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Australian Securities and Investments Commission
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Dear Ms. Som,

Consultation Paper 227 – Disclosure and reporting requirements for superannuation trustees: s29QC

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to ASIC Consultation Paper 227 – Disclosure and reporting requirements for superannuation trustees: s29QC (CP 227).

ASFA has consulted with its members and reviewed CP 227. We support Option 1 whereby ASIC will issue class order relief limiting the scope of s29QC of the Superannuation Industry (Supervision) Act 1993 (s29QC) and will provide further guidance to the industry. As detailed herein, we feel this is the only option which adequately addresses industry's concerns with the application of s29QC.

ABOUT ASFA

ASFA is a non-profit, non-politically aligned national organisation. We are the peak policy and research body for the superannuation sector. Our mandate is to develop and advocate policy in the best long-term interest of fund members. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

INTRODUCTION

ASFA supports the proposition behind s29QC that information provided by trustees should be provided in a consistent manner.

This being said, as you would be aware ASFA raised its (and the industry's) concerns about the extremely broad application/operation of s29QC in a joint letter to ASIC, APRA and Treasury dated 15 May 2014. Our concerns related to the need to align information relating to return targets/investment objectives, fees and costs and asset allocation.

In reviewing CP 227, it is our view that the proposals contained in Option 1, such that ASIC issues a Class Order (and guidance) for MySuper products reflecting the proposals contained in section B of CP227 adequately resolves the concerns we have previously raised. We congratulate ASIC for both proposing this pragmatic and efficient solution as well as consulting broadly with the industry to achieve improved industry and customer outcomes.

GENERAL COMMENTS

- As mentioned above we support Option 1. It is essential that in Option 1 the Class Order makes it perfectly clear that it is exhaustive and only past investment performance information for MySuper products is captured.
- Options 2 and 3 are unhelpful and would be ineffective as they do not solve the problem at hand.
- We have some concerns over the tight timing of the release of the Class Order and implementing s 29QC. In particular, page 5 of CP227 mentions the regulatory guide will be released in the second quarter 2015, which we assume would also include the final form of the Class Order. This timing is somewhat uncertain and leaves little time for the industry to implement changes for 1 July 2015 based on what may be contained within the final regulatory guide.

However, if the scope of s29QC is limited to past investment performance for MySuper products and if it only applies to marketing materials (and does not include PDSs and periodic statements) we are informed by our members that MySuper products/providers should largely be in a position to comply with s29QC from 1 July 2015. A transitional period and a facilitative approach to non-compliance for a reasonable period post 1 July 2015 would be appreciated (as noted below).

If s29QC is not limited to marketing materials and does include PDSs then the industry (MySuper products/providers) will need a reasonable transition period. In this situation, funds should have a transition period until at least 1 January 2016 being the commencement of the transitional timeframes contained within paragraph 8 of ASIC Class Order 14/1252. This would avoid the cost and consumer confusion of rolling PDSs twice within the space of 6 months – at 1 July 2015 for s29QC (where applicable) and at 1 January 2016 for CO 14/1252.

Choice products/providers (including select investment options) would not be in a position to comply with s29QC until after a reasonable transition period (say 12 months) after the choice product dashboard (including any associated APRA reporting standard) has been consulted upon and settled. Our members have raised numerous concerns and questions about the disclosure requirements that will apply to choice products, particularly in regards to superannuation wrap platforms. We would expect that this dialogue and subsequent consultation will occur separately to this consultation regarding the application of s29QC to MySuper products.

- Noting the limited timeframe that RSE's will have to prepare for compliance, ASFA seeks (per paragraph 9 of CP 227) an extension to ASIC's facilitative approach for a further 12 months to 1 July 2016 (or 12 months from the date of the final Regulatory Guide if it is tabled after 1 July 2015). Our members require adequate time to implement changes based on finalised (not draft) requirements.
- A number of our members have stated that they believe that s29QC is not appropriate in that information reported to APRA for prudential purposes is not appropriate for disclosure to consumers. It is argued that a legislative fix or repeal of s29QC would be more appropriate than an ASIC Class Order. We are cognisant of the fact that ASIC is not in a

position to provide a legislative fix or repeal and therefore pursuing this would be impractical and untimely given the proposed commencement date of s29QC.

- A number of members continue to disagree with ASIC's interpretation that presentation of asset allocation involves a 'calculation' and is therefore caught by s29QC.
- In a number of places in CP227 it is proposed that ASIC would clarify matters in the Class Order. We are of the view that it is generally more appropriate to clarify certain matters in a Regulatory Guide (other than the scope limitation which should be via Class Order).

