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

Submission by Switzer Financial Group Pty Ltd

1. Introduction

1.1 Switzer Financial Group is the holder of an Australian Financial Services Licence (AFSL No, 286531). It specialises in providing financial services to the members and trustees of Self Managed Superannuation Funds (SMSFs).

1.2 Through its financial planning practice, Switzer provides personal financial advice to retail clients. Many of these retail clients use an SMSF as the entity to manage and grow their super monies.

1.3 Switzer is also the publisher of the *Switzer Super Report*, Australia's leading investment newsletter for the trustees and members of SMSFs. Published three times a week, the *Switzer Super Report* is distributed to more than 4,000 subscribers. (see www.switzersuperreport.com.au)

1.4 While the focus of the *Switzer Super Report* is on the provision of general advice relating to investing the funds of an SMSF, the report also covers regulatory and compliance issues relating to managing and administering an SMSF, changes to any super laws and superannuation strategies.

1.5 Our Expert contributors include Peter Switzer, Paul Rickard, Charlie Aitken, Roger Montgomery, Barry Dunstan, Tony Negline, Penny Pryor, James Dunn and Professor Ron Bewley.

1.6 Most of our subscribers do not have a financial adviser, preferring to take control of the asset allocation and investment processes. This is in keeping with what we understand to be the situation across the industry, where surveys consistently show that, of the circa 500,000 SMSFs, more than half do not have a financial adviser. Many of our subscribers use the services of an accountant for book-keeping and taxation advice, others prefer to use the services of a professional administrator.

1.7 Switzer Financial Group welcomes the opportunity to provide feedback and input to ASIC in response to the proposals contained in Consultation Paper 216.

2. Plurality of Regulators

2.1 Before addressing the specific questions raised in Consultation Paper 216, we would like to share our concerns about a plurality of regulators. We feel these comments may shed further light on our response.

2.2 With ASIC's recent interest in SMSFs, we note that there are now three regulators who may impact (either directly or indirectly) on the members and trustees of SMSFs:

- APRA (which regulates the operation of the superannuation standards for all funds);
- ATO (which has specific responsibility for SMSFs); and
- ASIC (which regulates licensed advisers, and some, but not all, of the financial products that SMSFs invest in).

2.2 We contend that three regulators is one regulator too many – and possibly two regulators too many. Multiple regulators will invariably lead to regulatory overlap, could potentially lead to regulatory inconsistency and will almost certainly lead to extra cost for the industry. There is no compelling reason why, as agencies of Government, this situation should not be rationalised.

2.3 Our experience is that Government, and their regulatory agencies, consistently underestimate the costs of regulation. While industry participants may bear the initial cost of regulation, these costs are ultimately passed on to consumers or users.

2.4 Arguably, Consultation Paper 216 could be represented as an example of "regulatory overlap", as it is focussed on the provision of financial services to just one part of the 'SMSF Market' – those Trustees who elect to receive the services of an AFSL. As noted above, our research indicates that less than half of the SMSFs in Australia utilise these services.

Further, it seems to have been prepared without the considered input of the ATO. As discussed in section 4, Proposal B1 (warning clients that SMSFs do not have access to compensation arrangements) makes perfect sense – however, the nature of the warning proposed is somewhat different to that already being provided by the ATO in publications NAT 11032 and NAT 71923. We note also that the ATO automatically writes to all new trustees.

2.5 We do not advocate which of the regulators should service the SMSF market. Putting APRA's overarching role across the superannuation industry to one side, we suggest that either the ATO or ASIC act as the regulator for SMSFs and their advisers and that the other, by way of Memorandum of Understanding or otherwise, authorise the other to act on its behalf. For example, if the (single) Regulator decided that all trustees should be warned about the lack of compensation arrangements, then the format and content of that warning could be standardised, however delivered – in explanatory booklets, on websites, by licensed advisers etc.

3. Performance of SMSFs vs APRA Regulated Super Funds

3.1 We find it somewhat curious that ASIC chose not to refer to the Rice Warner findings on the comparative rates of investment returns for the APRA and SMSF segments in Consultation Paper 216.

3.2 According to Rice Warner (s 2.3), the aggregate investment returns (gross of fees) for the APRA and SMSF segments were as follows:

Year Ending 30 June	APRA Funds	SMSFs
2005	13.25%	17.4%
2006	14.0%	16.0%
2007	15.6%	20.1%
2008	-7.6%	-4.0%
2009	-11.9%	-4.5%
2010	9.8%	8.3%
2011	8.7%	11.25
7 Year Average	**5.4% pa**	**8.8% pa**

3.3 This is a massive difference in performance – 3.4% pa over 7 years. Moreover, the SMSF sector delivered higher returns than the APRA sector in six of the seven years, and in good as well as bad years.

