Australian Institute of Superannuation Trustees

16 March 2015

Ms Charlotte Som
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Investment Managers and Superannuation
Australian Securities and Investments Commission
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Dear Ms Som,

Re: ASIC CONSULTATION PAPER 227: *Disclosure and reporting requirements for superannuation trustees: s29QC*

AIST thanks ASIC for the opportunity to discuss and respond to these proposals.

The consultation processes that ASIC has put in place have been useful and extensive, with the various workshops that have been organised being particularly useful.

About AIST

The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the $600 billion not-for-profit superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training, consulting services and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

Key points of AIST response

In brief:
AIST supports ASIC's proposed class order relief and guidance (Option 1) on s29QC consistency, and proposes measures to improve consumer comprehension and protection through comparable disclosure across all superannuation products.

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The key points of AIST's response are:

- Further delay s29QC requirements until 1 January 2016.
- Support Option 1, class order from 1 January 2016.
- Call for RG97 rules to be settled prior to operation of s29QC.
- RG97 and Corporation Act requirements to have primacy.
- Opposition to any carve out of fee and cost disclosure.
- S29QC must apply to information provided to ratings agencies.
- S29QC must apply to select investment options as well as MySuper products.
- 'Return target' to be based on high probability rather than mean probability.

The details of our response to each of the questions posed by ASIC is set out in more detail below.

ASIC Proposal

A1 ASIC propose to address the uncertainty about the consistency requirements in s29QC using one of the three options outlined [at paragraphs 31-34 of the Consultation Paper].

Consistency aids transparency, comparability and accountability, and is a vital for effective consumer protection, competition and efficient operation of superannuation. ASIC should test its proposals on this basis and against principles on financial consumer protection.

AIST refers to (and supports) the OECD's *G20 High Level Principles on Financial Consumer Protection*[1].

As far as fee disclosure is concerned, these Principles may be summarised as follows:

- Standardisation, comparability, and consumer testing are all desirable.
- A level playing field across financial services is to be encouraged.
- Furthering responsible business conduct is important, e.g. ensuring that remuneration practices and conflicts are not detracting from proper disclosure.
- Remuneration/ conflicts of interests should be disclosed where conflicts cannot be avoided.
- Disclosure should help consumers distinguish between what is essential and what's less important.

[1] Organisation for Economic Co-Operation and Development, (2011), G20 High-Level Principles on Financial Consumer Protection, Geneva: Organisation for Economic Co-operation and Development. (Endorsed by G20 Finance Ministers & Central Bank Governors 14-15 Oct 2011) Available at: http://www.oecd.org/daf/fin/financial-markets/48892010.pdf

As mentioned in the teleconference between AIST and ASIC on 13 March, AIST also recommends that ASIC maps the areas in shorter PDSs and APRA reporting where it is likely there will be inconsistency between ASIC and APRA requirements to identify if there are other areas of inconsistency that can or should be reconciled.

AIST recently made this suggestion to APRA and the ABS in relation to ABS reporting forms that are currently open for consultation.

AIST Feedback

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?

AIST strongly supports Option 1 involving both a class order and guidance to clarify the scope of s29QC.

The class order should clearly specify both the area where it does and does not apply. This will provide certainty and consistency, and ensure that s29QC provides useful consumer protection.

The operation of s29QC should be delayed for a further six months, that is, until 1 January 2016, and the class order and associated guidance should apply from then.

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.

No, ASIC should not adopt Option 2. AIST prefers Option 1 to Option 2.

S29QC is broadly constructed and has wide application. As revealed in this and earlier consultations, there are differing views about the requirements imposed by s29QC. Guidance rather than a class order would not deliver the degree of consistency necessary to provide the comparability of superannuation products.

Option 2 would probably be less expensive to apply than option 1 but for the wrong reason. It would allow a range of applications as some parties may feel less constrained by guidance alone than they would by a combination of a class order and guidance.

A1Q3 Should we adopt Option 3, under which the s29QC 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.

No, both a class order and guidance is necessary to ensure that the consumer protections inherent in s29QC are properly realised, and that the application of s29QC is appropriately limited.

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.

No, AIST supports Option 1 on the basis set out in this submission.

ASIC Proposal

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.

AIST Feedback

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)?

