ASIC Consultation Paper 216
Advice on self-managed superannuation funds: Specific disclosure requirements and SMSF costs

Response from Hewison Private Wealth AFSL227185

Positioning statement

We have been advising, managing and administering SMSFs for over 20 years and currently provide these services to around 500 SMSFs. We are absolutely committed to the provision of professional and comprehensive advice and ensuring that our clients are fully informed of their obligations and risk exposure.

We fully support the current financial services regulation governing advice and have long been prominent in our advocacy of professional standards, non-conflicted advice and fee based remuneration.

We see the proposals contained in ASIC Consultation Paper 216 are to a large extent, in direct response to the failure of Trio Capital Limited (Trio) and the exclusion of SMSFs from subsequent compensation provided to APRA regulated Superannuation Funds under P23 of the SIS Act. This paper proposes to introduce a vast array of additional disclosure statements and warnings which, in our view are inappropriate and unnecessary with the likelihood of simply providing more confusion to an already heavily regulated advice process.

History is strewn with the failure of many MIS's for which investors have received little or no compensation. If the population of superannuation fund members were surveyed as to whether they were aware of compensation arrangements available under P23, we estimate that the awareness would be virtually non-existent.

We absolutely support the view that the regulation and compensation arrangements applicable to Managed Investment Schemes (MIS) and advice relative to them should be more effective. Simply piling more layers of disclosure and warnings will not, in our opinion, achieve the desired outcome and is not in the best interest of the consumer in respect to SMSFs.

The notion that a failure of a MIS due to mismanagement or fraud should be compensated by a levy against all superannuation funds is, in itself, a demonstration that the regulatory and compensation system is flawed. A system that requires superannuants to be responsible for others making poor decisions or being subject to deception is unfair and inappropriate in our view.

Rather than address the bases of the problems, this paper sets out to avoid holding those responsible to be responsible for sanction and compensation to those affected by their actions.

In essence, from the point of view of investment in isolation, an SMSF is simply a trust structure under which investments are held. The advice applicable to those investments is regulated under the existing Corporations Law requirements which in themselves are explicit and adequate if done in strict accordance with the requirements. This should be entirely adequate if supported by the appropriate compensation protection mechanisms. We respectfully suggest that this is the issue the paper should be addressing.

SMSF trustees are required to be members and member trustees. The trustees are responsible for making appropriate decision in the best interest of their members. If those decisions are influenced by the advice of an appropriately licensed and qualified financial planner/adviser. The requirements under the AFS licensing regime provide protection to the trustee in respect to the appropriateness of advice based on adequate research.
Future of Financial Advice (FOFA) reforms will remove any product based commission incentives to advisers for recommending financial products. Therefore, it should follow that an adviser would have no inclination to recommend a product carrying undue risk.

We strongly suggest that ASIC reconsider the entire question of inadequate compensation arrangements for MIS providers and those advising on investments within SMSF's.

Our responses to the proposals and relevant questions are as follows:

B OUR PROPOSED DISCLOSURE REQUIREMENTS

B1 Warning clients about lack of statutory compensation for SMSFs

Q1
Whilst we agree with the need to warn clients of the risks associated with SMSFs per Table 1, the form of that disclosure should not be mandated.

Q2
Clients establish a SMSF for many varied reasons. If clients are establishing an SMSF on the advice of a professional, they are more likely to listen to the advice provided rather than written warnings. If the advice is appropriate and in the best interests of the client, then the warnings should not be required.

Q3
No. If the advice to establish a SMSF is provided by SoA, then any warnings about the risks of an SMSF should also be disclosed in the SoA. This is currently already required under "super switching advice" regulations, so additional warnings should not be mandated nor their format.

The SoA is a tailored document and should not be full of common text warnings – such text can result in the client not receiving clear, concise and effective advice via their SoA.

Q4
Client's signing off on such documents does not prove they have read nor understood their obligations. This sounds like a proposal put forward by lawyers who do not operate in the real world!

A client who has been provided with advice via SoA to establish a SMSF would normally provide the adviser with a signed Instruction to Proceed, the wording of which should state they have read and understood the advice provided in the SoA –this should be sufficient if the SoA complies with the current legislation.

Q5
Yes – our tailored SoA document would need to be altered to include the proposed warnings, and additional training & supervision of authorised representatives would be required to ensure compliance with the proposed regulation. For large licensees, this could amount to large sums of money.

Q6
In practical terms, changes to advice documentation would be required which would take time and money to undertake. Given the current legislation already requires advice to be in the best interests of the client, prohibits conflicted remuneration, and that recommendations must have a reasonable basis, it is overkill to introduce more compliance for SMSF advice.

The same could be also required for accountants providing clients with advice to establish a Family Trust or Corporate entity – there are risks associated with such entities as well, but as they fall outside the definition of a financial product, consumers have little redress should the advice they receive be substandard.