3.4 The conclusion from Rice Warner, though somewhat understated, is telling. "These results may not support the proposition that SMSFs are better investment managers than APRA funds, but they do indicate that members of SMSFs, in aggregate, are not disadvantaged when compared to APRA funds."

3.5 An alternative conclusion could potentially be: "The members of APRA regulated funds, in aggregate, are disadvantaged when compared to SMSFs".

3.6 While these findings consider the aggregate performance of the industry segments, and individual funds will have quite different investment performance and quite different asset allocations, the magnitude of the difference suggests that in the main, SMSFs, after costs, are doing pretty well. Further, the data does not readily support any concerns that ASIC has articulated about the SMSF sector, nor does it support some of the "tips for advice providers" in Report 337 (see C30, C31 and C32).

3.7 Consultation Paper 216 deals specifically with one superannuation vehicle – Self Managed Superannuation Funds. On the basis of this data, a strong case could/should be made for similar disclosure requirements and costs, where the advice pertains to APRA regulated superannuation funds.

4. Proposal B1 – Warning clients about lack of statutory compensation for SMSFs

4.1 B1Q1: We do not disagree with the proposed disclosure/warning requirement ("not entitled to compensation'').

4.2 B1Q2: We think that the proposed warning will have little or no impact on retail clients, and therefore will be of negligible benefit. Firstly, retail clients are not generally aware of the operation of Part 23 (or instances where compensation for loss has been provided to members of superannuation funds). Secondly, they do not expect this to happen to a fund they are personally responsible for.

4.3 B1Q3: We think that the warning, if given, should be standardised and in a prescribed format. As discussed above, the ATO provides this warning in NAT 11032 (Running a Self Managed Super Fund) and NAT 71923 (Setting Up a Self Managed Super Fund). These booklets are available to **all** Trustees – and new Trustees are automatically forwarded a copy of NAT 11032 by the ATO.

We strongly recommend that ASIC works closely with the ATO on the format and content of the warning, so that warnings, however delivered (whether by a licensed adviser, or to the Trustee directly by the ATO in booklet or website,) are identical.

4.4 B1Q4: No, we don't think that retail clients should be asked to sign a document acknowledging that SMSFs are not entitled to receive compensation. This is excessive compliance.

As the details of all new Trustees are accessible to the ATO, a more robust arrangement might be to highlight this warning in the documentation sent by the ATO to new Trustees (covering letter and NAT 11032). This will ensure full coverage of Trustees, rather than just the subset that is advised by a licensed adviser.

4.5 B1Q5: Yes – if AFS licensees are required to ask clients to sign an acknowledgment and that acknowledgment is stored for seven years. The costs are more likely to be an upfront change cost.

4.6 B1Q6: We don't see any additional practical problems. That said, we think the benefits of this proposal are close to negligible.

5. <u>Proposal B2 – Disclosure Requirements</u>

5.1 B2Q1: Notwithstanding the regulatory overlap with the ATO, we don't disagree with the proposal that some form of additional disclosure by AFS licensees is appropriate.

However, we consider that Table 2 is too encompassing and that some aspects should be discontinued. We support proposed requirements 3, 4 and 5, and consider that requirements 6 and 7 should be dropped. We are not convinced that requirement 1 will add any material benefit, and suggest that requirement 2 (which deals with specific risks) should be modified.

Requirement 6 deals with the "need to consider and develop an exit strategy for an SMSF". We think it is an absurd situation for an adviser to be discussing this with a client at the same time that the client is contemplating setting up a fund. We don't discount that winding up an SMSF can be a time consuming and possibly expensive process – however, to discuss something that may be 10 years, 20 years, 30 years or even 50 years into the future is pointless. No client is going to have any interest in being made "aware of the process for winding up an SMSF", nor can an AFSL licensee estimate "the likely costs associated with the process".

Requirement 7 relates to laws and policies that impact SMSFs. While the *SIS Act* and associated regulations contain specific provisions for SMSFs and small APRA funds, there are no taxation laws that are unique to SMSFs. Changes to the superannuation laws can also impact members of other superannuation funds, so an argument could be made that this disclosure requirement (if considered necessary) should be expanded to cover any superannuation advice provided to a retail client. That said, we think that clients are very cognisant of the constant changes to the superannuation and taxation laws, and hence consider that this requirement will be of negligible benefit.