FEEDBACK ON PROPOSALS AND QUESTIONS

Please see the annexure to this submission for feedback on ASICs proposals and the direct questions asked in CP 227.

We trust that the information contained in this submission is of value. We would be pleased to meet with you to discuss our submission.

If you have any queries or comments regarding the contents of our submission, please contact ASFA's Policy Adviser, David Graus, on (02) 8079 0837 or by email dgraus@superannuation.asn.au

Yours sincerely



Glen McCrea
Chief Policy Officer

Annexure: Responses to CP227's List of proposals and questions

Options for Dealing with Uncertainty

A1 We propose to address the uncertainty about the consistency requirements in s29QC using one of the three options outlined above: see paragraphs 31–34.

A1Q1 Should we adopt Option 1, under which we would issue a class order (and potentially guidance) to modify the scope and application of s29QC (please also respond to the detailed proposals in Section B of this paper)? Are there other areas that should be considered for inclusion or exclusion from the proposed class order?

ASIC should adopt Option 1 which, as proposed in section B of CP 227, will limit the scope of s29QC to only past investment performance for MySuper products. This would provide both clarification and certainty and would address the problems that the industry has identified with the operation of s29QC.

Option 2 will not assist with fixing the problem as ASIC and APRA have already provided guidance which, to a greater or lesser extent, the industry does not agree with. Also, guidance on its own does not solve the problems that s29QC creates.

Option 3 is not supported as it will not assist with fixing the identified problems.

In regards to the question of whether there are other areas that should be considered for inclusion or exclusion from the proposed Class Order we are of the view that the Class Order should limit the scope of s29QC to only past investment performance for MySuper products.

A1Q2 Should we adopt Option 2 (no class order, but provide guidance)? If so, in what areas should we expand on the guidance already given, and are there any further issues you think should be addressed? Please give reasons for your answer, and the estimated costs in complying with this provision from 1 July 2015.

ASIC should not adopt Option 2 for the reasons given in A1Q1 above.

However we note that further guidance on various topics can be given as part of Option 1. Areas where further guidance would be helpful include:

- Confirmation that investment performance information provided to ratings agencies is not caught by s29QC;
- Confirmation that trustees are not responsible for investment performance information provided by third parties such as ratings agencies;
- ASIC detailing specifically which of the investment performance reporting fields are captured by s29QC;
- ASIC detailing specifically which documents/promotional material s29QC will apply to;

- ASIC providing clarity around the use of 'soft close' prices for the purpose of calculation of past performance;
- Confirmation that documents published/disclosed/given prior to the issuing of the Class Order (such as annual reports and statements) will not have to be reproduced to comply with s29QC; and
- Confirmation that trustees can still supply alternative data on a different basis provided it is clearly labelled and explained to consumers (e.g. member specific performance returns).

Are there other matters that require clarification/guidance?

A1Q3 Should we adopt Option 3, under which the s 29QC requirement would restart in its current form, as planned, on 1 July 2015? Please give reasons for your answer, and the estimated costs in complying with this provision from 1 July 2015.

This Option is not supported as the industry has many issues with s29QC in its current form as explained in our letter to the regulators dated 15 May 2014. Briefly the key points we raised in that letter cover:

- The need for consumer testing of regulator prescribed disclosure information (e.g. MySuper dashboards)
- A product's investment return and return target should be measured as net of tax and investment costs only and should not utilise the concept of a "representative member" to deduct administration fees.
- Return targets – "mean of distribution of estimate net returns" is misleading to consumers
- Return targets – frequency of change/need to update PDSs
- Asset allocation definitions are not a "calculation" therefore section 29QC should not apply to asset allocation definitions
- Asset Allocation - APRA data reporting standards generally do not coincide with, and are less informative to members
- Concerns with respect to the fact that online disclosure of investment performance generally uses "soft" unit price information whereas the APRA data reporting standard requires "hard" valuations
- Concerns with respect to the requirement to disclose administration fees "gross of tax obligations" under SRS 703.0.

We are informed that each of the larger providers in the industry would need to spend \$2-\$3m to comply with the current version of s29QC and, left unmodified, it would provide vastly inferior outcomes for consumers.

A1Q4 Would you prefer ASIC adopt an approach other than Options 1, 2 or 3? If so, please outline the approach you consider we should take, and give reasons.

We would not prefer that ASIC adopt an approach other than Option 1. While out of ASIC's purview, the only other suggestion we can provide is that s29QC should be repealed.

