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ASIC consults further on facilitating online financial services disclosures

In April 2008, ASIC released a consultation paper (CP 93) to stimulate discussion on how to facilitate the use of online financial services disclosures.

Following feedback from the industry, ASIC has issued another consultation paper (CP 121) seeking further feedback on how to better facilitate the delivery of financial services information online.

In its revised paper, ASIC proposes the following:

- providing relief to give providers certainty about giving PDSs, FSGs and SoAs to retail clients via hyperlinks and references to website addresses; and
- providing good practice guidance on online disclosure.

Please see below for further details. Alternatively, you may want to access the paper by clicking on this link:

<http://www.asic.gov.au/ASIC/asic.nsf/byHeadline/09-198AD%20ASIC%20consults%20further%20on%20facilitating%20online%20financial%20services%20disclosures?opendocument>

ASIC's proposed good practice guidance

- ASIC proposes to encourage providers to apply their good practice guidance when delivering financial services disclosures online. In some cases, the guidance reflects regulatory requirements for delivering certain financial services disclosures. ASIC's proposed guidance includes the following:
 - disclosure documents should be easy to retrieve and read. Clear instructions should be provided on how to access the disclosure;
 - retail clients should be able to clearly identify an electronic document as part of a specified disclosure document;
 - providers should be satisfied on reasonable grounds that the retail client or their agent has received a copy. For example, ASIC explains that reasonable grounds would include sending the disclosure to an email address provided by the retail client and tracking delivery of the email by return receipt. ASIC also suggests that providers should send an email or a paper notice to an address provided by the retail client notifying the client when the disclosure becomes available online;

- retail clients should be able to keep a copy so that they can access the disclosure in the future. This could include the ability to download, save or print a copy of the disclosure; or alternatively, ensure that hyperlinks or website addresses continue to be accessible;
- the provider must maintain a copy of all versions of the disclosure and use technology, where possible, to maintain records of when each version was available. These records should be kept for a period of at least 7 years;
- retail clients should be able to change their mind about receiving disclosures online at any time and at no cost. Providers must make it easy for retail clients to unsubscribe from receiving disclosures online and to request paper copies of the disclosures at no cost; and
- disclosure documents should be delivered in a way that does not unreasonably expose retail clients to security risks (i.e. phishing).

ASIC invites comments on the revised proposals in the consultation paper. Submissions should be emailed to policy.submissions@asic.gov.au by 11 December 2009.

Source

Australian Securities & Investments

Commission, ASIC consults further on facilitating online financial services disclosures, 13 October 2009.

<http://www.asic.gov.au/ASIC/asic.nsf/byHeadline/09-198AD%20ASIC%20consults%20further%20on%20facilitating%20online%20financial%20services%20disclosures?opendocument>

ASFA's submission Cooper Review

The Super System Review (Cooper Review) is examining Australia's superannuation system in three phases:

- Phase One: Governance;
- Phase Two: Operation and Efficiency; and
- Phase Three: Structure

Submissions on the Cooper Review's first issues paper on the governance of superannuation funds released in late August were due last week.

In its submission, ASFA has suggested the following 10 key improvements to the superannuation system for consideration by the Cooper Review:

- Minimum competency standards and ongoing CPD requirements for trustees (including SMSF trustees, but at a different level).
- Governance policy on trustee composition, selection, removal, tenure and succession planning.
- Independent directors should not be a requirement but any impediments to appointing independent trustees should be removed.
- Conflict of Interest rules, including tests, such as member perception, impact on board discussions and unfair advantage to third parties.
- No regulatory direction or prescription on investments.
- Consolidation of the industry: size should not matter.
- Rationalisation of legacy products: removal of legal constraints and adverse tax consequences.
- CGT relief on all fund mergers.
- SIS legislation should be amended to reflect the different duties that trustees may have in relation to different sub-trusts or groups of members as well as different product structures.
- A single regulator for the entire financial services industry and, ideally, one centralised piece of legislation for superannuation.

