



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 227

Disclosure and reporting requirements for superannuation trustees: s29QC

December 2014

About this paper

This consultation paper sets out ASIC's proposals for how the consistency requirements under s29QC of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) may be addressed.

We are seeking feedback on these proposals from licensees of registrable superannuation entities (RSE licensees).

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 19 December 2014 and is based on the Corporations Act and the *Superannuation Industry (Supervision) Act 1993* as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on how the consistency requirements under s29QC of the SIS Act may be met. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section C, 'Regulatory and financial impact'.

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at www.asic.gov.au/privacy for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 13 March 2015 to:

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What will happen next?

Stage 1	19 December 2014	ASIC consultation paper released
Stage 2	13 March 2015	Comments due on the consultation paper
	February–March 2015	Drafting of regulatory guide
Stage 3	Second quarter, 2015	Regulatory guide released

A Background

Key points

Section 29QC of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) imposes consistency requirements between the reporting standards of the Australian Prudential Regulation Authority (APRA) and the information given by licensees of registrable superannuation entities (RSE licensees), including under the disclosure requirements in the *Corporations Act 2001* (Corporations Act) and the Corporations Regulations 2001 (Corporations Regulations), as administered by ASIC. The s29QC requirement is intended to improve the comparability of information about superannuation products.

The purpose of this consultation paper is to address uncertainty in the industry about how to comply with s29QC in its current form, while also providing possible options for modifying the scope and application of s29QC.

The s29QC requirement for consistency

- 1 Under s29QC, if an RSE licensee provides information calculated in a particular way to APRA under a reporting standard made under the *Financial Sector (Collection of Data) Act 2001*, and the licensee gives the same or equivalent information to another person, including on a website, the licensee must ensure that this information is calculated in the same way as the information given to APRA.

Deferral of the s29QC requirement

- 2 The s29QC requirement was enacted with a commencement date of 1 July 2013. However, in March 2014, in response to questions raised by industry on compliance with s29QC, we issued a joint letter¹ with APRA to all RSE licensees to clarify the application of s29QC. Following concerns expressed by industry to both ASIC and APRA in response to our joint letter, ASIC then deferred by class order the operation of s29QC until 1 July 2015: see Class Order [CO 14/541] *RSE licensee s29QC SIS Act disclosure exemption*. During this deferral period, ASIC is consulting further with industry on the application of s29QC.

¹ A full copy of the joint letter issued by ASIC and APRA on 21 March 2014 is available at www.asic.gov.au/regulatory-resources/superannuation-funds/stronger-super-reforms and <http://www.apra.gov.au/Super/Documents/ASIC-APRA-letter-s29QC-March-2014.pdf>.

- 3 Regardless of the deferral of s29QC, APRA's Reporting Standard SRS 700.0 *Product dashboard* (SRS 700.0) and Reporting Standard SRS 703.0 *Fees disclosed* (SRS 703.0) still apply. The requirement to use APRA's reporting standards in the calculation of items for the MySuper product dashboard is required specifically under the Corporations Regulations: see Subdiv 2E.1 of Pt 7.9. The requirement exists independently of s29QC.

Rationale for the s29QC requirement

- 4 The Super System Review² into Australia's superannuation system identified a lack of transparency, comparability and, consequently, accountability in Australia's superannuation system. In particular, the review identified that there was no standardised methodology for calculating and disclosing relevant superannuation fund or investment option information.
- 5 The Revised Explanatory Memorandum to the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012 indicates that the obligation to give information that is calculated in a consistent way will improve the comparability of superannuation products (page 29). Further, inconsistent information provided through multiple means can cause significant damage to members of superannuation funds and inhibit informed decision making.
- 6 One area where inconsistency may arise is in the disclosure of past performance data, with RSE licensees using different methodologies to calculate the return information that they publish, for example, in their advertising material.

