

13 March 2013

By email: charlotte.som@asic.gov.au

Charlotte Som
Lawyer
Investment Managers and Superannuation
Australian Securities and Investments Commission

Dear Ms Som,

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

AustralianSuper welcomes the opportunity to provide feedback on the options contained in ASIC Consultation Paper 227.

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 2.1 million members and manage over \$85 billion of members' assets. Our sole focus is to provide the best possible retirement outcomes for members and we have a keen interest in ensuring that disclosure of fees and costs and other key features to members is uniform across the superannuation industry.

This submission touches on issues relating to fee disclosure on which we have already made a recent submission to ASIC. Consistent fee disclosure across the superannuation industry is important in promoting both consumer understanding as well as promoting greater competition and efficiency within the superannuation industry.

AustralianSuper has commended ASIC's work on fee disclosure in our submissions to the Financial Systems Inquiry, and fully support the disclosure of fees and costs of underlying assets. We see this as key in ensuring that a fully competitive superannuation industry flourishes in Australia to the benefit of its end users.

We have considered the Consultation Paper 227 and provide detailed comments attached. By way of summary the key issues in our submission are as follows:

- **Option 1** – We contend that Option 1, under which ASIC would issue a class order and accompanying guidance is the preferred option.

- **Asset allocation** – We contend that asset allocation should not be subject to the application of s29QC.
- **Fee and costs disclosure** – This type of disclosure should be subject to the application of s29QC as it is important that all data on fees and costs be consistent.
- **Consumer facing disclosure** – We do not agree that s29QC should be limited in its application to consumer facing disclosure, being advertising and promotional material. Consumers source information on superannuation funds from a much wider range of data than these two points – it is better public policy that they be provided with consistent information across all channels.
- **Cost information** – The Consultation paper requests information on costs of complying with s29QC in each section of the paper. Costs of compliance with s29QC should not be substantively different from the costs that would be normally be incurred in seeking to comply with mandatory reporting and disclosure requirements more generally. We suggest that the real concern is instead the issue of transparency and comparability between superannuation funds, based upon mandatory information provided in disclosure and regulatory reporting.
- **APRA consultation** – We assume that detailed consultation on this matter with APRA will occur as a matter of course, and that both regulators are cognisant of the competition, transparency and comparability issues arising from the application of s29QC, as well as considering the letter of the law.

Please do not hesitate to contact Louise du Pre-Alba on 03 8648 3847 if you wish to discuss this further. We are happy to provide further information on request.

Yours sincerely



Louise du Pre-Alba
Head of Policy

ASIC CONSULTATION PAPER 227: DISCLOSURE AND REPORTING REQUIREMENTS FOR SUPERANNUATION TRUSTEES

ASIC feedback questions are in bold below. Only questions of specific relevance to AustralianSuper have been included.

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? ... Are there other areas that should be considered for inclusion or exclusion from the proposed class order?

We contend that the use of both Class Order relief and accompanying guidance material would clarify the operation of s29QC and ensure certainty in reporting to regulators as well.

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?

We agree that s29QC should be limited in its scope and application on specified subject areas, such as asset allocation. It is evident that using s29QC where there is no other legislated requirement for providing information in a certain way can lead to problematic outcomes. This is the case in relation to asset allocation where specified APRA reporting can, if s29QC is intended to apply, lead to disclosure of asset allocation positions to consumers that differ from that which directors have signed off on. We do not see the consumer benefit in creating this difference in presentation of information, particularly where it results in consumers have less information about the investments made on their behalf, as a consequence of APRA reported information being used in disclosure documents.

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?

We contend that fee and costs disclosure should continue to be subject to the application of s29QC. It is of key importance for fee and costs disclosure to be

uniform across all channels to ensure there is no inconsistent information in the marketplace which will ultimately confuse consumers in investment decision-making.

In asserting this we are confident that ASIC and APRA can work together and ensure that superannuation fund trustees provide fee and cost information in both APRA reporting and in disclosure documents that seeks to capture all fees, and is in compliance with the Corporations Regulations requirements and ASIC class order relief relating to fee and costs disclosure. If information provided in APRA reporting differs from that provided in disclosure documents in compliance with the Corporations Regulations, then the intent of providing full fee and costs disclosure to consumers will be undermined.

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 statements regime)?

We agree that the operation of s29QC should be limited to ensure that it does not override any existing disclosure requirements. This is based on the contention that legislated disclosure requirements should have primacy.

This does not however address the consequential issue arising, that APRA reporting may accept different information than that provided to consumers. AustralianSuper would consider this to be a retrograde step. It is unacceptable that different fees and cost information could be provided to APRA than that provided to consumers. Provision of one of these pieces of information to a third party must be incorrect and misleading – it is a question of which fee and cost information is wrong.

AustralianSuper contends that the legislated disclosure requirements in the Corporations Regulations should have primacy and that reporting to APRA should be made on the same basis.

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 do not agree that the application of s29QC should be limited to consumer-facing disclosure only. This position incorrectly assumes that consumers source information about superannuation only from trustees of superannuation funds. This is incorrect. Consumers of superannuation products directly and indirectly source information about superannuation, including information about fees and costs, from various forms of media, who in turn are reliant upon ratings agencies for information

about superannuation funds. They in turn are reliant upon the correct data being provided to APRA and the Australian Bureau of Statistics about superannuation. To require a lesser standard in the provision of information to APRA and the ABS than that required in consumer facing disclosure is to do a disservice to those same consumers – as they will be end users of the APRA and ABA data and may ultimately be misled by the difference in information provided.

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

No. Past investment performance information should be subject to s29QC to ensure consistency of this information across all channels.

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

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?

No they should not be considered the same.

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?

Yes

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

We agree with (b) – that there should be a change in terminology in either the shorter PDS or the MySuper product dashboard to highlight the difference between these two measures.

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?

We agree that the information about the Standard Risk measure in the periodic statements is problematic and may cause confusion to consumers compared to other risk disclosures which factor in time periods of investment which are relevant to a long term investment such as superannuation.

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

AustralianSuper agrees with the ASIC proposal that s29QC does not apply to disclosure of asset allocation.

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'?

Yes, there is no industry standard on this, and as such has given rise to regulatory concerns as well. The primary concern that AustralianSuper has in this regard is if such a standard results in less meaningful asset class disclosure to members than more.