

# THOMSON GEER

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Domestic & Cross Border

## SHIFTING GEER JUNE 2014

24 JUNE 2014

Welcome to Shifting Geer, Thomson Geer's superannuation newsletter for the period 26 May 2014 - 20 June 2014.

### APRA AND ASIC UPDATES

#### ASIC Class Order [CO 14/425]

(Registered 26 May 2014)

The Class Order extends the relief provided by ASIC Class Order [CO 10/630] until 19 July 2015. CO 10/630 provides relief from the operation of *Corporations Regulations* 7.9.20AA (member statement long-term performance reporting requirements) and 7.9.75BA (website annual report disclosure).

#### APRA letter to trustees: deferral of Superannuation Reporting Standard SRS 711.0 SuperStream Benchmarking Measures

(27 May 2014)

APRA has confirmed that it will defer the commencement of SRS 711.0 until 1 July 2015. APRA proposes to consult with the Superannuation Industry regarding the content of SRS 711.0, based on the Acting Assistant Treasurer's 26 May 2014 statement advising that superannuation funds will have until 1 July 2015 to implement the SuperStream contribution data standards.

The main purpose of SRS 711.0 is to collect data on rollover and contribution processing to assist Treasury and the ATO in benchmarking the impact of SuperStream, and it was intended that SRS 711.0 would be effective from 1 July 2014.

#### APRA letter to trustees: Superannuation Reporting Standards

(30 May 2014)

APRA has updated five reporting standards as follows:

- Reporting Standard *SRS 001.0 Profile and Structure (Baseline)*:
  - for the 2015 Financial Year, removal of references to select investment options, pending further consultation on select investment option reporting requirements;
  - additional clarity has been given to:
    - annual and ad-hoc reporting due dates;
    - the interpretation of membership base;
    - RSE licensee ownership and for- /not-for-profit status;
    - the interpretation of the terms "defined benefit RSE", "MySuper product" and "sub-fund";
    - the manner in which defined benefit funds should be reported; and

- the manner in which MySuper products should be reported; in order to promote consistency of reporting;
- the addition of a new field in respect of MySuper products (item 6, column 2), requiring submission of the unique MySuper product identifier; and
- expansion of the information required in respect of changes to a MySuper product to ensure that changes to both a MySuper product itself and to lifecycle stages within a MySuper product (where applicable) are notified (item 6, column 7), to reduce the volume of validation queries.

APRA confirms that SRS 001.0 will be revised in the first half of 2015.

- Reporting Standard *SRS 330.1 Statement of Financial Performance*:
  - removal of references to select investment options, pending re-consultation; and
  - minor definitional changes impacting the reporting instructions, to reflect the changes made to SRS 330.0 in March 2014.
- Reporting Standard *SRS 330.2 Statement of Financial Performance*:
  - minor definitional changes impacting the reporting instructions, to reflect the changes made to SRS 330.0 in March 2014; and
  - clarification of definition of reporting income and insurance-related inflows.
- Reporting Standard *SRS 800.0 Financial Statements*:
  - minor definitional changes impacting the reporting instructions, to reflect the changes made to SRS 320.0 and SRS 330.0 in March 2014;
  - clarification of the reporting basis in respect of members with both defined contribution accounts and defined benefit accounts;
  - clarification that income is to be reported gross of expenses and that operating income is to include rebates on fees charged to members;
  - additional detail in terms of reportable benefit payments; and
  - clarification of definition of insurance related inflows.
- Reporting Standard *SRS 801.0 Investments and Investment Flows*:
  - the addition of a new investment vehicle type, "life company other", for consistency with amendments made in March 2014 to SRS 530.1 and SRS 533.0;
  - re-wording of the definition of "life company guaranteed" and "life company investment linked", for consistency with amendments made in March 2014 to SRS 530.1 and SRS 533.0;
  - minor definitional changes impacting the reporting instructions, to reflect the changes made to SRS 530.1 and SRS 533.0 in March 2014;
  - additional detail on look-through reporting requirements;

- clarification of requirements to report currency hedged investments and indirectly held assets exposed to derivatives contracts; and
- clarification of definition of asset domicile.

