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Manager
Benefits and Regulation Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: strongersuper@treasury.gov.au

Dear Sir/Madam,

**Exposure Draft – Superannuation Industry (Supervision) Amendment Regulations 2012
(No.)**

The Association of Superannuation Funds of Australia (ASFA) would like to provide this submission in relation to the draft *Superannuation Industry (Supervision) Amendment Regulations 2012 (No.)*.

About ASFA

ASFA is a non-profit, politically non-aligned national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. We focus on the issues that affect the entire superannuation industry. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds (SMSFs) and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

1. General comments on the exposure draft

ASFA is generally supportive of the draft regulations and the overall reforms to SMSFs that form part of the Stronger Super initiatives. However ASFA does have a number of specific comments.

Summary of recommendations

- 1.1 ASFA recommends that greater clarity be provided to trustees insofar as how often consideration of whether to hold insurance needs to occur.
- 1.2 ASFA recommends that the Australian Taxation Office (ATO) confirm its continued acceptance of documents such as deeds of arrangements as valid documentation of asset ownership where state laws prevent a trust arrangement from being acknowledged on a property title.
- 1.3 ASFA recommends that the definition put forward in the draft regulations of net market value be replaced with that of "market value" as already defined in the section 10 of *Superannuation Industry (Supervision) Act 1993 (SISA)*.

1. Specific Comments

1.1 Proposed sub-regulation 4.09(2)(e) – consideration of insurance

This requirement does not appear to be a particularly onerous requirement. As outlined in the Explanatory memorandum (EM) the trustee would simply need to make note of the fact that they have considered whether the fund should hold a contract of insurance for members in the fund's minutes of trustee meetings.

The EM also implies that the consideration of whether to hold insurance needs to occur on the same basis as the “regular review” of the investment strategy.

ASFA recommends that greater clarity be provided to trustees insofar as how often consideration of whether to hold insurance needs to occur.

1.2 Proposed regulation 4.09A – Operating Standard: money and other assets to be kept separate

ASFA supports the policy intent of this proposed regulation that will require trustees of an SMSF to keep money and other assets of the fund separate from any money or assets held by the trustee personally. This means that assets will need to be designated as being held by members in their capacity as trustee of the SMSF. However, ASFA believes there exists an impediment in some state laws that will impact the administration of this requirement.

For example, a particular problem is real estate in Victoria. The Victorian Titles Office will not allow a trust arrangement to be noted on a property title. Trust arrangements must be evidenced by separate documentation not registered with the Titles Office.

General practice has been to execute a separate deed or other document that clarifies that the trustee is holding a particular piece of real estate on behalf of a particular super fund. In the past the ATO has accepted such deeds of arrangement.

ASFA recommends that the Australian Taxation Office (ATO) confirm its continued acceptance of documents such as deeds of arrangements as valid documentation of asset ownership where state laws prevent a trust arrangement from being acknowledged on a property title.

1.3 Proposed regulation 8.02 – asset must be valued at net market value

The requirement that assets be valued at their net market value will require regular valuations of these assets to be conducted at some cost to the owners of the asset. This is because the proposed regulation requires all assets to be valued annually when annual accounts are completed in accordance with section 35B of the SISA.

This will involve an increase in the holding costs of that asset which may raise the question of whether trustees will be discouraged over time from investing in assets which are more difficult or expensive to value. This may prove to be a significant negative factor in relation to asset classes which have significant exposure to SMSFs.

Similarly, valuing assets for which a market price is not readily determinable such as collectibles may be expensive and doing that annually for assets intended for longer term holding would be an unreasonable diminution of the fund's assets.

It is noted that the draft regulations refer to *net market value*. However the SISA already has a definition of *market value* at section 10. Further to this the ATO is currently drafting valuation guidelines that also refer to market value as defined in SISA. The existence of different definitions for essentially the same thing will always create confusion.

Finally, the requirement to deduct costs of sale when establishing the net market value means all listed securities must be marked down by the cost of brokerage when sold (which may vary from broker to broker). As well there will be difficulties in reliably determining sale costs for assets that are unlisted.

ASFA recommends that the definition put forward in the draft regulations of net market value be replaced with that of "market value" as already defined in the SISA.

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We thank you for providing us with the opportunity to make this submission and to participate in the consultation process.

If you have any queries or comments regarding the contents of our submission, please contact Tony Keir, Senior Policy Adviser and Policy Communications Manager on (02) 8079 0815 or by email tkeir@superannuation.asn.au

Yours sincerely
Margaret Stewart



General Manager, Policy and Industry Practice