It is clear s29QC offers little incremental benefit at a significant cost to the industry where there are other pre-existing mechanisms within the law and within ASIC's powers that can be used to ensure that the s29QC objectives are achieved. In particular:

- We note that FSC Standard 6 specifies a standard calculation methodology for investment performance (superannuation and non-superannuation) and is industry regulated. Investment performance using FSC Standard 6 is calculated by industry participants and service providers (Morningstar, Fund Data etc).
- We note that industry mechanisms exist for standard asset allocation reporting (IMD forms).
- We note that regulations for PDSs cover protections for clients against misleading or deceptive conduct.

We note that while s29QC relates only to superannuation, disclosure is already covered through relevant Corporations Act legislation that covers both superannuation and non-superannuation vehicles.

ASIC's general approach to limiting the Scope of s29QC

B1 We propose to limit by class order the scope and application of s29QC. There are a number of ways to do this, including by limiting s29QC to particular disclosure topics as outlined in this paper. However, we also propose to limit by class order the scope and application of s29QC to consumer-facing disclosure such as advertising or promotional material.

The meaning of “advertising or promotional material” needs to be made clear – either in the Class Order or by separate guidance. Our preference would be to limit its application to regulated disclosures and mediums such as websites and advertising.

Note: Documents such as PDSs do not need to be covered by s29QC because they are already regulated documents with appropriate protections for consumers. In addition, documents can be incorporated by reference within a PDS and as such, issues with s29QC will continue.

B1Q1 Do you agree that s29QC should be limited in its scope and application generally? If yes, is limiting s29QC by reference to particular areas or topics the most appropriate way to do this? Are there other topics or areas where consistency would be beneficial, such as executive officer remuneration disclosure, which are not included in this paper (please outline these topics and areas)?

Yes s29QC should be limited in its scope and application. APRA reporting is very broad and subject to change (e.g. 4 new draft ABS forms and 4 new Select Investment Option forms released by APRA in January 2015). Therefore, limiting s29QC to a designated information in defined APRA reporting standards (such as investment performance information) and/or types of disclosure (such as advertising and promotional material) provides the industry with ongoing certainty about the application of this provision.

Having considered the breadth of APRA reporting and disclosures in general, we feel that s29QC should not be expanded to other areas. In any case, we believe that this would be beyond the intent of the legislation which is founded on consistency with calculation of information that is reported to APRA.

We are concerned with the wording in the question: “*If yes, is limiting s29QC by reference to particular areas or topics the most appropriate way to do this?*” Our understanding of the proposal in the CP227 is that the scope of s29QC would be limited to solely historical investment performance information. As such there is currently only one ‘area’ or ‘topic’ that s29QC will be limited to.

B1Q2 Do you think fee and costs disclosure should be excluded from the s29QC requirement so that RSE licensees know they only need to refer to the Corporations Act and Corporations Regulations for these requirements?

Yes. We believe that the current legislation within the Corporations Act/Regulations and the RG 97 consultation that is underway will provide sufficient clarity around fees and costs disclosure.

B1Q3 Does limiting s29QC to particular topics help to clarify that s29QC should not override any existing disclosure requirements (such as those in the periodic statement regime)?

Yes – APRA Reporting Forms are not wholly consistent with the requirements of the PDS and periodic statement regime, and where inconsistencies exist, providing clarification that the pre-existing requirements of the PDS and periodic statement regime should still apply would be useful.

B1Q4 Do you agree that s29QC should be limited to specific types of disclosure? If so, should the application of s29QC be limited to consumer-facing disclosure such as advertising or promotional material? Should this be in addition to limiting s29QC to particular topics or areas?

We agree that s29QC should be limited to consumer-facing disclosure such as advertising or promotional material.

However, we believe that it is more important to limit the topic to which s29QC applies to (i.e. historical investment performance information), in line with the proposed Class Order outlined in CP227.

We note that third parties in the industry often relay information to the public (e.g. Morningstar, Fund Data, Chant West) and the trustee has little control over that information and presentation of that material. For example: differences can arise in performance due to currency of data or other items out of the control of the Trustee.

Therefore it is recommended limiting s29QC to **Trustee** generated advertising and promotional material to overcome this.

B1Q5 What would be the estimated costs in applying s29QC to consumer-facing disclosure such as advertising or promotional material and/or to particular areas or topics?

We are informed by one of our members that limiting s29QC to specific types of disclosure and to certain topics will quickly reduce their implementation costs.

A large percentage of the fund's s29QC compliance cost is to analyse and remediate all potential fields and all potential areas, therefore specifying the locations in which to perform the remediation helps to cut out about a fifth of the fund's costs. **As noted earlier**, even if the documentation / disclosure type is limited, work is still required to ensure that other materials are consistent.

