

THOMSON GEER

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Domestic & Cross Border

SHIFTING GEER JULY 2014

29 JULY 2014

Welcome to Shifting Geer, Thomson Geer's superannuation newsletter for the period 23 June 2014 - 25 July 2014.

APRA AND ASIC UPDATES

ASIC Class Order [CO 14/509]

(26 June 2014)

The Class Order commenced on 1 July 2014, and modifies SIS section 29QB by providing a safe harbour so that if superannuation fund trustees update their funds' websites within the following time frames, they will be taken to comply with the provision:

- Remuneration Disclosure (SIS Regulation 2.37):
 - item 1 (names of each relevant executive officer): within 20 business days after the person is appointed or changes his or her name;
 - items 2 to 4 (appointment, change of position and retirement dates): within 20 business days after the appointment, change or retirement occurs; and
 - items 5 to 16 (payments, benefits and compensation): within 4 months after the end of the most recently completed financial year; and
- Document Disclosure (SIS Regulation 2.38):
 - the current trust deed, amendments, governing rules and rules relating to the nomination, appointment and removal of trustees or trustee directors: within 20 business days after the document takes effect;
 - the most recent actuarial report for each defined benefit fund: within 20 business days after the trustee receives the report;
 - the most recent product disclosure statement (PDS) for each superannuation product: within 20 business days after a copy of the PDS (including any Supplementary PDS or Replacement PDS) is first given to a person in a recommendation, issue or sale situation;
 - the previous financial year's annual report: within 20 business days after it is first provided or made available to a member;
 - the financial services guide: within 20 business days it is first given to a person;
 - summary of each significant event or material change notice within the previous 2 years: within 20 business days after the notice is first sent to members;
 - name and Australian Business Number of each outsourced service provider who provides a service which may affect a material

- business activity of the entity: within 20 business days after the person is appointed to provide the service;
- the name, qualifications and summary of each executive officer's experience as a trustee board member: within 20 business days after:
 - o the person has been appointed as an executive officer; or
 - o the end of each financial year during which the person served as a trustee or executive officer;
 - records of attendance at Board meetings: within 20 business days after the end of each financial year;
 - registers of relevant interests and relevant duties: within 20 business days after the end of the quarter in which the relevant register was last amended;
 - summary of the conflicts management policy: within 20 business days after the policy being established or amended;
 - proxy voting policies: within 20 business days after the policy being established or amended;
 - the summary of how the trustee exercised its voting rights: within 20 business days after the end of the relevant financial year;
 - constitution: within 20 business days after the constitution or any amendment taking effect; and
 - annual financial statement: the day that the statement is first lodged with ASIC or provided to a member.

APRA draft Reporting Standards

(7 July 2014)

APRA released its Discussion Paper *Reporting standards for select investment options* and draft amendments to Reporting Standards SRS 533.1 *Asset Allocation and Members' Benefits Flows (SRS 533.1)* and SRS 702.1 *Investment Performance (SRS 702.1)* in response to the Superannuation Industry's requirement for further clarification of its Reporting Standards.

Three Reporting Standards currently apply to select investment options and were originally intended to commence with effect from 1 July 2014 but were deferred until 2015:

- Reporting Standard *SRS 330.1 Statement of Financial Performance (SRS 330.1)*;
- Reporting Standard *SRS 533.0 Asset Allocation (SRS 533.0)*; and
- Reporting Standard *SRS 601.0 Profile and Structure (RSE) (SRS 601.0)*.

APRA's key proposed changes are:

- amending the Reporting Standards' definition of "select investment option" which is currently defined to mean an investment option in a fund (accumulation or defined benefit), ERF or PST which:
 - underlies certain defined benefits;
 - underlies a pre-MySuper default product that includes at least one accrued default amount; or
 - underlies a reserve; or

- at the most recent 30 June, has assets relating to non-MySuper interests:
 - o greater than \$50 million; or
 - o less than \$50 million but which represent more than 5% of total fund assets within which the investment option is located.