Our approach to compliance

- 7 ASIC and APRA will share information to assist with the administration of s29QC. As such, we may have access to data provided to APRA for the purposes of checking compliance with s29QC.
- 8 After s29QC comes into operation, we will be monitoring and ensuring compliance to ensure transparency and consistency of information.
- 9 However, we may consider extending our facilitative approach to compliance to give RSE licensees time to make the necessary arrangements to comply with the s29QC requirement. Industry will be advised if we extend our facilitative compliance approach in this way.

² The Super System Review was announced by the then Minister for Superannuation and Corporate Law on 29 May 2009, with the review making recommendations by 30 June 2010. The review looked at the governance, efficiency, structure and operation of the superannuation system in Australia.

- 10 If an RSE licensee does not follow the calculation methodology in APRA's instructions to the reporting standards, we may take appropriate action as the regulator responsible for this provision. A failure to comply with s29QC is an offence of strict liability, with a maximum penalty of 50 penalty units.

Previously issued guidance on how to comply

- 11 We have previously issued Information Sheet 167 *Disclosure requirements for superannuation trustees: s29QC* (INFO 167) to give guidance about the implications of the s29QC requirement. Our joint letter with APRA to RSE licensees, dated 21 March 2014, also outlined our views on s29QC.
- 12 In addition to the issues raised in the information sheet and the joint letter (as detailed below), there is a potential conflict between some of the requirements of APRA's reporting standards and the existing disclosure requirements (e.g. reporting performance in periodic statements under reg 7.9.20AA of the Corporations Regulations).

Our guidance in INFO 167

- 13 In INFO 167, we indicated that, in practice, the s29QC consistency requirement means the following:
- (a) Calculations in the MySuper product dashboard must be consistent with APRA's reporting standards (e.g. for returns or risk information).
 - (b) RSE licensees can only use information in advertising or other disclosure material, such as information on investment returns, if it aligns with the calculation methodology that APRA prescribes for reporting this data. This also applies to information that RSE licensees give to third parties (e.g. ratings agencies).
 - (c) RSE licensees do not have to use exactly the same information in their disclosure material as the information given to APRA. For example, their advertising may contain more up-to-date information on returns. However, this information must be calculated using the same methodology used when providing the information to APRA.
 - (d) If APRA requires information to be reported in different ways, RSE licensees may use any of these methods in their disclosure material in the absence of further guidance. For example, if APRA requires an RSE licensee to provide both gross and net information on investment returns, RSE licensees can use one or both of these figures in information provided to third parties or in their advertising. However, any methodology used must be consistent with APRA's methodologies for reporting this data.

- (e) RSE licensees need to be aware that the requirement to align their disclosure material with how they report data to APRA may extend beyond matters such as performance information. If APRA requires an RSE licensee to report data about asset allocation (including defining 'cash' or any other asset class), RSE licensees will need to consider whether changes should be made to their disclosure to align with these definitions.

APRA and ASIC's joint letter to industry

- 14 In our joint letter with APRA, dated 21 March 2014, we provided clarification on the operation of s29QC (based on the most frequently asked questions) in the areas of investment performance, return targets, asset allocation, and fees and costs.

Investment performance

- 15 APRA's Reporting Standard SRS 702.0 *Investment performance* (SRS 702.0) includes a calculation methodology for both a net investment return and a net return. The operation of s29QC, therefore, means that whenever a net investment return or net return is quoted in disclosure material, the methodology in SRS 702.0 must be applied when calculating this information.

Return targets

- 16 SRS 700.0 requires an RSE licensee to calculate a return target for the purpose of information to be included in a MySuper product dashboard. This methodology requires the calculation of this return target to represent the mean annualised estimate of the percentage rate of net return that exceeds the growth in the consumer price index (CPI) over 10 years.
- 17 We consider that 'investment return objective' information for an investment option required to be disclosed in a shorter Product Disclosure Statement (PDS) under Sch 10D to the Corporations Regulations is equivalent to 'return target' information required to be provided to APRA for a MySuper product under SRS 700.0. This means that investment return objective information disclosed in a shorter PDS will need to be calculated in the same way as the return target information provided to APRA.