## ASIC Class Order [CO 14/541]

(Registered 13 June 2014)

Class Order [CO 14/541] exempts trustees from the SIS section 29QC superannuation disclosure obligations until 1 July 2015 and aligns the SIS section 29QC start date with the 1 July 2015 start date for the choice product dashboard requirements. Put simply, SIS section 29QC requires trustees to calculate certain information (such as returns) that is disclosed to the public (for example, in a PDS) in the same manner as it must be calculated under the APRA Reporting Standards.

## APRA Reporting Framework FAQs

(16 June 2014)

APRA has issued three new FAQs as follows:

- *FAQ 95: When I report a new piece of information on SRF 001.0, do I need to fill in the whole form?*

**Answer:** Yes; the whole form must be completed.

- *FAQ 96: How should an RSE licensee report benchmark asset allocation and asset allocation ranges on SRF 533.0?*

**Abridged Answer:** In accordance with Prudential Standard *SPS 530 Investment Governance*, when a trustee formulates an investment strategy for an investment option, the trustee must determine asset allocation targets and ranges that are appropriate to the investment objectives of the investment option.

There are a number of different asset allocation approaches that a trustee may adopt in formulating an investment strategy, such as strategic asset allocation (SAA) or dynamic asset allocation (DAA) approaches. Irrespective of which asset allocation approach is used, APRA expects trustees to adopt a formal approach to determining asset allocation.

Under a SAA approach, a benchmark asset allocation is required, which will provide the optimal balance between expected risk and return for a long term investment horizon.

If a trustee adopts a SAA approach, the asset mix formulated in this process should be reported to APRA in accordance with the APRA-defined asset class types in column 1 of item 1. The benchmark asset allocation, the upper end range and lower end range for each asset class type is to be reported in column 4, column 5 and column 6 respectively.

Under a DAA approach, asset allocation may change more frequently over the investment horizon in response to changes in market conditions or the trustee's short and medium term outlook.

If a trustee adopts a DAA approach, the asset mix formulated in this process should be reported to APRA in accordance with the APRA-defined asset class types in column 1 of item 1. The upper end range and lower end range for each asset class type is to be reported in column 5 and column 6 respectively. If the trustee has adopted a benchmark asset

allocation, report the allocation in column 4, otherwise leave column 4 blank.

- *FAQ 97: How should an RSE licensee incorporate derivative exposures when reporting directly held and indirectly held investments on SRF 533.0?*

**Abridged Answer:** APRA has identified an error in the instructions for SRF 533.0 regarding reporting of directly held derivatives. The instructions incorrectly require reporting of directly held derivatives to be excluded from SRF 533.0. The instructions should not exclude directly held derivatives from being reported on SRF 533.0. However, when reporting to APRA on SRF 533.0, APRA expects trustees to consider derivatives as part of the overall asset allocation of an investment option, rather than in isolation.

APRA expects that trustees would not generally consider the use of derivatives when determining a benchmark asset allocation. Therefore, derivatives would not ordinarily need to be reported in item 1.

The value of investments reported in column 6 of item 2 must represent the effective economic exposure for each asset class type. This is calculated as the sum of the value of all physical investments (having applied look-through) together with the net exposure to derivative instruments. Net exposure means the offsetting of long and short derivative positions for each asset class type, in accordance with Australian Accounting Standards. Therefore, the value of total investments reported in item 2.1 will include directly held derivatives of the MySuper investment option.

The information reported in item 3 must represent the net movement of each asset class type. The net movement of each asset class type is calculated as the sum of the movements in physical investments (having applied look through) together with the movements in directly held and indirectly held derivatives.

APRA has amended the following two FAQs:

- *FAQ 37: Do references to 'look through reporting' in relation to indirectly held investments mean that cascading trusts will have to be 'looked through' to provide details of all indirect assets? (amended 16 June 2014)*

**Answer:** Look-through in APRA's collection is where information about the underlying investment in an investment vehicle must be reported. This involves looking through cascading trusts to the first non-connected entity and reporting the ultimate asset class in which the investment is held. An illustrative example is provided in the instructions to SRF 532.0.