APRA proposes to remove the reference to investment options underlying a reserve and proposes to further consider other aspects of the definition and associated thresholds once the outcomes of the Government's consultation in relation to choice product dashboard requirements are finalised;

- removing the requirement to report select investment options under SRS 330.1;
- amending two forms for select investment option reporting by amending:
 - SRS 533.1 in order to introduce reporting on:
 - o movements in directly held and indirectly held investments, as follows:
 - > total net transactions;
 - > total investment income;
 - > total realised/unrealised gains/losses; and
 - > total foreign exchange gains/losses; and
 - o members' benefits flows; and
 - SRS 702.1 which will require the reporting of:
 - o highest and lowest applicable fee and cost scales; and
 - o examples of member fees and costs payable;
- moving and/or amending some items currently required on SRS 330.1 and SRS 533.0 to SRS 533.1 by:
 - retaining the requirement to report the strategic asset allocation of each select investment option, as currently required under SRS 533.0;
 - reducing the reporting requirements in respect of the actual asset allocation of each investment option by removing the requirement to report fixed income currency types;
 - requiring SRS 533.0, to report investment movements in directly held and indirectly held investments, broken down by asset class, domicile and listing type on a look-through basis, where appropriate;
 - requiring SRS 330.1 to report detailed breakdowns of:
 - o members' benefits flows, sub-divided to identify the components of inflows and outflows;
 - o investment income and gains/losses;
 - o investment expenses;
 - o operating income and expenses;
 - o advice expenses;

- o insurance flows;
 - o income tax expenses/benefits; and
 - o transfers into and out of reserves,
- on a quarterly (as opposed to annual) basis; and
- requiring aggregated members' benefit flows information under SRS 533.1 in respect of each select investment option.

Proposed changes

APRA is seeking comments by 15 September 2014 and it expects to release final Reporting Standards in February 2015 with a commencement date of 1 July 2015.

LEGISLATION

Corporations Amendment (Streamlining Future of Financial Advice) Regulation 2014

(Registered 30 June 2014)

The Regulation gives effect to time-sensitive FOFA changes until the measures contained in the *Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014* can be passed by both Houses of Parliament, taking effect from 1 July 2014 until 31 December 2015 (Period).

The Regulation has the following effects, relevant to the Superannuation Industry:

- Best Interests Duty:
 - introduces the prescribed step that the provider must prove that it has identified the client's objectives, financial situation and needs that the client discloses (subject to any agreement to scale the advice) in substitution to the current requirement under the Corporations Act, section 961B(2)(a), that specifically requires the objectives, financial situation and needs to be identified via instructions; and
 - the provider is not required to prove whether he or she has taken any further step that would reasonably be regarded as being in the best interests of the client (the Corporations Act, section 961B(2)(g) "catch-all" provision);
- Fee Disclosure:
 - fee recipients are not required to provide a renewal notice to clients in respect of any ongoing fee arrangement entered into during the Period;
 - fee recipients are not required to provide a fee disclosure statement to clients in respect of any ongoing fee arrangement entered into before 1 July 2013 up until the Period's cessation;
- Conflicted Remuneration:
 - performance bonuses (based on sales) due to recommendations made by employees and agents of licensees are not considered to be "conflicted remuneration" provided that the bonus is low in proportion to the individual's total remuneration and the bonus is calculated by reference to other factors that outweigh the volume of sales;

- monetary benefits given to a provider of general advice, who is an employee of a licensee or authorised representative, is not considered to be "conflicted remuneration" if (among other factors):
 - o the benefit is neither:
 - > a recurring benefit because the person has given general advice; or
 - > payment made solely because a financial product was sold (commissions); and
 - o during the previous 12 months before the benefit was given, the person did not give financial product advice to a retail client, other than general advice and/or personal advice in respect of basic banking products and/or consumer credit insurance; and
 - o the product sold is either a product issued or sold by the licensee or a related body corporate (or licensed to be sold by the licensee).
- The Government has announced that it will make further regulations within 90 days to ensure the following Corporations Act requirements are explicitly listed in Statements of Advice provided by financial advisers to their clients and signed off by both:
 - the adviser is required to act in the client's best interests and prioritise the client's interests ahead of its own;
 - any fees will be disclosed and the adviser will provide a fee disclosure statement annually;
 - the client has the right to return financial products under a 14-day cooling-off period; and
 - the client has the right to change his or her instructions to the adviser, if he or she experiences a change in their circumstances.

CASES

There were no cases of interest for this period.