AIST agrees that s29QC should be limited on the basis set out in this submission, in relation to asset allocation for the time being and invest return objectives. We believe this limitation should be explicitly stated, as should the areas of inclusion. We do not believe it should be otherwise limited.

Paragraph 41 states that if a topic isn't included in the class order under option 1, then s29QC does not apply. AIST reiterates the point made in the introduction to this submission that such a conclusion should only be made after a thorough mapping of the areas of inconsistency.

AIST submits that consistency in disclosure is generally beneficial, as it aids consumer comprehension of financial products, and the differences between them. AIST supports a review of s29QB disclosure, including executive officer remuneration disclosure, and has already advised ASIC that it is prepared to assist in facilitating such a review.

Notwithstanding this, a review of s29QB disclosure is beyond the scope of s29QC as it does not relate to APRA reporting. Therefore, ASIC should not progress this proposal as part of consideration of s29QC but should do so subsequently and later.

Furthermore, the Government is still to respond to submissions on its November 2013 discussion paper *Better regulation and governance, enhanced transparency and improved competition in superannuation*.

AIST encourages the Government to issue this response. A discussion with industry about wider disclosure issues would then be more firmly based and both industry and ASIC will have a clearer understanding of the Government's policy and intentions.

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?

Fee and cost disclosure should not be excluded, as consistency of fee and cost information is fundamental in assisting consumers in making informed and meaningful investment decisions. The disclosure of inconsistent information about fees could be used to manipulate disclosure and confuse consumers into making inappropriate decisions.

For fee and cost disclosure to provide the optimal level of consumer protection, disclosure should be aligned with the specific work being undertaken by ASIC in response to Regulatory Guide 97. AIST strongly argues that this needs to be resolved before CP 227 is finalised.

Calculation methodologies should be set, e.g. through Regulatory Guides, whenever outcomes affecting members' benefits need to be disclosed. This is needed to ensure consistency and to help drive efficiency.

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)?

AIST strongly submits that the existing disclosure requirements in the Corporations Act and Regulations should provide the best consumer protection and should override other requirements.

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?

AIST is strongly opposed to limiting s29QC to consumer-facing disclosure such as advertising or promotional material issued by a super fund.

Consumers are just as likely to see information in the media about super fund performance and fees in news and opinion articles not authored by the super fund. Often these articles will include comparison tables and assertions about which funds have the highest performance or the lowest fees. In very many cases, media outlets source this information from ratings agencies and other bodies that trade in super fund data.

Ratings agencies however often source their information directly from superfunds. To exclude data provided to such bodies would make a travesty of the s29QC requirements, and directly result in misleading information being provided to consumers.

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?

There would be no additional cost to the application of s29QC on the wider basis proposed by AIST.

ASIC Proposal

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.

AIST Feedback

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

Past investment performance should be explicitly covered by s29QC.

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?

No, it should quote net returns rather than net investment returns. AIST strongly supports the use of net returns rather than net investment returns as the key comparison rate for all purposes, including information provided to ratings organisations.

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

Costs would be relatively low and limited to the recalculation of some historical data, if the approach proposed by AIST below is adopted.

While historical data was disclosed in a manner compliant with then applicable requirements at the time, AIST submits that all *new* use of past performance information should be subject to s29QC. For example, where a fund discloses each years past performance over the past 10 years, the performance shown for each of the previous years, including those years preceding the operation of the Stronger Super reforms, should conform to the requirements of s29QC.

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While there is some cost and possible difficulty involved in calculating indirect costs for past years this is outweighed by the value of consistency in the reporting of past years, and the principles underpinning s29QC.

However, there should be no requirement to reissue previous PDSs that do not comply with s29QC and should continue to be able to be published on super fund websites as part of the historic record.

At the discussion on 13 March, the idea of s29QC only requiring use of the net return in relation to MySuper products was floated. We understand that this was on the basis that net returns are required to be shown on MySuper product dashboards, and there is not any requirement for a product dashboard for select investment options.

AIST categorically opposes such a proposal as it would make the comparison of MySuper products with select investment options impossible, and would not be in the best interests of consumers. A MySuper member looking to compare the net return of their existing product with the net return of a select investment option would not be able to do so.

ASIC Proposal

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.