- *FAQ 66: On SRF 702.0, a number of items are to be reported on a look-through basis. Is this the same basis as for the other reporting forms (e.g. SRF 533.0, SRF 530.1)? (amended 16 June 2014)*

**Answer:** Yes, the look-through basis is the same for SRF 702.0, as it is for other reporting forms. Reporting on a look-through basis involves reporting information about the underlying investments in an investment vehicle. In practice, this involves looking through cascading entities to the first non-connected entity and reporting the ultimate asset allocation in which the investment is held, in addition to the investment

performance of each investment vehicle which includes the associated fees, costs, taxes and other deductions.

An illustrative example of the application of look-through is provided in the instructions to Reporting Standard SRS 532.0 Investment Exposure Concentrations.

### **ASIC Information Sheet 197: Fee and cost disclosure requirements for superannuation trustees**

(18 June 2014)

ASIC has provided further guidance in relation to the fee and cost disclosure requirements in Schedules 10 and 10D of the *Corporations Regulations* that take full effect as of 1 July 2014. Despite the fact that amendments were made for 31 December 2013, ASIC provided Class Order relief in respect of those amendments, and it has been up to trustees to determine whether or not to comply with the requirements prior to 1 July.

The main guidance that ASIC provides is as follows:

- highlighted definitional changes (such as “indirect cost ratio”);
- ASIC will take a facilitative approach until 1 July 2015, and it intends to undertake further consultation on key aspects of the fee disclosure;
- the fee and cost table templates apply to both MySuper and Choice investment products;
- fees must be gross of tax;
- performance fees are now incorporated into “investment fees” and the “Additional explanation of fees and costs” section requires trustees to provide a statement about how performance fees affect administration fees and investment fees. Before the introduction of these amendments, trustees were required to make a statement that performance fees were included in the template as “management costs”; and
- a fee for intra-fund advice that has the characteristics described in SIS section 29V(8)(a), and is charged as an administration fee, will not be an advice fee and will need to be disclosed as an administration fee in the template.

### **ASIC Regulatory Guide 252: Keeping superannuation websites up to date**

(June 2014)

The Regulatory Guide explains how remuneration and other information on superannuation websites may be kept up to date under SIS section 29QB.

Additionally, ASIC has issued Class Order [CO 14/509] to clarify how trustees can comply with the obligation to keep their funds’ websites up to date and provides a safe harbour so that, if they update their websites within the class order timeframes, they will be taken to comply with the updating obligation under section 29QB.

The Regulatory Guide provides guidance in respect of the Release times for updating disclosure being:

- 20 business days, except for remuneration items; and
- four months for remuneration items (items 5 to 16 in SIS Regulation 2.37(1)).

## LEGISLATION

### Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014

(16 June 2014)

This Bill, along with 14 additional supporting Bills, was passed by the Senate and awaits Royal Assent. The Bills amend various tax laws for the purposes of introducing a 3-year progressive budget repair levy commencing in the 2015 Financial Year.

The Bills also introduce the levy to the following superannuation-related taxes:

- Departing Australia Superannuation Payments Tax;
- Superannuation Excess Non-Concessional Contributions Tax; and
- Superannuation Excess Untaxed Roll-over Amounts Tax.

## CASES

There were no cases of interest for this period.

## OTHER RECENT DEVELOPMENTS

### Superannuation Data and Payment Standards (Contribution Transitional Arrangements) Amendment 2014

(Registered 27 May 2014)

This Standard amends the contribution transitional arrangements contained in Schedule 1 to the *Superannuation Data and Payment Standards 2012* by:

- extending the existing "contribution transition-in period" by 12 months to 30 June 2017; and
- including additional transition-in arrangements to expand the options available to trustees and medium to large employers to transition to full implementation of the contributions standard, as follows:

1 July 2014 until 2 November 2014	Medium and large employers can send information required under SIS Regulations 7.07A and 7.07E in any electronic format as advised by the trustee and provided the contribution payment is made electronically.
Before 30 September 2014	Trustees must notify the ATO of an alternative start date.  A trustee has an alternative date if: <ul style="list-style-type: none"><li>• the trustee has provided an implementation plan to the Commissioner of Taxation on or before 30 September 2014; and</li><li>• the implementation plan contains a statement that the entity is able to meet the requirements of paragraph 4.3(a) of Schedule 1 on and after a particular date which is not later than 1 July 2015.</li></ul>
On and after 3 November 2014	Subject to "Error and outcome response messages" rules trustees must be able to receive contributions transaction messages that comply with the Standard, unless the ATO has been notified of an alternative start date (no later than 1 July 2015).