Source

Association of Australian Funds of Australia, The Voice: 19 October 2009.

Cooper Review - Phase 2

The government has released for public consultation a paper dealing with the operation and efficiency of Australia's superannuation system, being phase two of the Cooper Review.

The review is a three-phased consultation process. Phase one focused on governance and phase three will focus on structure.

The paper notes that efficiency operates on different levels. For example, from a government's perspective, an efficient superannuation system is one that imposes the least demand on its fiscal position via the aged pension and its regulatory and taxation systems, while still achieving the government's policy objectives. For most members, efficiency means the highest end benefit for a given level of contributions during the accumulation phase.

However, the review panel considers there is much greater scope to improve system efficiency overall by refining and streamlining operational processes and reducing costs and leakages. Some of the key issues raised in the paper include:

- ⌵ are fees too high?
- ⌵ is it necessary to have fewer, but much bigger, superannuation funds?
- ⌵ can trustees justify using active managers so widely?
- ⌵ can default funds be better designed?
- ⌵ is so much choice costing members unnecessarily?
- ⌵ should rebates be banned?
- ⌵ is percentage charging the right model for superannuation?
- ⌵ do administrators need to be more directly regulated?

Please refer to this link for further information: http://www.supersystemreview.gov.au/content/html/mediareleases/2009/Operation_&_Efficiency_Key_Issues.pdf.

Papers on the scope of the review, phase one and phase two of the review are available at www.supersystemreview.gov.au.

Interested parties are invited to make submissions on phase two of the review by 14 December 2009.

It is anticipated that preliminary recommendations will be released in March to April 2010.

Source

Australian Government, Review into the governance, efficiency, structure and operation Australia's superannuation system, Operation and Efficiency - Key Issues, 16 October 2009. <http://www.supersystemreview.gov.au/content/content.aspx?doc=html/mediareleases.htm>

ASIC releases new proposals on superannuation forecasts

ASIC proposes to grant relief to superannuation funds from the personal advice, conduct and disclosure requirements of Pt 7.7 of the Corporations to enable them to provide superannuation forecasts to their existing members: [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/CP122.pdf/\\$file/CP122.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/CP122.pdf/$file/CP122.pdf).

ASIC has released a draft regulatory guide that:

- ⌵ explains the nature of the relief for super fund trustees who would like to provide their members with a retirement projection with their periodic statements, on the condition that they use certain assumptions (to be set by ASIC on the advice of the Australian Government Actuary); and
- ⌵ offers guidance for providers of superannuation product calculators as to how they can best comply with our current relief for providers of financial product calculators.

ASIC's proposals follow on from a consultation paper released in July 2008, Consultation Paper 101 (CP 101) Superannuation forecasts. ASIC is seeking comments on the updated version of CP 101 – CP 102 and on the draft regulatory guide papers by 11 December 2009.

Background

ASIC had already provided relief for generic financial calculators in [CO 05/1122]. However this relief does not apply to a retirement projection provided to a member without user input. This means that providers of retirement projections cannot take advantage of the relief given in [CO 05/1122]. Currently, a provider of a retirement projection would need to comply with the personal advice requirements of the financial services licensing regime, including providing a Statement of Advice with the projection.

ASIC suggests that the provision of superannuation forecasts can be best facilitated by giving relief from the requirements of the Corporations Act. This is because a superannuation forecast is likely to involve giving personal financial product advice, as it takes into account a member’s objectives, financial situation or needs. Therefore without the relief, providers of superannuation forecast would need to hold an AFS licence and comply with the personal advice requirements of the licensing regime.

The draft regulatory guide describes the situations in which ASIC proposes to grant relief from licensing, advice, conduct and disclosure requirements under the Corporations Act for the provision of such forecasts. This will allow super funds to provide their members with an estimate of the likely balance of their superannuation funds on retirement (retirement projection) with their periodic superannuation statements.

