

11 November 2013

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Financial Advisers
Australian Securities and Investments Commission
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Dear Ms Lee,

CONSULTATION PAPER 216: Advice on SMSF: Specific disclosure requirements and SMSF costs

The Financial Services Council thanks ASIC for the opportunity to provide comments on the proposed disclosure amendments to advice provision requirements pertaining to advising on Self Managed Superannuation Funds (SMSFs).

The Financial Services Council (FSC) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and Public Trustees. The Council has over 130 members who are responsible for investing more than \$1.9 trillion on behalf of 11 million Australians. As the representative body of Advice Licensees –our members are responsible for more than 80% of financial advisers/planners in Australia (including accounting professionals licensed today to provide advice).

The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the fourth largest pool of managed funds in the world. The Financial Services Council promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

Compensation Warning

The FSC is supportive of measures to ensure that consumers are appropriately and efficiently informed on establishment of an SMSF that their investment will not/no longer have access to the compensation arrangements under the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

We note that the previous Government's response¹ to Recommendation 4 of the Parliamentary Joint Committee on Corporations and Financial Services on the collapse of Trio Capital (Trio) contained two parts stating:

¹ The Hon Bill Shorten MP, Minister for Financial Services and Superannuation, Media Release no. 028, *Comprehensive response to combating superannuation investment fraud*, 26 April 2013.

- “The ATO will seek to amend its registration process to add additional warnings that SMSF members are not eligible for compensation.
- ASIC will also consult on requiring advisers, on the establishment of SMSFs, to advise clients that they do not have access to compensation arrangements under the SIS Act.”

We submit that a warning on the ATO Trustee registration form to establish an SMSF is a sensible and efficient place to include a warning such as that proposed by ASIC.

We further submit that an adviser warning the client, being advised on the establishment of an SMSF, that the SMSF means that the client’s super investment will not/no longer have access to the compensation arrangements under the *Superannuation Industry (Supervision) Act 1993* (SIS Act), is a reasonable proposal.

However, the warning should be meaningful to the consumer, including those advised to establish/switch to an SMSF, and we query whether multiple warnings, in different formats, using different wording on multiple forms is helpful to aiding consumer understanding.

It is neither efficient nor sensible in requiring the client sign off on the warning twice. The client is to sign off on the ATO Trustee declaration form acknowledging the warning and the responsibilities of the Trustee which they will commit to undertake. Further an adviser has substantially enhanced conduct and disclosure obligations as a result of FoFA that compel and adviser to have considered the client’s needs and wants and provided advice that was in the Best Interests of the client and that in documenting that advice, an adviser would not proceed to implement the advice they have provided the client until the client has understood the advice and authorised the adviser to proceed to implement the advice. As such, the client will have been warned by the adviser and the client will have signed a document which contains the warning (the ATO registration form).

The FSC is supportive of the adviser warning the client of the fact that their prospective SMSF will not be protected by a SIS compensation scheme. We are not supportive of prescriptive warnings nor of any additional and/or separate document (including disclosure inclusion in the Statement of Advice) to be signed by the client to confirm they have understood as being useful tools to aid consumer understanding.

Proposed other Disclosure Requirements

The FSC agrees that the bolded topics articulates in Table 2 are the type of information an adviser who complies with all the advise obligations (such as the new Best Interest duty) providing advise on the establishment or switch to an SMSF disclose to a consumer.

Disclosure obligations regarding the provision of advice already exist. For example, section 947C of Corporations Act section 947C on *Statement of Advice given by authorised representative-main requirements* stipulates that the SOA include a statement setting out the advice and information about the basis on which the advice is given.

We interpret the purpose of these proposals is therefore to document ASIC’s SOA information disclosure expectations with regards to SMSFs.

Our strong preference is for any additional disclosure obligations to be Guidance or Information regarding what type information should be included in the SOA and that the obligations tie back to s947C particularly in light of the introduction of the Best Interest duty. That is, that under a best

interest duty, there is a higher standard to be met in terms of the 'basis' for any advice or recommendation. Further, our preference is if a Class Order were to proceed, for the general themes/topics an adviser consider documenting as the information about the basis on which the advice is or was given, in the SOA rather than detailed prescriptive obligations. For example item 5 of Table 2, it is appropriate and reasonable that an adviser inform the client of costs associated with running an SMSF. However, the costs may vary from fund to fund, and structures used by the client, and indeed may vary if the client chooses to manage the SMSF themselves or continue to use other professionals like an advisers/planner.

We note that the disclosure item 7 of Table 2 should be a subset of item 1 of Table 2. Further, disclosure item 1 and parts of item 2, item 3 and 4 may have fairly generic responses across all clients. For example the responsibilities and obligations of an SMSF Trustee are likely to be consistent across many clients. Our strong preference is for ASIC to be pragmatic about the disclosure that should therefore be included in an SOA and the means by which it is provided. Rather than pages of pages of generic information in an SOA on such topics, as important as they are, may better be met by other literature (such as the ATO's SMSF investor guide or an educational website should it exist) and the SOA could then simply supplement or provide that information which really requires tailoring to the advice specifics and the client.

Guidance on SMSF costs

We note that the ASIC commissioned Rice Warner research report is anecdotally, costs representative of industry views. However, it is important to recognise the costs are generalisations only, as costs will vary fund to fund, between service providers, depending on underlying assets, whether platforms are used for example.

As suggested previously, our preference is for any ASIC guidance on cost to focus on the type of costs an SMSF may incur, not on actual costs (unless they are specifically known for that client). It is imperative and already a legal obligation for the adviser to provide the client with advice which is in the clients Best Interest which includes consideration of costs amongst other matter and therefore for the information to be documented in the SOA as articulated previously. Our strong preference is for any additional disclosure obligations to be Guidance or Information regarding what type information should be included in the SOA and that the obligations tie back to s947C particularly in light of the introduction of the Best Interest duty. That is, that under a best interest duty, there is a higher standard to be met in terms of the 'basis' for any advice or recommendation.

Cost to implement

Our submission has not detailed costs to comply with these proposals as it is challenging to know what these measures will cost the industry to implement without sighting the draft Class Order.

Implementation timeframes

Should ASIC proceed with these proposals we request that ASIC consider that the requirements be implemented at the AFSL next rolls/updates their SOAs but within eighteen months. The industry has and continues to go through significant regulatory change and each disclosure amendment carries time/cost imposts on providers.

We look forward to working with you to provide guidance to the industry. If you have any questions regarding the FSC's submission, please do not hesitate to contact me on (02) 9299 3022.

Yours sincerely

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SENIOR POLICY MANAGER