In relation to Requirement 1 (explaining the role and responsibilities of trustees), our sense is that a discussion about this is not going to get a lot of traction. It is often very hard to explain something until the person has had an opportunity to experience it first hand (such as accepting contributions, or arranging for the accounts to be audited), and while all the information is relevant, it is likely to get lost in the avalanche of other information the adviser is providing. Further, this is covered extensively by the ATO, and despite any attempt to standardise this disclosure, there must be some risk of inconsistency with the information provided directly to the trustees by the ATO.

Finally, we agree that there are some specific risks in using an SMSF as your superannuation vehicle (for example, trustee structure), however we do not agree that 'lack of insurance' is a risk. Certainly, most SMSFs trustees will pay more for insurance if they arrange it directly than they would if they took it out through an APRA regulated fund (which has access to group buying power), however this is not necessarily a risk. This is a disadvantage of using an SMSF.

Regulation 4.09 of the *SIS Act* requires that SMSF trustees consider "whether the trustees of the fund should hold a contract of insurance that provides insurance cover for one or more members of the fund'. Sensibly, the requirement is to consider insurance– there is no requirement to take it out – and nor should there be.

We contend that there are many cases where it would be inappropriate (and highly expensive) for a trustee to take out insurance. We note ASIC's view about insurance (see Report 337, in particular C17 and C180 and the use of the words "will" and "must") and question the appropriateness of this position.

5.2 B2Q2: While there will be some benefit, we don't think it will be material and, is unlikely to justify the compliance and time costs – the latter in respect of both the adviser and the client. While ASIC contends in Report 337 that there is a "need to improve the quality of advice given to retail clients on SMSFs", the Cooper Review, ATO reviews and other data, such as the comparative performance data compiled by Rice Warner, suggest that the SMSF "universe" is doing quite well. There is no substantiation that improved disclosure (along the lines suggested in the Consultation Paper) will lead to better outcomes.

It could be suggested that there is insufficient demonstration of a problem – and if there is no problem, what are we trying to fix?

As discussed above, we suggest that any disclosure requirements be kept to the minimum, along the lines suggested in paragraph 5.1.

5.3 B2Q3: We think that the disclosures, if given, should be standardised and given in a prescribed format.

5.4 B2Q4: No – many clients don't bother to read risk disclosure statements or other documents – so asking them to sign such a document is arguably mindless compliance.

5.5 B2Q5: The biggest compliance cost, if the disclosure requirements are to be implemented as set out in Table 2, is the "time" cost of licensed advisers. It is interesting to note that the ATO's NAT 11032 booklet ("Running a self managed super fund) is a 32 page, A4 booklet and that there is not that much more material in this booklet than CP 216 is proposing as the disclosure/explanation requirements. So, if the disclosure/explanation is going to be performed at a meaningful level, the comparison is - "how long does it take to explain a 32 page A4 booklet?"

Our estimate of the "time" is around 1.5 to 2.0 hours per client. Applying a fairly standard charge out rate of $350 per hour, our estimate of the cost per client is $525 to $700.

5.6 B2Q6 and B2Q7: We don't have any further comments in relation to B2Q6 and B2Q7.

6. Proposal B3 – Transition

6.1 B3Q1: We suggest that the timeframe to implement the proposals (in whatever form) should be determined by the time it takes to ensure absolute consistency and standardisation between the regulators (ASIC and ATO) in relation to format, prominence and content of the disclosures, and how these disclosures are articulated/explained to trustees (retail clients) on websites, explanatory booklets and/or by AFS licensed advisers.

Our working assumption is that this will take longer than six months, so a timeframe of 1 January 2015 or 1 July 2015 might be more feasible.

7. Proposal C1 – Guidance on Costs

7.1 C1Q1: We broadly agree with Rice Warner's presentation of the 'Range of Annual Compliance Administration Costs' (Table 17) for a fund in accumulation, both in terms of the costs, the characterisation of the services and the ranges (from Low to High). It is not our experience that an additional 'fee if the fund pays a pension' is always charged (so would caution adding 100% of these fees), while agreeing that most funds will generally require an actuarial certificate.

We cannot see, however, how Rice Warner moved from Table 17 (Annual Compliance Administration Costs) to Table 21 (Full Administration Costs). Rice Warner describes these additional services as "including investment accounting, access to online investment platforms and investment analysis and reporting".