ASIC’s view is that when properly designed, projections can provide fund members with clear, effective, and useful information, even if providers are not required to comply with the full requirements.

Relief for retirement projections

ASIC proposes to give relief to super fund trustees who provide retirement projections to their existing members with their periodic statements. A Class Order will be released to that effect. Where a trustee already holds an AFS licence, ASIC proposes to give relief from the advice, conduct and disclosure requirements of Pt 7.7.

The relief is given on certain conditions:

- ⊘ the projection sets out the mandatory content, including standard warnings and disclosures (see Table 1 below);
- ⊘ the member’s retirement benefit is calculated taking into account all of the required variables, and using the default assumptions (see Table 2 below); and
- ⊘ the projection is given at the same time as the periodic statement, and is included in or accompanies the statement.

If a super fund trustee already holds a licence with an authorisation to give personal financial product advice, they are free to give their members personal advice via whatever medium they choose, including by giving projections at any time.

Table 1: Content requirements for retirement projections

| Obligations | Recommendations |
|------------------------------|--|
| Estimated end benefit | <p>A projection must set out the member’s estimated end benefit, in today’s dollars (see RG 000.54–RG 000.55 for an explanation of the deflator that must be used to convert the end benefit into today’s dollars). The end benefit must be presented as both:</p> <ul style="list-style-type: none"> ⊘ a lump sum; and ⊘ an annual income stream. <p>The lump sum must be broken down to show the effect of contributions, earnings and fees, i.e. the lump sum should be presented as follows: Lump sum = Total contributions + Total earnings – Total fees</p> <p>Note: See Section C of the draft regulatory guide for further information about the assumptions that should be applied to calculate total contributions, earnings and fees.</p> <p>The amount shown as the estimated end benefit may be rounded to the nearest \$10,000 for a lump sum amount, or \$1000 for an annual income stream amount.</p> |

| Obligations | Recommendations |
|--|---|
| Current account balance | A projection must set out a member's current account balance as at the time at which the projection has been calculated. This will be the closing balance taken from the member's periodic statement. |
| Contributions | A projection must set out the total contributions from all sources made into the account over the previous statement period. If your fund records sufficient information to identify the source of contributions, you may set out both the total contributions, and the contributions broken down by source. |
| Investment earnings | A projection must show the assumed rate of investment earnings (see RG 000.36–RG 000.37 for more detail on the assumed rate of investment earnings). |
| Fees and costs | A projection must show the assumed figure for fees and costs that will be deducted from the member's account (see RG 000.39–RG 000.40 for more detail on the assumed figure for fees and costs). |
| Retirement date and life expectancy | A projection must show the effective date of the projection, i.e. the standard assumed retirement date (see RG 000.46–RG 000.47 for more detail on the assumed retirement date). In relation to the annual income stream, the projection must also indicate how long the income has been calculated to cover (i.e. the person's life expectancy: see RG 000.49 for more information about the standard assumed life expectancy). |
| Insurance premiums | A projection must show the assumed figure for insurance premiums deducted from a member's account during their working life (see RG 000.50–RG 000.51 for more detail on the assumed figure for insurance premiums). |
| Warnings and disclosures | A projection must include the prescribed-text warnings and disclosures set out in the Appendix of the draft regulatory guide. These include a statement of the key variables and assumptions used in calculating the projection. |

Table 2: Summary of assumptions you must use in calculating a member's end benefit when relying on the relief