Remediating Asset Class disclosures is the single biggest area of s29QC compliance cost for this fund. If Asset Classes are excluded by Class Order (a good consumer outcome as it means super and non-super can remain aligned) then approximately half of the overall fund's cost would also be saved.

Remediating Fees and Costs disclosures is the next biggest area of s29QC compliance cost for this fund. We note that trustees would still be prohibited from engaging in deceptive conduct by other legal mechanisms. Approximately 10% of the overall fund cost would be saved by excluding this from the operation of s29QC.

Remediating Return Target disclosures is not a large area of s29QC compliance cost as this is mostly confined to the PDSs and MySuper dashboards at present. However, consumers would not understand the measure and therefore the industry would need to spend money to educate advisers and clients. Approximately 5% of the overall fund cost would be saved by excluding this from the operation of s29QC.

Limiting the scope to past investment performance

B2 We propose to limit by class order the scope of the application of s29QC to past investment performance. Any area covered by APRA's reporting standards not specifically listed in the class order would not be included in the consistency requirements.

B2Q1 Do you agree that s29QC should be limited in this way to past investment performance information?

Yes we agree that ASIC should limit by class order the scope of the application of s29QC to past investment performance for MySuper products. Any area covered by APRA's reporting standards not specifically listed in the class order would therefore not be included in the consistency requirements. For clarity, the specific APRA reporting form and data item name/label that it applies to (by SRF number) should be stated in the class order or in accompanying guidance.

We request guidance that disclosures already published by an RSE licensee prior to the commencement of s29QC which contain past investment performance should be exempted and do not need to be reissued.

B2Q2 Should a class order require promotional material for the fund that uses past performance information to quote the net investment return provided in the MySuper product dashboard in line with APRA's reporting standard?

Yes. For MySuper we favour the simplicity of quoting a 'net return' (also calculated as per the APRA reporting forms) as this is a single return measure that is net of all fees i.e. incorporating both administration, and investment (including performance) fees.

The Net Return effectively takes into account all fees experienced by a member, providing a return figure which is more representative of a member's actual return. This provides members with a more accurate method of drawing comparisons between funds when looking to compare investment performance results from different providers and/or for benchmarking surveys (e.g. SuperRatings).

In order to achieve consistency of figures released to members and meet the APRA requirement of 'hard close' figures, we believe that providing some clarity around this (either in the Class Order/or by amendment to the APRA forms) is required.

As mentioned previously, for Choice products a separate dialogue is required.

B2Q3 What would be the estimated costs in applying s29QC to past performance information?

Drawing on existing legislation for just the MySuper products, implementation should not require significant resources.

Clarifying 'return target' and 'investment return objective'

B3 We propose to clarify by class order that the 'return target' in the MySuper product dashboard and the 'investment return objective' in shorter PDS disclosure should not be considered the same or equivalent information for the purposes of the s29QC consistency requirements. ASIC would also clarify by class order which elements of the MySuper product dashboard are the same as, or equivalent to, other information in documents such as shorter PDSs.

B3Q1 Do you consider that the 'return target' in the MySuper product dashboard and the 'investment return objective' in shorter PDS disclosure should not be considered the same or equivalent information for the purposes of s29QC?

Yes. We believe the 'return target' in the MySuper product dashboard and the 'investment return objective' in shorter PDS disclosure should **not** be considered the same or equivalent information for the purposes of the s29QC consistency requirements.

As noted in CP 227, there are shortcomings in the comparability of the two measures due to the underlying calculation methodologies and assumptions including the confidence intervals. Further the 'return target' as defined in the APRA reporting standards is subject to considerably more movement on a regular basis than an option's 'investment return objective'.

B3Q2 If you agree that this information is not the same or equivalent, do you think there are difficulties for consumers in being presented with information about investment return objectives in a shorter PDS and about return targets in the MySuper product dashboard?

While the potential for confusion exists this could be remedied in two ways.

1. Warnings could be provided as suggested in question B3Q3.
2. Alternatively this could be resolved with better naming conventions in the product dashboard. For example: rename the dashboard return objective item so that it is called an "APRA comparative CPI return objective" and then it is clearly different to an investment return objective. The "investment return objective" may then continue to be more precisely expressed.

Trustees are already prevented from engaging in misleading and deceptive conduct – arguably they should be allowed to present investment return objectives in what they determine is the most appropriate manner for the particular investment.

B3Q3 If there are difficulties for consumers in being presented with differing information about objectives and returns, what are the solutions to this:

(a) Would providing a warning to consumers about the differing information be sufficient?

(b) Should there be a change in terminology in either the shorter PDS or the MySuper product dashboard to highlight the difference between these two measures? or

(c) Should the RSE licensee include both sets of information in the shorter PDS and the MySuper product dashboard?

