



ASIC

Australian Securities & Investments Commission

Managing regulatory change (MRC) in life insurance and pensions

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Introduction — ASIC's role as market integrity and consumer protection regulator

The Australian Securities and Investments Commission (ASIC) is an independent Australian Commonwealth government body constituted by the Australian Securities and Investments Commission Act 1989. It was first established on 1 January 1991 as the Australian Securities Commission, to administer the Corporations Law. In July 1998, it received new consumer protection responsibilities and its current name.

ASIC's charter of responsibilities includes:

- Regulating and enforcing laws which promote honesty and fairness in financial markets, products and services and in Australian companies;
- Ensuring that investors and consumers act prudently and can rely on the integrity of the market, because ASIC enforces their rights, warns them of risks and takes action to improve standards of behaviour across the financial sector; and
- Underpinning the strength, growth and international reputation of Australia's financial markets.

ASIC regulates superannuation (pension) funds, insurers and deposit-taking institutions, by:

- Setting standards about what those institutions tell their customers;
- Monitoring their sales practices and compliance with codes of practice;
- Checking customer complaints systems;
- Cooperating with its co-regulator, the Australian Prudential Regulation Authority (APRA) on issues of joint regulatory interest and concern; and

- Investigating and taking action against misconduct.

ASIC also regulates finance sector intermediaries (such as dealers, advisers and brokers) who are involved in the distribution of information and sale of products and services to customers, by:

- Setting standards for their education, training and operations;
- Licensing and registering them before they start operating or dealing with customers;
- Recording their details and the names of their authorised representatives on public registers, which can be searched electronically;
- Monitoring the quality of the advice they give; and
- Investigating and pursuing misconduct through enforcement action.

As at 30 June 2000, ASIC employed 1,234 full time equivalent staff throughout each state and territory in Australiaⁱ. Those staff act under the direction of three fulltime Commissioners, appointed by the Governor - General on the nomination of the federal Treasurer.

The market

Since March 1996, superannuation assets in Australia have grown from A\$250 billion to A\$477.4 billion. Assets grew 16.9% over the 1999 – 2000 year and have more than doubled over the past 5 years.

The rate of growth in superannuation in Australia in the past 10 years has been the second highest amongst OECD countries, with superannuation assets now representing over 70% of GDP. Superannuation assets are projected to reach A\$700 billion by June 2005 and A\$1000 billion (or A\$1 trillion) by 2010, with the corresponding growth in the ratio of assets to GDP to reach 90% by 2010.ⁱⁱ

In life insurance, a recent Rice Kachor survey of the Australian market revealed that sales of annual premium products had increased 17.7% to A\$1.5 billion to the year ending 31 March 2000. Over the same period, the market for single premium products rose 3.86% to A\$30.35 billion.ⁱⁱⁱ

Overall, significant sums are being invested in Australian superannuation, managed funds and life insurance products – totalling A\$20.5 billion in the quarter ending 30 June 2000.^{iv}

The market and rationale for regulation

Superannuation plays a vital role in Australia's financial markets – given that in June 2000, 70% of Australia's funds under management totalling A\$699 billion represented superannuation-sourced funds. That figure exceeds the size of the Singapore and Hong Kong SAR markets.

The size of the Australian superannuation market is in large part due to the broad customer base which results from legal obligations imposed on employers to make compulsory superannuation contributions for their employees.

For ASIC, promoting the integrity of conduct and consumer protection in both the superannuation and life insurance markets, means that our focus is on the way in which trustees, underwriters and intermediaries interface with fund members and policyholders.

This focus includes the quality of information flowing from trustees to members (or from underwriters to policyholders), the handling of complaints and the conduct and practices associated with the sales of products.

It is a focus which we at ASIC are likely to intensify with the impending arrival of choice of funds. At the date of preparation of this paper, negotiations between the political parties on the introduction of choice of fund legislative reform were close to concluding. Presently, Australian employees have no general right to choose a superannuation fund into which their employer must make compulsory contributions – but the proposed law reform measures will enable employees to select their own fund.

The introduction of choice of funds will be accompanied by enhanced disclosure requirements for funds which ASIC will administer, and an education campaign for all participants.

How does ASIC propose to deal with these legislative and market challenges? The mantle of consumer protection regulator and the establishment of a protective framework has involved ASIC in:

- Understanding the scope of the legislation we administer and the operations of the financial services industries we regulate, in an era of immense global and technological innovation and change;
- Identifying and addressing the most important needs, problems and risks which consumers face;
- Training and equipping our staff so they can act effectively and appropriately; and
- Building strong relationships with consumer, industry and government representatives so we can work collaboratively to fulfil our roles and discharge our responsibilities.