| Obligations | Recommendations |
|--|---|
| Investment earnings, fees and costs | |
| Investment earnings | You must use a uniform assumed earnings rate for each member, regardless of their particular investment strategy. The rate you must use will be the standard rate specified in the Class Order: see also RG 000.36–RG 000.38. |
| Fees and costs | You must use a uniform assumed figure representing all fees and costs to be paid by the member. The figure you must use will be the standard rate specified in the Class Order: see also RG 000.39–RG 000.41. |
| Factors that are personal to the member | |
| Salary and contribution levels | You must assume that the member's current salary level will remain unchanged. However, to take into account normal average wage growth, you must apply the inflator that will be specified in the Class Order. You must assume that current contribution rates will remain constant: see also RG 000.42–RG 000.45. |
| Retirement age and life expectancy | You must assume the retirement age that will be specified in the Class Order. In illustrating an annual income stream, you must assume income payments will be required every year from the age of retirement until the age specified in the Class Order: see also RG 000.46–RG 000.49. |
| Insurance premiums | You must use a single assumed figure representing the annual insurance premiums to be paid by the member. The figure you must use will be the standard rate specified in the Class Order: see also RG 000.50–RG 000.51. |

| Obligations | Recommendations |
|---|--|
| Pension entitlement and member's other funds | You must not consider the potential effects on the member's end benefit of: <ul style="list-style-type: none"> ⊘ any entitlement to the age pension; or ⊘ any other super fund account the member might hold. Note: See RG 000.52–RG 000.53. |
| Factors that are external to the member | |
| Inflation | You must illustrate the member's retirement benefit in today's dollars, using the deflator specified in the Class Order: see also RG 000.54–RG 000.55. |
| Taxation conditions and other legal factors | You may assume that current taxation conditions and other legal factors will remain unchanged. You may also ignore the possibility that a member may be required to pay some tax upon receipt of their end benefit: see RG 000.56–RG 000.58. |

Source

Australian Securities & Investments Commission, ASIC releases new proposals on superannuation forecasts. <http://www.asic.gov.au/ASIC/asic.nsf/byHeadline/09-203AD%20ASIC%20releases%20new%20proposals%20on%20superannuation%20forecasts?opendocument>

ASFA's key meeting with APRA

The Association of Superannuation Funds of Australia (ASFA) has reported on the key messages that were discussed at their meeting with the Australia Prudential Regulation Authority (APRA) last month. Please see below for details:

Liquidity Risk

The key themes from APRA on the topic of liquidity are:

- ⊘ Trustees need to make sure that they properly identify and manage their liquidity risk. ASFA recommends that Trustees consider the APRA letter on superannuation and illiquid investments dated 29 July 2009.
- ⊘ APRA advises Trustees that they need to understand the triggers for illiquidity and have appropriate contingency plans in place that manage liquidity risk. However, that plan needs to be more robust than simply a plan to seek relief from APRA. APRA's approval should not be automatically assumed.
- ⊘ APRA indicates that Trustees who sought liquidity relief in the past need to address the following key questions:
 - > From a prudential perspective what will the Trustee do next time if liquidity is strained?
 - > How will trustees respond if relief is not granted as sought?
 - > How did the fund's risk management framework operate?
 - > How did the fund get into the situation that required relief and what will be done differently next time?
- ⊘ APRA is also concerned about funds using the default investment option as a "liquidity bank" for other investment options.
- ⊘ APRA reminds Trustees that the default option cannot by definition be an illiquid option since relief from the 30 day portability rules requires active member consent.

Unit pricing errors

APRA has noticed a resurgence in unit pricing errors in recent reviews. APRA suggests that trustees review their risk controls around unit pricing calculations.

APRA expects trustees to have a robust policy in place regarding the way in which funds are treating their Deferred Tax Assets (DTAs).

ASFA has issued a detailed discussion paper on DTAs which can be accessed from their website.



Data Integrity

ASFA has reminded that APRA issued an alert to Trustees to be diligent insofar as the integrity of their data (existence, verification and security) is concerned.

ASFA recommends that Trustees should have checks in place to satisfy themselves regarding the integrity of their data.

ASFA has indicated that a new Best Practice paper on data integrity will be released in the near future.

Anti-detriment provisions

ASFA states that APRA is interested in how trustees implement anti-detriment provisions. ASFA reminds trustees that they must have a properly considered and articulated policy in place regarding this issue, as they have a duty to act in the best interests of members.

Source

Association of Superannuation Funds of Australia, ASFA Action Issue 373, 22 October 2009.

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