<p>3 November 2014 to 30 June 2017</p>	<p>Medium and large employers can send contributions transaction messages in an electronic file format that does not conform to the Standard provided the employer and trustee agree in writing and the conditions of paragraph 4.2(b) of Schedule 1 to the Standard are satisfied.</p> <p>This means that the following conditions must be satisfied:</p> <ul style="list-style-type: none"> <li>• the terms and definitions used in the alternate file format align with the relevant terms and definitions specified in the document referred to in Schedule 2;</li> <li>• any payment associated with the contributions message conforms with a method specified in the document referred to in Schedule 3; and</li> <li>• alternative data elements and business rules (if any) are documented to show how the business rules and data requirements used in the alternate format align with the business rules and data requirements specified in the document referred to in Schedule 4(a).</li> </ul>
<p>From 2 February 2015</p>	<p>Error messaging (in respect of three day contributions processing) commences.</p>
<p>From 1 July 2015</p>	<p>Breach notification for failure to comply with SuperStream requirements to be reported to APRA (under SIS, section 29JA)</p>
<p>On and after 1 July 2015 and until 30 June 2017</p>	<p>Small employers can send contributions transaction messages in an electronic file format that does not conform to the Standard provided the employer and trustee agree in writing and the conditions of paragraph 4.2(c) of Schedule 1 to the Standard are satisfied.</p> <p>This means that the following conditions must be satisfied:</p> <ul style="list-style-type: none"> <li>• the terms and definitions used in the alternate file format align with the relevant terms and definitions specified in the document referred to in Schedule 2;</li> <li>• any payment associated with the contributions message conforms with a method specified in the document referred to in Schedule 3; and</li> <li>• alternative data elements and business rules (if any) are documented to show how the business rules and data requirements used in the alternate format align with the business rules and data requirements specified in the document referred to in Schedule 4(a).</li> </ul>

The ATO and APRA subsequently wrote to trustees on 28 May 2014 in respect of the SuperStream responsibilities and confirmed the following:

- **Commencement dates:**

Where a trustee does not expect to be ready to comply with the Standard by 3 November 2014 it must notify the ATO by 30 September 2014 of its proposed alternative start date which must be no later than

1 July 2015. Such notification must be accompanied by the trustee's implementation plan. To assist in this process, the ATO intends to publish guidance on what is expected in the implementation plan.

- **Use of the Fund Validation Service:**
  - SIS section 34Z requires trustees to provide the information prescribed in SIS Regulation 3B.03 to the ATO for inclusion in the Fund Validation Service.
  - The ATO has recently written to all trustees setting out obligations to provide additional data. The process for providing this data will be similar to the process adopted when providing product and bank account details for processing rollovers
- **Use of SuperTICK:**
  - SIS Regulation 7.07B(2) requires trustees to validate member details if an employer sends initial registration information or a first contribution within three business days of receiving the information
  - The use of SuperTICK is mandatory, unless an employer has contributed on behalf of a member prior to 1 July 2014. It is recognised that until a trustee reaches its alternative start date, the use of SuperTICK may not be fully integrated into a trustee's processes.
- **Breach reporting:**
  - APRA is the agency responsible for administering these requirements that require trustees to comply with the Standard. APRA recognises that compliance with the Standard in respect of contributions and member registration is a new obligation and that practices are likely to evolve over time.
  - While APRA encourages compliance as soon as possible, APRA does not expect failure to comply with these requirements to be reported as a breach prior to 1 July 2015.
  - From 1 July 2015, APRA's response to breaches will be similar to its general compliance and enforcement approach which is to firstly work with the trustee to ensure the appropriate actions are taken to address any shortcomings in their processes.

### Fair Work Commission Expert Panel

(10 June 2014)

The President of the Fair Work Commission (FWC), Justice Iain Ross, has confirmed that on 6 June 2014 the Federal Court declared that the FWC Expert Panel is currently not constituted as required under the *Fair Work Act 2009*. Accordingly, the President said that the FWC Expert Panel, as currently reconstituted, will not deal further with the 4 yearly review of default fund terms in modern awards.

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