- a) Yes this is feasible.

- b) Yes this is desirable – changing terminology in the Dashboard (not just the MySuper dashboard) is the preferred option as PDS naming conventions have been in force longer and a Significant Event Notice to all members (due to change by ASIC/APRA in terminology) is not desired or cost effective.

We suggest renaming the dashboard return objective item so that it is called an “APRA comparative CPI return objective” (per the banking industry’s mortgage “comparative rates”).

- c) This would be the least favourable option. It would be likely to lead to more confusion and the shorter PDS is already information intensive. Forcing the addition of this measure and therefore accompanying text to explain it to consumers would not be beneficial.

B3Q4 Are there any other elements of the MySuper product dashboard where there may be uncertainty about whether the information is the same or equivalent to other information that trustees disclose, such as risk?

None have been identified.

B3Q5 If s29QC were to apply to MySuper product dashboard information, what are the estimated costs of complying with the s29QC requirements for MySuper product dashboard disclosure and, specifically, the disclosure of return targets and investment return objectives?

The return target information on the MySuper dashboard is already driven by the calculation methodology in APRA reporting standard SRS 700.0. Further the investment return objective is currently required to be disclosed in the shorter PDS pursuant to the Corporations Act (and Regulations). For this reason there should be no extra costs in complying with the dual disclosure.

Clarifying how to report asset allocation data

B4 We propose to clarify by class order that if APRA requires an RSE licensee to report data about asset allocation (including defining 'cash' or any other asset class), the licensee will not need to amend its shorter PDS disclosure to align with these definitions.

B4Q1 Do you agree with our proposal, or do you think that s29QC should apply to disclosure of asset allocation?

Yes, we are supportive of the proposal to clarify that Asset Allocation in member communications need not directly accord with that reported to APRA. However we would also suggest that this should not be limited solely to shorter PDSs, as we believe it would be important to include things which fall outside the shorter PDS regime such as member-facing website, annual reports and periodic statements to members, so that members can be provided information that is relevant to their circumstances.

While we support this proposal it should not actually be necessary to provide this clarification given the scope of s29QC will be limited to past investment performance as proposed in B2 of CP227.

B4Q2 Would consistency in asset class definitions be useful in the future, if a specific reporting standard could be developed for these purposes? In particular, would standard asset class definitions help address labelling issues associated with asset classes such as 'cash'?

While the intention of consistency across asset class definitions is commendable, we recognise that any move to implement consistent reporting standards may prove problematic and would not be easy to achieve. The existing IMD forms in use by the industry are currently the best general standard, but trustees often prefer, for their own disclosures, to go into the sub-class level to differentiate certain investments.

We note the purpose of SRS 533.0 is to collect information to be used for prudential supervision and publication, including assessing compliance with Prudential Standard SPS 530 Investment Governance. It may also be used by the Australian Bureau of Statistics. For this purpose SRS 533.0 requests a look-through treatment to be applied to assets.

We are of the view that the reporting of allocations to members in this form could lead to members adjusting their exposures based on information that details the asset rather than the return profile of their targeted investments.

Standard Asset Class definitions will only be of use to consumers if:

- a) they apply to both super and non-super investment vehicles simultaneously. We note that the industry already has standards (e.g. IMD standards as used by Morningstar).;
- b) they are sufficiently flexible to allow trustees to expand upon them to improve disclosure (e.g. often trustees present at sub-class level);
- c) they allow for common variants (e.g. Cash vs Enhanced Cash); and
- d) 'Other' is not used.

B4Q3 If s29QC were to apply to asset allocation information, what would the estimated costs be?

We are informed by members that if s29QC were to apply to asset allocation information that the costs would be substantial. One member has informed us that changing Asset Class disclosures is the

single biggest area of cost for them. If Asset Classes are excluded by class order (a good consumer outcome as it means super and non-super can remain aligned) then approximately half of the overall s29QC cost would be saved by them.

We are informed by another member that the estimated costs would include those associated with the reissue of the PDS suite of documents, website redesign, system changes and any costs associated with amendments required to their custodial arrangements to reflect amended holdings for portfolios.

We are informed by one member that the costs involved with reprinting the PDS suite of documents and distributing Significant Event Notices to all members would be significant, before taking into account the associated costs of personnel hours in making the amendments and changes to internal procedures (such as costs include Group Marketing, Risk and Compliance, Legal, Investments and Executive Review). By way of indicative costs, the current print cost for the PDS Suite is approximately \$100,000 per annum. To the extent that a reissue does not tie in with a scheduled update, the member would need to allow for the additional cost. Costs for external legal counsel review are estimated to be in the region of \$50,000.