ASIC'S regulatory philosophy

The integration of ASIC's enforcement and compliance functions represents a recognition of the fact that enforcement alone is not the answer to effective regulation. Indeed, a coordinated enforcement and compliance approach enables ASIC to deliver not only strong public enforcement outcomes (such as criminal prosecutions and civil judgments)^v, but also to establish a regulatory environment which reduces or prevents significant compliance risks arising.

ASIC achieves this holistic regulatory approach by focussing on the identification of emerging regulatory risks or trends, and implementing educational and regulatory strategies (with both consumers and market participants) designed to increase public awareness and to raise overall industry standards of compliance.

A matrix of reactive and proactive regulatory tools underpins this regulatory philosophy, namely:

- Adopting a risk-based approach to compliance involving systemic identification of important regulatory risks;
- Engaging in cooperative partnerships with industry, consumers, other regulators and the media, both to produce a shared sense of purpose, and also to make our market-place intervention more effective;
- Focussing on results and seeking innovative meaningful outcomes.

Delivery of disclosure requirements

ASIC assumed responsibility for administering disclosure obligations by financial product providers on 1 July 1998. In the context of this Symposium, ASIC is responsible for administering the disclosure requirements for life insurers, superannuation funds, approved deposit funds, pooled superannuation trusts and retirement savings accounts.

Over the course of the past 2 years, ASIC's primary activity in this area has focussed on disclosure by superannuation trustees – which reflects the fact that superannuation fund disclosure obligations are generally more onerous than those for the other products referred to.

Disclosure in this context encompasses:

- Point of sale disclosure, prior to the issue of a product^{vi};
- Disclosure upon sale or issue of an interest;
- Regular disclosure by way of annual member statement and fund report;
- Continuous disclosure for significant events;
- Disclosure on request; and
- Exit disclosure, upon departure from the fund.

ASIC's approach to superannuation disclosure and its response to operational requests is outlined in an information release published in January 1999.^{vii} ASIC receives three classes of operational requests:

1. Applications for ASIC to exercise its discretionary exemption and modification powers;^{viii}
2. Requests for no-action letters in relation to past or anticipated future non-compliance with the law; and
3. Requests for guidance on the interpretation of the applicable law.

Any reforms or policy developments in disclosure are now largely dependent upon the passage of the Financial Services Reform Bill ("FSR Bill") through Parliament. At the date of preparation of this paper, a final draft Bill had not been published, but the Government intends that it be introduced to the House of Representatives before the end of the current Parliamentary session.

The FSR Bill is the final step in an extensive review of the financial services sector which commenced with the Financial Services Inquiry in March 1997^{ix}. Some core features of the proposed disclosure regime provided for by the discussion draft FSR Bill are:

- A harmonised approach to disclosure across all financial products (including uniformity in both licensing requirements and for product disclosure);
- A requirement that product disclosure statements be lodged with ASIC, but ASIC will not be required to pre-vet those statements;
- A 2 year transitional period from the date the FSR Bill is enacted for ongoing disclosure, but not for pre-sale disclosure; and
- Facilitation of a technology neutral approach to electronic or paper-based disclosure documents.

The last point brings me to a specific consideration of electronic disclosure issues, which I know is of interest to those attending this Symposium.

Electronic delivery of information

There has been a well-documented explosion in e-commerce capabilities to disclose information, both from a business to business (B2B) and business to customer (B2C) perspective. To some extent this has been spurred on by government initiatives. In Australia, the Government has allocated funds to a superannuation program (SuperECProgramme) which is designed to deliver cost and administrative efficiencies by the medium of new technologies.

Not surprisingly, some product providers are considering the extent to which they can discharge their legal reporting obligations via the internet.

ASIC is minded to be generally facilitative of the use of the internet to deliver information. It aims to be technology neutral within the constraints of existing regulatory requirements and principles. This is reflected by the case-by-case approach ASIC has to date taken in relation to applications for relief for the delivery of part electronic application forms in life insurance.^x In the superannuation area, product providers have also sought and obtained case-by-case relief to ensure that disclosure proposals are within the parameters of the law.

In examining the extent to which disclosure documents can be provided by the internet, ASIC will consider a number of policy perspectives, including:

- Accessibility of a member or policyholder (including potential customers) to the internet. In one application for relief ASIC received, we required the provider first to obtain a member's consent before distribution of information to that member by email;
- The extent to which technology can ensure that information and application forms which must be delivered together, are in fact delivered together;
- The extent to which the electronic version of information should replicate the paper version; and

- The extent to which the purpose or effect of signature requirements (in the case of point of sale materials) can be achieved by some other means.

Removing regulatory barriers to electronic distribution

Regulators face an unenviable task of balancing the legitimate business needs and expectations of industry – for efficient, quick and competitive methods of communication, with the requirements of protective legislation designed to ensure that customers are not disadvantaged by technological developments. This tension is best exemplified in areas where legislation has imposed an obligation on product providers to disclose information to consumers, but where technological changes mean that consumers need to make contact with the product provider to obtain the information they need, and to which they are entitled.