B2 Disclosure Requirements

Q1

These disclosures are already covered by existing regulation in respect to risk disclosure.
We agree with the sentiment that clients receiving advice regarding the establishment of an SMSF should receive an explanation of their responsibilities and the risks associated with running a SMSF, but mandating the form and items to be disclosed will likely result in pro-forma advice documents with slabs of "warnings" with little likelihood of the client reading the whole document.

It is likely that such a disclosure will be so long that it would be relegated to an appendix in the SoA and subsequently clients would not read it.

Q2

Not particularly – clients who establish an SMSF upon the advice of a professional are likely to rely on the advice rather than lengthy written warnings.

Q3

No – an SoA should be tailored to the client's needs, and a mandated form of disclosure will likely be relegated to the back pages of an SoA so as not to confuse the advice to a client.

A comprehensive SoA can be a complex document, and filling that document with pages of warnings and disclosures can reduce the readability of an SoA.

If there were a mandated approach to disclosure / warning I imagine the most effective way to do this would be via a separate booklet that accompanies the advice and to which the SoA refers. This would keep the advice readable and relevant to the client, whilst giving them access to the full information they will need to make an informed decision as to whether to proceed with the advice.

Q4

No – signing an instruction to proceed with the advice should be sufficient. Clients establishing an SMSF already have to sign the ATO declaration which includes substantial detail about their obligations and responsibilities.

Q5

Yes – production of additional educational material / disclosure material in addition to that already required by "switching" regulations is overkill.

Q6

The text in Table 2 if presented in 12 point font would stretch to over 4 pages. This is an additional four pages for the client to absorb on top of the potentially complex advice in the SoA surrounding contribution strategies, pension strategies, estate planning & insurance strategies. The result could be a more confused client who is less likely to make a rational decision.

Q7

Yes. To the extent the ATO is the regulator of SMSFs it is important that ASIC is not doubling up on information / disclosure requirements already required by the ATO.

B3 Transition Period

Q1

Given our firm is a one office operation with six advisers, it is likely we could comply with new regulations within a six month time frame. Larger AFSL holders may struggle with such a time frame given the other legislative loads such as the Tax Agents Board requirements that are currently in play.

C1 Our proposed guidance on SMSF costs

Q1

Generally speaking we do agree with the Rice Warner findings and descriptions. However, every case is different and it would be a mistake to regulate this issue.

Different providers of both SMSF administration services and APRA regulated funds have different cost bases. It is impossible to absolutely generalise on this issue.

Q2

No. Costs associated with establishing and running an SMSF should already be disclosed to clients in dollar and percentage terms under existing regulations. There is no need for additional legislation to require such a disclosure.

An SMSF may not be cost effective for a client when established due to their planned pattern of contributions – for example, a client may establish a SMSF and rollover a balance of $100,000 however have the intention of contributing $450,000 to their SMSF from an inheritance they have received.

The cost of insurance via APRA funds is currently increasing, and in some cases the cover provided by such insurance is substandard to the insurance that can be obtained by members of an SMSF. If advice was provided to roll money out of an APRA fund and into an SMSF, then the adviser providing that advice has existing obligations to clearly set out the risks of such action. An obvious loss upon rolling out of the APRA fund is the loss of the insurance provided by that fund.

Q3

All the costs associated with running an SMSF should be disclosed to the client in writing under current legislation. There is no need for additional legislation.

It is also difficult to quantify the dollar cost of some items, such as annual accounts & audit and the costs of winding up as those costs can be levied by other professionals and the range of fees can be wide. We currently already provide our clients with a realistic estimate of the ongoing costs of accounting & audit when we provide advice to establish an SMSF.

Once again, a mandated form for the disclosure of costs is inappropriate, as such advice should be tailored to each client's situation. This is particularly pertinent to advice to establish an SMSF due to the likelihood of the client having more funds and potentially requiring more sophisticated advice.

Q4

Any costs that are likely to be incurred as a result of the advice provided should be disclosed in the advice. This is a requirement of existing legislation, particularly where the advice is advising a switch from an APRA fund to an SMSF.

Q5

No

Q6

It shouldn't as costs should already be being disclosed in advice documents now.

Q7

Only in that insurance and winding up costs may not be known at the time advice is given.
Insurance premiums can be higher than anticipated should a member have pre-existing conditions that result in loadings. It is also difficult to predict the future cost of APRA fund insurance, particularly in light of recent price rises.

Winding up a fund may happen some 20 to 30 years in to the future (or more). It is somewhat useless estimating the cost of wind up now, when such an estimate is clearly not going to be right when the time comes. Having said that, there is no harm in pointing out that an SMSF needs to be wound up correctly and would incur costs at that time to do so.

Yours sincerely,

Hewison Private Wealth

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