Asset allocation

- 18 We consider that asset allocation disclosure requirements are affected by APRA's Reporting Standard SRS 533.0 *Asset allocation* (SRS 533.0). To the extent that an RSE licensee provides information in its disclosure material about asset allocation, the RSE licensee must adopt the asset class types

defined in SRS 533.0 so that asset allocation information is calculated in the same way as information provided to APRA.

- 19 Although SRS 533.0 requires detailed information, such as movements in asset allocation, to be provided to APRA, this information need not be included in disclosure material simply because it is required to be reported to APRA. Section 29QC, when read with SRS 533.0, does not affect the way in which information is to be disclosed about asset allocation if this information is not the same or equivalent to information provided to APRA.
- 20 An RSE licensee could provide additional information about the assets of its fund if it wishes to do so. For example, an RSE licensee may opt to give information about the top 10 shareholdings or the split of growth and defensive assets, and will not be required to calculate this information in a particular way, given that it is not the same or equivalent information to that provided to APRA.

Fees and costs

- 21 An RSE licensee must disclose fees and costs information in its shorter PDS in accordance with Schs 10 and 10D to the Corporations Regulations. Clause 204(7) of Sch 10 requires that a cost or amount paid or payable must include, if applicable, GST (less any reduced input tax credits) and stamp duty.
- 22 From 1 July 2014, SRS 703.0 has required RSE licensees to report to APRA fees and costs information that is required to be disclosed in their shorter PDS.³
- 23 As a result, from 1 July 2014, any fees and costs information that is disclosed by RSE licensees that is the same or equivalent to information set out in the shorter PDS will have to be calculated in the same way as the relevant information in the PDS.

Uncertainties raised by industry about how to comply

- 24 We have reviewed the feedback from industry on the application of s29QC. We maintain our legal view, as set out in both INFO 167 and the joint letter of 21 March 2014, that s29QC can apply to a range of information and, in particular, it may apply to information about investment performance, return targets, asset allocation, and fees and costs. However, in light of the concerns

³ APRA issued FAQ 88 in May 2014, which provides more clarity about the alignment with Sch 10 to the Corporations Regulations, and clarifies that fees and costs should be reported gross of income tax, GST and stamp duty. APRA may assess whether the content of FAQ 88 should be incorporated into the instructions to SRS 703.0.

and areas of uncertainty raised by industry, we considered it timely and important to utilise the deferral period to address these concerns.

25 Some of the concerns identified include the following:

- (a) *Return targets:* Where we have taken the view that the return target of the MySuper product dashboard is the same or equivalent information as the investment return objective in the shorter PDS, some of the responses indicated that industry considers these two items to be quite different and therefore it is inappropriate to align the two requirements—in particular, a number of the responses highlighted shortcomings in the comparability of the two measures due to differences in the underlying calculation methodologies and assumptions, including confidence intervals. RSE licensees noted that they could often calculate their investment return objective in the shorter PDS to a higher level of probability than the probability that applies in the case of the return target in the My Super product dashboard.
- (b) *Asset allocation:* Where we have taken the view that the asset class definitions in APRA’s reporting standard SRS 533.0 would be relevant to the strategic asset allocation requirements in the shorter PDS, responses indicated that industry had sought legal advice which suggested that there is no calculation involved in presenting strategic asset allocation information. Further, it was suggested by industry that the asset class definitions used in SRS 533.0 may not be appropriate for disclosure purposes, even assuming that a calculation is involved.

26 There were additional concerns relating to the calculation of performance information, including whether ‘soft close’ or ‘hard close’ valuation figures should be used in return calculations (i.e. there was a concern that interim figures could not be used or published as a result of s29QC).

27 Further, feedback indicated that clarification of the definitions of ‘net investment return’ and ‘net return’ for non-MySuper products was required. Currently, these definitions apply only to MySuper products.