In essence, the potential antiquity of posted mail (whereby the information is delivered by the product provider to the consumer's address) and its replacement by email portals or website searches (through which the consumer goes to the product provider's electronic address to obtain information) signifies a subtle, but fundamental shift in onus in the delivery of financial information.

In February 2000, ASIC took the proactive step of encouraging the development of a fully electronic system for offering securities.^{xi} ASIC's policy paper was issued following a 5 month public consultation period, preceded by the issue of a policy proposal paper for public comment.

Under this policy, issuers of securities will be able to make effective use of electronic technology when designing their electronic application processes, provided potential investors have electronic access to the same prospectus material and other information as do paper-based applicants.

More recently, ASIC released a policy proposal paper on 5 October 2000, to allow fully electronic distribution of life and superannuation products.^{xii} The paper has been released for public comment on proposals to remove barriers to fully electronic distribution of life insurance and superannuation products.

Although ASIC has for some time been dealing with case-by-case applications for relief in relation to disclosure of documents by electronic means, the proposed policy will go further and allow life companies and superannuation trustees to receive and process applications electronically. The proposals are designed to ensure that issuers of life insurance and superannuation products are not disadvantaged in comparison to issuers of securities, and to maintain a consistent approach to regulation of electronic commerce across the financial services sector.

ASIC is particularly concerned to ensure that consumers who apply electronically for life insurance or superannuation products have full access to disclosure documents and are fully informed about their obligations. The policy proposals address three distinct issues:

- Direct distribution of life insurance and superannuation products using electronic applications;
- Electronic applications where intermediaries (agents or brokers) are involved; and
- Mixed-media distribution.

In relation to the latter issue, ASIC is concerned that if product issuers use a combination of paper based and electronic versions of disclosure documents and application forms, then there could be confusion for consumers if there is a difference in the way information is presented or if the content varies. To reduce that risk, it is likely ASIC will require issuers of mixed-media documents to ensure that the electronic and paper versions of documents remain substantially similar.

Conclusion

ASIC's responsibilities as market integrity and consumer protection regulator entail, in the main, focussing on the interaction between consumers and financial service providers through:

- The disclosure of information provided to consumers by financial services providers; and
- The conduct of financial services providers and intermediaries when dealing with consumers.

ASIC brings to its regulation and supervision of the financial services industries, some years of experience with regulation and supervision of the corporate sector more generally. Not surprisingly, our past experience and our desire for regulatory harmony between all commercial sectors we regulate, is an important driver of our regulatory approach in respect of life insurance and superannuation funds. Such consistency of approach is reflected by the recent extension of our policy regarding electronic applications for securities, to the proposed policy allowing electronic applications for life insurance and superannuation products.

As I suggested at the outset of this paper, the range of activities we regulate, the size of the market and the finite nature of public resources means that our approach to regulation – be it enforcement of the law or policy guidance – needs to be structured, focussed and based on a balanced assessment of competing risks and emerging trends.

Consistently with that risk-based strategic approach, ASIC adopts a proactive approach to e-commerce. While it is technology neutral on the delivery of information by either traditional or electronic means, it works with consumers and industry to ensure that consumers are not disadvantaged by new methods of delivery of information, while providers can maintain their drive towards greater cost efficiency and international competitiveness.

Endnotes

ⁱ ASIC Annual Report 1999 - 2000

ⁱⁱ Speech by Senator Kemp, Assistant Treasurer, to ASFA, 18 October 2000.

ⁱⁱⁱ Cover Note, Issue 1232, 26 October 2000, p. 2.

^{iv} APRA Annual Report 1999 - 2000

^v In the 1999 – 2000 year, ASIC banned 50 advisers and brokers (the highest number ever), secured gaol sentences for 25 offenders and succeeded in 84% of the 461 Court cases it pursued. (ASIC Annual Report 1999 – 2000).

^{vi} Commonly as prescribed in the determination issued under section 153 of the Superannuation Industry (Supervision) Act 1993 (Cth) ("SIS Act"), and also under section 157 of the SIS Act.

^{vii} Information Release 99/002, available at www.asic.gov.au

^{viii} Part 29 of the SIS Act and clause 40 of the section 153 SIS Act determination.

^{ix} The Wallis Committee

^x Information Release 00/013, April 2000, available at www.asic.gov.au

^{xi} Policy Statement 150 "Electronic Applications and Dealer Personalised Applications", 15 February 2000. See also Information Release 00/066, both available at www.asic.gov.au

^{xii} Policy proposal paper "Electronic applications for life insurance and superannuation products", September 2000. See also Information Release 00/032, both available at www.asic.gov.au