OTHER RECENT DEVELOPMENTS

[Industry Super Australia agrees to change comparative advertising](#) (24 June 2014)

Industry Super Australia (ISA) was required to change its superannuation choice advertising campaign "Compare the Pair" in response to concerns raised by ASIC that consumers may be misled by the advertisements that ran from February to May 2014.

According to ASIC, ISA will ensure that future versions of the campaign:

- clarify the terms "Average Retail Super Fund" and "Average Industry Super Fund" by providing details about the samples used in the comparison, including the number of retail and industry funds in the samples; and
- include a voiceover clarifying that past performance is not a reliable indicator of future performance.

ISA has also agreed that any future iterations of the advertising will be consistent in terms of the time period selected for the comparison.

ASIC's media release in respect of this issue included a reference to its November 2012 Regulatory Guide 234 *Advertising financial products and*

services (including credit): Good practice guidance (RG 234). RG 234 provides comprehensive guidance in order to assist promoters comply with their legal obligations to not make false or misleading statements or engage in misleading or deceptive conduct. Some of the following points, below, are likely to be pertinent in the case of the advertisements comparing financial products and services, and the Corporations and ASIC Act provide relevant rules in respect of these:

- whether a particular statement is misleading or deceptive will depend on all the circumstances of the particular case;
- comparisons should only be made:
 - between products that have sufficiently similar features or, where an advertisement compares different products, the differences should be made clear in the advertisement; and
 - about returns if the information used is current, complete and accurate;
- where only one particular feature of a product is highlighted, a comparison may be misleading if it ignores other key features;
- where a comparison demonstrates differences in outcome over time, it is important to ensure not only that the differences are accurate and relevant but also that they will remain consistent for a reasonable period of time;
- where a comparison has been made over a short period, any limitations of such a comparison should be clearly disclosed;
- when comparing the performance of products that are different in terms of investment objectives, fees, types of investments made, or countries or markets covered, the differences should be clearly disclosed. However, disclosure may not always be sufficient to correct any misleading impression if the comparison is simply inappropriate and unreasonable;
- information about future performance should only be used where it is relevant and there are reasonable grounds to provide the information. If a person makes a representation about any future matter for a financial product, but does not have any reasonable grounds for making the representation, the representation is taken to be misleading; and
- an advertisement will not always include in its headline claim all information about the product that is relevant to the consumer's decision. However, the more that a qualification is required to balance the information contained in the headline claim, the more prominently placed the qualification should be. The headline claim must not itself be misleading.

Review of retirement income stream regulation

(21 July 2014)

The Government has released its Discussion Paper in respect of how Superannuation Law currently restricts the availability of relevant and appropriate income stream products in the Australian market.

The Government is also seeking consultation in respect of three areas:

- the regulatory arrangements for superannuation income streams:
 - the types of income stream products that would enable retirees to better manage risk in the retirement phase;

- whether the annuity and pension rules constitute an impediment to the development of new products;
- changes that could be made to the annuity and pension rules to accommodate a wider range of income stream products while having regard to the need to protect against abuse of the earnings tax exemption and to promote appropriate and prudent retirement income objectives; and
- whether such changes would lead to new products being brought onto the market;
- deferred lifetime annuities (DLA):
 - whether people should only be able to purchase a DLA with superannuation money and/or for an up-front premium or some other purchase option;
 - whether there should be an upper limit on the amount that can be invested in a deferred lifetime annuity?
 - whether there should be a minimum deferral period and/or maximum deferral age or period for a DLA;
 - whether payment features described in the Discussion Paper strike the right balance in allowing people to insure against longevity risk while avoiding unnecessary restrictions on product development; and
 - whether DLA providers should be able to offer a death benefit and if so, any restrictions on the size of the death benefit that should be considered; and
- the minimum payment amounts for account-based income streams:
 - whether the current minimum payment amounts for account-based products are appropriate;
 - whether there should be an automatic mechanism for adjusting the minimum drawdown amounts in response to significant adverse or very strong investment market performance and if so, what should that mechanism be;
 - whether any automatic mechanisms should be subject to specific maximum periods before reverting back to the original minimum drawdown amounts;
 - whether other issues need to be considered if the minimum drawdown amounts should fluctuate.

The closing date for submissions is 5 September 2014.

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