief in [CO 09/210]; and</li> <li>⊘ the advice is limited in scope (i.e. you have only considered the member's existing interest in the trustee's fund).</li> </ul>
Increases in fees, costs, charge, premiums, remuneration or other benefits	<p>Where the personal advice you provide would result in an increase in any:</p> <ul style="list-style-type: none"> <li>⊘ fees, costs or charges incurred in relation to the member's interest in the fund;</li> <li>⊘ premiums attributable to the member for insurance attached to the member's interest in the fund; or</li> <li>⊘ remuneration (including commission) or other benefits payable for the member's interest in the fund,</li> </ul> <p>You must notify the member in writing of the increase as an amount in dollars when, or as soon as practicable after, you provide the advice.</p>

Sources:

Australian Securities and Investments Commission, Regulatory Guide 200 Advice to super fund members, 9 July 2009. [http://www.asic.gov.au/asic/pdfflib.nsf/LookupByFileName/RG200.pdf/\\$file/RG200.pdf](http://www.asic.gov.au/asic/pdfflib.nsf/LookupByFileName/RG200.pdf/$file/RG200.pdf)

Australian Securities and Investments Commission, regulation impact statement, 9 July 2009. [http://www.asic.gov.au/asic/pdfflib.nsf/LookupByFileName/RIS-co-09-210.pdf/\\$file/RIS-co-09-210.pdf](http://www.asic.gov.au/asic/pdfflib.nsf/LookupByFileName/RIS-co-09-210.pdf/$file/RIS-co-09-210.pdf)



## Investment performance ranking of superannuation firms

An article published in the *Sunday Morning Herald* indicates that the Australian Prudential Regulation Authority (APRA) will soon launch SuperWatch, the first attempt to meaningfully rank the investment performance of superannuation funds holding investments worth more than \$1 trillion altogether.

According to the article, APRA aims to simplify existing confusion surrounding the performance of thousands of superannuation options by publishing league tables.

APRA's league tables will highlight the performance of 200 or so large superannuation funds rather than the multitude of investment options within each fund.

This new measure follows a study released by APRA last week, which measured the performance of 115 major Australian superannuation firms. The study showed that higher operational costs were correlated significantly with lower net investment performance.

The study also showed that the average superannuation investor would be better off in a "passive" index-based fund rather than paying extra fees to be in an actively managed fund.

It also found that the average fund underperformed passive index benchmarks by about 1 per cent annually between 2002 and 2006.

The article states that APRA researchers are still working on their methodology for presenting the rankings, with the likelihood that any measurement will provoke considerable controversy.

#### Sources:

Australian Prudential Regulation Authority, Investment performance ranking of superannuation firms, June 2009. [http://www.apra.gov.au/Research/upload/SA\\_WP\\_IPRSF\\_062009\\_ex.pdf](http://www.apra.gov.au/Research/upload/SA_WP_IPRSF_062009_ex.pdf)

Sunday Morning Herald, *Super fund rankings ready to go online*, 13 July 2009.

#### [aonmastertrust.com.au](http://aonmastertrust.com.au)

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