Options for dealing with the uncertainty

28 Below are three options for dealing with the uncertainty about the consistency requirements in s29QC. We seek your views on which option you prefer and why, and in Section B, we seek your views on our specific proposals to modify the scope and application of s29QC under Option 1.

29 Given the feedback received by ASIC to date in relation to the application of s29QC, and following discussions with APRA, this paper recognises that some change to s29QC and its parameters may be necessary for the provision to be workable (see Option 1).

30 We are interested in the possible scope of the application of the provision. There may be additional disclosure areas that you think s29QC should or should not apply to which have not been specifically outlined here and we would value feedback on these areas as well.

Option 1 (class order and potential guidance)

31 Under Option 1, we would issue a class order (and potentially guidance) to modify the scope and application of s29QC. We are consulting in further detail on this option in Section B, which provides some potential variations in the relief or guidance that may be required. We are proposing that our class order would make it clear which of APRA's reporting standards would have an impact on disclosure. RSE licensees would only be required to comply with the s29QC consistency requirements in the specific areas covered by the class order.

Option 2 (guidance, no class order)

32 Under Option 2, we would not modify the law but we would issue a regulatory guide to bring together our existing guidance (e.g. INFO 167, the joint letter to industry and FAQs) and promote clarity around the interaction of s29QC with the disclosure requirements.

33 We would maintain our current position on how to apply s29QC, but we would expand and build on the guidance already issued where further clarity is needed or to address further issues identified by industry. We would discuss with APRA whether any changes to its reporting standards would assist in making disclosure arrangements more appropriate, noting that APRA collects information for prudential purposes and is limited in its ability to amend reporting forms for disclosure purposes alone.

Option 3 (no class order, no additional guidance)

34 Under Option 3, we would allow the requirements in s29QC to restart, as planned, on 1 July 2015 without any further changes to the current operation of this provision. We would not issue a class order or further guidance under this option.

Proposal

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.

Your 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?
- 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.
- 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.
- 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.

Rationale

- 35 Option 1 provides some clarity on s29QC, and would result in class order relief. This would provide a more formal solution to the present difficulties with the consistency requirements.
- 36 Option 2 would provide some scope for further clarity about the consistency requirements, but would not change the law, and industry would need to comply with the consistency requirements as they stand.
- 37 Under Option 3, if we provide neither class order relief nor any further guidance, and allow s29QC to restart on 1 July 2015, industry would need to comply with the consistency requirements as they stand.
- 38 We also recognise that there may be further options to consider in relation to this provision and its application.

B Our proposals to modify the scope and application of s29QC (Option 1)

Key points

This section provides more details on Option 1, and proposes possible variations in the scope and application of s29QC in any class order relief or guidance that may be required.

Our general approach to limiting the scope of s29QC

- 39 APRA's reporting standards are comprehensive and cover over 4,000 data items on superannuation. The potential scope and application of s29QC are very broad and there may be aspects of APRA's reporting standards that would also affect disclosure that have not yet been considered.
- 40 Limiting s29QC to designated topics (such as performance information) and/or types of disclosure (such as promotional material) provides some certainty about the application of this provision. The class order could be modified, if necessary, as new APRA reporting standards are developed or as the need arises.
- 41 Under our proposals in this section, if a topic is not included in the class order, the consistency requirements would not apply to it. Therefore, an RSE licensee would make disclosures without needing to take into account s29QC and APRA's reporting standards. This might apply to areas such as fee and costs disclosure that are already prescribed in the Corporations Act or Corporations Regulations, or the specific performance reporting requirements in periodic statements.

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.

Your 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)?
- 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?
- 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)?
- 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?
- 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?

Rationale

- 42 As noted in paragraph 5, inconsistent information provided through multiple means can cause significant damage to members of superannuation funds and inhibit informed decision making. If we accept that a significant focus of these reforms is on the needs of consumers to have consistent information about superannuation, then limiting the requirements to consumer-facing disclosure such as advertising or promotional material may help in targeting consistency where it is needed most.
- 43 This may also help avoid any confusion or concern that documents produced for third parties, such as auditors, would not need to comply with the consistency requirements.
- 44 The remainder of this paper considers limiting the application of s29QC to particular topics or areas.