AIST Feedback

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, given the mean probability requirement in the current methodology for calculation of return targets in MySuper product dashboards, it is not appropriate that return targets be considered synonymous with investment return objectives.

Consumers do not understand the meaning of return targets, and in particular they do not understand that it is set on a mean probability basis. In other words, it is a measure that super funds are only expected to reach half of the time!

Trustees cannot be reasonably required to set investment return objectives on the basis of mean probability. They will do so on the basis of high probability. Indeed, they would not be properly discharging their fiduciary duties if they were to do so.

As this is a consumer protection issue (and hence the responsibility of ASIC) related to a methodology required by APRA for its reporting, AIST strongly submits that ASIC and APRA should attempt to resolve this issue as a matter of urgency. Resolution should involve resetting the methodology for return targets on the basis of a high probability.

The industry standard is around 66% but this depends on the option. For example, a cash option should have a very high probability of achieving its return target, and the target should reflect the option - a cash option might have a target of CPI +1% but a probability of getting it of close enough to 100%. A higher growth option will have a lower probability of achieving its return target.

In the meantime, ASIC should undertake surveillance of MySuper product dashboards, and appropriately enforce disclosure of return targets on a mean probability basis, initially on a facilitative basis. AIST notes that super funds are using a range of probability targets to underpin their return targets and suggests that this causes confusion, and is at odds with comparability.

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, consumer research undertaken by ASIC has shown that consumers have limited understanding of the concept of either return targets and investment return objectives, and difference between. This however is no justification for treating them as being the same.

The inclusion of return targets in PDSs would very confusing for consumers, and the inclusion of both measures in a product dashboard would be even more confusing, and would not assist a consumer's understanding of a superannuation product.

This could be addressed by super funds explaining both concepts in their PDSs and in MySuper product dashboard. A far more satisfactory solution however is to change the mean probability requirement to be a high probability requirement (although we appreciate this is a matter for APRA rather than ASIC).

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?

AIST supports solution (b). There should be a clear explanation of each concept and the differences between them.

AIST suspects that there remain many in the super industry itself – let alone less financially literate consumers - who do not understand the use and implication of the mean probability requirement on the setting of return targets. AIST has continually submitted that return targets should be set on the basis of high probability rather than mean probability. We continue to strongly hold this position.

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?

AIST has long standing concerns about the use and value of the Standard Risk Measure in the MySuper product dashboard. These concerns have been conveyed to APRA and Government on numerous occasions.

A summary of our concerns is that the standard risk measure uses volatility as a proxy for risk, does not measure other forms of risk, and does not measure severity of market risk. As a consequence, the measure can be misleading and inappropriate for members who are in a mandatory long term investment environment. These limitations are recognised by the proposers of this measure.

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?

AIST understands that super funds currently base their MySuper product dashboard disclosure on data reported to APRA, and therefore there is no additional cost.

ASIC Proposal

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.

AIST Feedback

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

AIST agrees with the ASIC proposal, and submits that s29QC should not apply to asset allocation at this time. If it applied to asset allocation at this time, it may result in consumers being provided with less useful, specific and relevant information about the asset allocation of their fund. This is a consequence of the existing structure of reporting to APRA on asset allocation, and is not in the best interests of members.

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'?

Consistency in asset class definitions is a worthwhile objective, and should be pursued by ASIC through industry consultations in the medium term. This would help labelling issues associated with various asset classes, including cash.

However, consistency should not be achieved at the expense of useful consumer information. For example, a typology that categorised infrastructure investments as 'other' rather than 'infrastructure' would not be in the best interests of consumer understanding of a superannuation product.

In the first instance, AIST proposes that APRA and ASIC review existing asset allocation requirements with a view to developing a proposal that is both consistent and maximises usefulness to consumers. This should then be the subject of consultation with the super industry.

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

The cost of applying s29QC to asset allocation would depend on the time and process adopted for implementation of the requirement. If the requirement was phased in by requiring asset allocation information in PDSs produced after a set date to be s29QC compliant this would minimise the cost impact. However, AIST is not proposing the consideration of such a requirement until after industry consultations on this question proposed above.

If you have any further questions regarding this submission, please contact David Haynes, Executive Manager Policy & Research on 03 8677 3803 or at dhaynes@aist.asn.au .

Yours sincerely,

Tom Garcia
Chief Executive Officer