

5th February 2014

By email: gregg.button@asic.gov.au

Gregg Button
Analyst
Investment Managers and Superannuation
Australian Securities and Investments Commission
GPO Box 9827
PERTH WA 6001

Dear Gregg,

Re: ASIC Consultation Paper 219 – Keeping superannuation websites up to date

I am writing in response to the feedback requests outlined in ASIC Consultation Paper 219 – Keeping Superannuation Websites up to date. We wish to provide feedback on ASIC's proposed options for dealing with uncertainty about the updating obligations.

About AustralianSuper

AustralianSuper is one of Australia's largest super funds and is run only to benefit members. We don't pay commissions to anyone to recommend us, nor do we pay dividends to shareholders. We have over 2 million members and manage over \$70 billion of members' assets. Our sole focus is to provide the best possible retirement outcomes for members.

We are regulated by ASIC and support transparency and accessibility of information for superannuation investors as good public policy. In this regard we seek to disclose more to consumers than is usually required under the current disclosure requirements on items of key importance to consumers.

We are providing comments in the order of feedback you have requested.

Options for dealing with uncertainty about the updating obligation

A1Q1 Please provide your feedback in relation to Option 1 by responding to the detailed proposals set out in Section B of this paper.

AustralianSuper supports ASIC providing RSE licensees a 'safe harbour', so that compliance with the updating obligation is achieved if an RSE's website is updated within the timeframes set out in the proposed class order. Class order relief provides regulated entities with certainty about compliance with their obligations under section 29QB of the *Superannuation Industry (Supervision) Act 1993*.

A1Q2 Do you think that ASIC should adopt Option 2, under which ASIC would not issue a class order, but give guidance on the updating obligation? Please give reasons for your answer.

No. A class order provides greater certainty than a no-action position, particularly in relation to dealings with third parties.

A1Q3 Do you think that ASIC should adopt Option 3, under which ASIC would not issue a class order nor give guidance on the updating obligation? Please give reasons for your answer.

No. This provides no certainty or comfort for RSE licensees and there clearly are compliance challenges for all entities subject to the requirements as they are.

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

We do not propose an Option 4. Instead, AustralianSuper supports Option 1 as a general proposition, assuming that Option 1 will be qualified by our comments on Section B of your paper, as shown in this submission.

Option 1: Safe harbour for RSE licensees

B1Q1 Do you have any comments on ASIC's general approach to:

- (a) providing a safe harbour for RSE licensees; and**
- (b) the general time of 14 days for updating website information?**

(a) AustralianSuper supports the use of a class order to provide regulatory relief to licensees. The approach proposed by ASIC will ensure that RSE licensees understand and are able to meet the time requirements to fulfil their obligations under section 29QB of the SIS Act.

(b) AustralianSuper supports this time being 10 **business days** (in contrast to the 14 day proposed by ASIC) generally, but have made suggestions for a different timeframe for specified disclosure obligations for specific reasons.

In addition, we also suggest that all requirements for disclosure should commence one clear business day *after* the trigger event as a matter of course in case the trigger event occurred late in the day. This means 10 business days would be 11, 20 business days would be 21 business days after the trigger event occurred.

We also suggest the following:

- where a significant event notice or material change notice is sent to members, the website summary of such notices be updated within **six business days** instead of 7 days generally (taking into account one clear business day).
- where a Product Disclosure Statement (PDS), RSE annual report, Financial Services Guide (FSG) or RSE licensee financial statement are *first given to relevant recipients*, the RSE's website should be **updated by the end of the next business day**.

B2Q1 Do you agree with the proposed seven-day period for updating the RSE's website summary of significant event or material change notices?

No. Six business days ensures that a 7 day requirement is complied with in all circumstances as it takes into account all holiday periods which may arise.

B2Q2 If not, please state the period you prefer and give your reasons. As above.

Same day: PDS, RSE annual report, FSG, RSE licensee financial statement

B3Q1 Do you agree with ASIC's proposal that RSE licensees are taken to comply with the updating obligation if they post a PDS, RSE annual report, FSG or RSE licensee financial statement to the RSE's website on the day the document is first given to a relevant recipient?

No. As mentioned above, compliance can be consistently achieved if the requirement applies the next business day, particularly if the trigger event occurs late in the business day or outside of office hours.

B3Q2 If not, what time do you consider that RSE licensees should have to post such documents to the RSE's website and still be taken to comply with the updating obligation? Please give your reasons. As above.

Tables illustrating how the class order will work

B4Q1 If we were to publish tables similar to Table 1 and Table 2, would this help you in complying with your updating obligation? Please give reasons for your answer. Yes. The tables illustrating how the class order would work are very helpful.

The use of a clear Trigger event is particularly useful, as it provides a systematic process for complying with the relevant obligations.

B4Q2 Do you think ASIC should give any other guidance in relation to the updating obligation? If so, please give details of the guidance you seek and state why you think it is needed.

Yes, more clarity is needed on the following points:

Remuneration benefits (Regulation 2.37(1) Items 5-7 and 9-16)

The trigger event should be the board signing off on remuneration. We suggest timing should be the next business day after the trigger event occurring.

Termination of an officer or trustee (Regulation 2.37(1) Item 8)

The trigger event should be when the final remuneration is paid. Timing should be the next business day after the trigger event occurring.

Actuarial reports (Regulation 2.38(2)(d))

AustralianSuper suggests that an exemption be provided in relation to disclosure of actuarial reports. This information often includes details of individual member remuneration, or information from which individual member remuneration can be deduced. Further, these reports are published every three years, containing information that is over one year old at the time the actuarial report is produced. Perhaps class order relief from disclosure of actuarial reports could be conditional on publication of annual solvency reports for the same defined benefit funds and subfunds?

Proxy voting (Regulation 2.38(2)(o))

AustralianSuper submits that the class order should prescribe that:

- the release time for the summary of proxy voting be **21 business days** from the first day of the current financial year (rather than 14 days). This is seeking to implement a 28 day requirement, but converting it to a business day requirement and ensuring the trigger event day is not counted.
- we also suggest that the requirement for summary information should be able to accommodate disclosure of complete information as a means of complying with the requirement.

Please do not hesitate to contact me on 03 8648 3847 if you wish to discuss this further.

Yours sincerely

Louise du Pre-Alba
Head of Policy