Limiting the scope to past investment performance

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.

Your feedback

- B2Q1** Do you agree that s29QC should be limited in this way to past investment performance information?
- 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?
- B2Q3** What would be the estimated costs in applying s29QC to past performance information?

Rationale

- 45 In other industries, comparison rates for investment performance and fees are sometimes used to help consumers make choices between different products. For example, there are comparison rates for home loans.
- 46 In the Super System Review, performance features significantly when considering consistency concerns in the superannuation sector. Inconsistency in the manner in which performance is reported means that consumers cannot easily make comparisons between different superannuation products. At present, RSE licensees can provide performance information on a different basis (e.g. one trustee may provide returns on a gross basis and another on a net basis). However, all RSE licensees need to use a net investment return for their MySuper product dashboards.
- 47 APRA's reporting standards provide an opportunity for the development of consistent performance reporting, both in advertising and promotional material, as well as in other disclosure documents. APRA's reporting standards could help define such matters as the reporting of:
- (a) unit pricing;
 - (b) crediting rates; and
 - (c) net investment returns.
- 48 Under this proposal, we would clarify by class order the specific APRA reporting standards relating to past investment performance that apply in relation to disclosure. The class order would specify that it is only appropriate to use a methodology for return calculations that is specified by APRA's reporting standards. The class order may specify which APRA

reporting standard methodology is appropriate in a particular disclosure circumstance.

- 49 Further, the class order would specify the particular disclosure material that may require the use of consistent methodology—such as promotional material and advertising. This may enable a trustee to provide other third parties such as ratings agencies with information calculated on a different basis, provided that the information is not being given directly to consumers.
- 50 One option is to leverage off the information provided in the MySuper product dashboard. APRA’s reporting standard on the MySuper product dashboard already requires the calculation (among other things) of a net investment return.
- 51 It may help consumers if RSE licensees were to use information such as return information that is already provided in the MySuper product dashboard.

Clarifying ‘return target’ and ‘investment return objective’

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.

Your 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?
- 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?
- 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?
- 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?
- 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?

Rationale

- 52 The policy intention of s29QC is to improve comparability of superannuation products. This could include requiring consistency between the items in the MySuper product dashboard and disclosure documents, such as the shorter PDS, and promotional materials.
- 53 In the joint letter to industry from APRA and ASIC, it was considered that the ‘investment return objective’ information for an investment option required to be disclosed in a shorter PDS under Sch 10D to the Corporations Regulations was equivalent to the ‘return target’ information required to be provided to APRA for a MySuper product under SRS 700.0.
- 54 Other elements in the MySuper product dashboard—such as the level of investment risk—may also have their potential equivalent provisions under the shorter PDS disclosure requirements.
- 55 We have received feedback from industry that highlights the difficulty in taking the view that the investment return objective and return targets are the ‘same or equivalent’ information for the purposes of s29QC. Investment return objectives are often internally set by the trustee and may not be based on a 10-year time horizon, nor may the objectives always use the CPI as the relevant benchmark. Trustees are concerned that the return target does not in fact reflect the objective of their particular fund or option.
- 56 We are proposing that the class order would specify that return targets are not the same as or equivalent to investment return objectives used in shorter PDSs. If appropriate, relief could be given subject to conditions that may require:

- (a) warnings to be given in either (or both) the shorter PDS and the MySuper product dashboard that the investment return objective and return target are not the same; or
- (b) the RSE licensee to include both sets of information in the shorter PDS and the MySuper product dashboard.

57 As a further alternative, a class order could change the terminology in either the shorter PDS (investment return objective) or the MySuper product dashboard (return target) to avoid consumer confusion. For example, if the return target was described as the '10-year performance target', this may help draw attention to the differences between the MySuper product dashboard figures and the shorter PDS information.