We are puzzled as to what 'investment accounting" is, noting that you can't prepare financial statements (covered in the Compliance Administration Costs) without accounting for the performance of the investments. Maybe it is an element of performance attribution – however in our experience, it is not very sophisticated.

There are, of course, some SMSFs (usually advised) using wrap platforms and others using "premium" online SMSF administration platforms that provide these services. A high end fee of $8,000 is not out of the question – but it is still pretty irregular.

Moreover, these fees are rapidly coming down as competition and scale comes to the market. If anything, the fees in Table 21 are more likely to be witnessed by clients utilising the services of a traditional family accountant.

We would recommend that Table 21 be discounted and that ASIC uses Table 17 as its basis for any consideration in relation to 'minimum sizes'.

In relation to Rice Warner's analysis about the points at which an SMSF becomes cost effective compared with an APRA regulated fund:

- we agree that under $200,000, SMSFs will often be uncompetitive on a cost basis compared to an APRA regulated fund (broadly Rice Warner's finding);
- we do **not** agree with the statement that funds from $200,000 to $500,000 can provide equivalent value *"if the trustees undertake some of the administration".* As discussed above, we don't think this is about "administration" – rather it about 'nice to haves' like online reporting and analysis, and Rice Warner has largely misinterpreted the 'full service' offer.

We consider that the Rice Warner analysis largely confirms the long held "anecdote/industry recommendation" that members really shouldn't consider setting up an SMSF unless the size is at least $200,000 or if smaller, they are going to get to $200,000 within a short time period.

As noted in Section 3 of this document, it could be argued that an analysis of comparative costs, with the intent of recommending minimum fund sizes, is somewhat academic, given the conclusion of the remarkable and consistent outperformance of the SMSF segment compared to the APRA segment.

7.2 C1Q2: We don't see any compelling case why ASIC should provide guidance on the costs relating to the setting up, managing and winding up an SMSF. There is no specific rationale for this proposed course of action discussed in Consultation Paper 216. Further, given their fiduciary duty to their client, licensed advisers arguably already have this obligation under the law.

We note further that ASIC does not provide guidance on the costs relating to using an APRA regulated fund, on the costs relating to investing in a managed investment scheme, on the costs relating to trading on the stockmarket, to name but a few.

7.3 C1Q3: A professional adviser would inform his/her client as a matter of course of the costs involved in establishing and running an SMSF, so unlike our response to C1Q2 above, we don't see any difficulty with a requirement that says this should occur. In relation to the costs set out in Table 4, we suggest this requirement only apply to these particular "costs":

- Cost type 1 (costs associated with the set up);
- Cost type 2 (ongoing costs associated with running an SMSF); and

- “Cost type 4” (general guidance around the minimum size fund).

As we have noted before, a client will have almost no interest in the “costs associated with winding up an SMSF – cost type 3”, which in many cases, are going to be 10, 20, 30 or even 40 years down the track.

Cost type 5, the potential time cost, can’t be quantified and thus it is not practicable to ‘require’ such a discussion.

Cost type 6, so called higher insurance premiums costs, is (at least in 2013), a potential disadvantage of an SMSF compared to many APRA regulated fund. It is not a cost, as there is no obligation to take out insurance – and nor should there be.

Any ‘requirements’ should be focussed on aspects that can be practicably delivered and which the client is likely to respond to, rather than the all-encompassing list.

7.4 C1Q4: We don’t think that there are any other categories of costs that need to be disclosed.

7.5 C1Q5: We don’t think any other disclosures are required.

7.6 C1Q6: The proposed guidance, as set out in Table 4, will result in additional time costs for advisers, and their clients. Notwithstanding that a professional adviser would, as a matter of course, inform his/her client about some of these aspects, if the requirement embraces all components set out in Table 4, our estimate is that this will add an additional time impact of between 15 minutes and 30 minutes per client. Applying a fairly standard charge out rate of $350 per hour, our estimate of the cost per client is $88 to $175.

7.7 C1Q7: This is a difficult question to assess because the Consultation Paper is relatively silent on how the requirement may be implemented, and whether ASIC will require advisers “to show” how it was met.

We also note that costs in the SMSF industry are not static and, as the industry evolves from being very much a “cottage industry” to one where financial institutions are investing and building scale, some costs are falling quickly. Further, new services are evolving rapidly. Accordingly, if ASIC is too prescriptive on the content and delivery, advisers will face a number of practical problems and could (unintentionally) present their clients with misleading information.

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