Clarifying how to report asset allocation data

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.

Your feedback

- B4Q1 Do you agree with our proposal, or do you think that s29QC should 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'?
- B4Q3 If s29QC were to apply to asset allocation information, what would the estimated costs be?

Rationale

- 58 Under cl 7(3)(b) of Sch 10D to the Corporations Regulations, RSE licensees must list the asset classes in which the MySuper product or investment option invests, and set out, in the form of a range or otherwise, the strategic asset allocation of the asset classes. APRA also requires RSE licensees to report the strategic and actual asset allocations for investment options.
- 59 We have considered that asset allocation disclosure requirements were affected by SRS 533.0 as a result of the operation of s29QC. This is particularly the case for the strategic asset allocation disclosure requirements in shorter PDSs.

- 60 Consistency in asset class definitions may significantly help consumers to compare products. However, we understand that there are some industry concerns about our view that a calculation is involved in determining a strategic asset allocation range and, even assuming there is a calculation, there are issues with using APRA's current asset class definitions.
- 61 In particular, there are concerns that the current asset classes for reporting purposes do not reflect the structure through which investments are made, and instead focus on the ultimate asset in which the money is invested. RSE licensees have indicated to ASIC that this has impacts for consumers when considering risk. Some RSE licensees have suggested that using APRA's reporting standard definitions of asset classes would be misleading for consumers.
- 62 Under this proposal, ASIC would provide class order relief to specify that asset class definitions in APRA's reporting standards do not currently need to be used when disclosing strategic asset allocation ranges in shorter PDSs. However, this is a position that could be revisited if there was a clear need for clarity in asset class definitions in the future or if responses to this consultation paper suggest that there would be benefits in aligning disclosure with the reporting requirements for asset allocation.

C Regulatory and financial impact

63 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:

- (a) achieving the need to provide consistent information to consumers and others; and
- (b) the need for certainty about the application of s29QC.

64 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:

- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
- (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
- (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).

65 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

66 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:

- (a) the likely compliance costs;
- (b) the likely effect on competition; and
- (c) other impacts, costs and benefits.

See 'The consultation process', p. 4.

Key terms

Term	Meaning in this document
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
CPI	Consumer price index
INFO 167	Information Sheet 167 <i>Disclosure requirements for superannuation trustees: s29QC</i>
joint letter	Our joint letter with APRA to RSE licensees, dated 21 March 2014, outlining our views on s29QC
MySuper	A simple and cost-effective superannuation product, which will eventually replace existing default superannuation arrangements
MySuper product dashboard	A simplified set of key product features in a standard format that all MySuper product providers must publish, which is designed to allow people to more easily compare funds
PDS	Product Disclosure Statement
reporting standards	Reporting standards, forms and instructions determined by APRA under s13(1) of the <i>Financial Sector (Collection of Data) Act 2001</i> , as in force from time to time
RSE	A registrable superannuation entity (e.g. a superannuation fund)
RSE licensee	A person or group of persons licensed by APRA to operate an RSE (e.g. the corporate trustee of a superannuation fund or the group of individual trustees of a superannuation fund)
s29QC	Section 29QC of the SIS Act
shorter PDS	A PDS that is required to comply with the shorter PDS regime
shorter PDS regime	The requirements set out in Div 3A of Pt 7.9 of the Corporations Act as modified by Subdivs 4.2 to 4.2C and Schs 10B, 10C, 10D and 10E to the Corporations Regulations, which prescribe the content and length of the PDS for first home saver accounts, margin loans, superannuation products and simple managed investment schemes

SIS Act

Superannuation Industry (Supervision) Act 1993

SRS 700.0 (for
example)

An APRA reporting standard (in this example, numbered
700.0)

List of proposals and questions

Proposal	Your feedback
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?
	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.
	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.
	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.
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.	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)?
	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?
	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)?
	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?
	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?

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

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