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Dear Ai-Lin

CONSULTATION PAPER 216 – ADVICE ON SELF-MANAGED SUPERANNUATION FUNDS: SPECIFIC DISCLOSURE REQUIREMENTS AND SMSF COSTS

ASIC published *Consultation Paper 216 – Advice on self-managed superannuation funds: specific disclosure requirements and SMSF costs* (CP216) on 16 September 2013. The Westpac Group, which includes BT Financial Group (BTFG), welcomes this opportunity to provide our comments and we appreciate the additional time provided to prepare this submission.

We understand the proposals in CP216, concentrate on these themes:

- when setting up a SMSF, advisers (AFS licensees and their authorised representatives who give personal advice to clients on SMSFs) and investors should discuss the roles and responsibilities of a trustee of a SMSF, the risks associated with a SMSF structure (including not having access to a Government compensation scheme or the advantage and disadvantages of moving away from an APRA-regulated fund);
- advisers and investors should also discuss the time and effort required to manage a SMSF, the skills and expertise the investor has (or might not have) to make investment decisions for the SMSF; and
- if a SMSF is to be established, advisers and investors should also discuss whether the investor's investment strategy will deliver the returns required to adequately fund their retirement.

We support this focus and the broader attention ASIC has applied to SMSFs and the role of advisers and other intermediaries assisting in the establishment, operation and maintenance of SMSF arrangements.

SMSFs provide a meaningful way for individuals to take control of their retirement and allows the desires of many to actively corral their compulsory superannuation and transition from being passive recipients of the superannuation guarantee to active managers of their retirement outcomes.

SMSFs are a viable and empowering mechanism that we expect to continue to attract the interest and investable funds of a growing proportion of the pre and post-retirement population. We support ASIC's desire for this growth to occur in a safe and sustainable way to protect the interests of this segment. We agree industry should enhance the standards and bolster the expectations about the way advisers, intermediaries or other gatekeepers support those individuals establishing and running an SMSF.

About Westpac, BTFG and SMSFs

ASIC's intent aligns to our governing view that SMSFs are an appropriate vehicle for individuals that have the time and desire and skill (as well as a requisite minimum balance) to dedicate to them. It is also our view that the highest standards should be expected of those 'SMSF Specialists' who advise and offer services to SMSFs.

We support efforts by regulatory bodies around the SMSF market. In addition to protecting investors, this also protects the integrity of the SMSF market. In addition to appropriate regulatory oversight and activity, we also support education as a strategy to ensure the right people are in SMSFs. The Westpac Group has long focused on education as a way to help customers and potential customers understand the advantages and disadvantages of SMSFs.

CP216 Proposals

Generally, we believe SMSF Specialists should be specifically trained to have a quality conversation with prospective and existing SMSF trustees. On this basis, we support ASIC's proposed disclosures. Indeed, we believe SMSF specialist advisors should already adhere to these disclosures as a matter of good practice and underscored by their best interest duty obligations.

Within this context, our specific comments in relation to ASIC's CP216 proposals are contained in the enclosed Appendix (below). Although we make these particular observations:

- we are broadly supportive of ASIC's proposed new SMSF disclosures – some care should be taken to avoid duplications that could arise with regard to the existing ATO SMSF Trustee Declaration (this declaration addresses, among other things, manage the SMSF in compliance with relevant laws, maintain the fund for the sole purpose test of providing retirement benefits, value fund assets at market value for financial accounts and statements, have annual audited accounts by an SMSF approved auditor and meet the ATO's reporting and administration requirements);

- we prefer the disclosure obligations apply as a Class Order to ensure consistency regardless as to who provides the services, i.e. the same rules would apply to accountants and to financial planners. It is important to recognise in any regulatory treatment that many SMSFs are set up directly by trustees or with the guidance of accountants. As a matter of parity and to ensure ASIC's policy intent is delivered effectively, disclosures should be provided both by licenced advisers (i.e. in the Statement of Advice, SOA), as a standalone document (i.e. by accountants) and / or as part of the ATO SMSF on-boarding processes – in this regard we presume ASIC is working with the ATO to ensure consistency;
- we support prescription as to the nature of the content to be disclosed to ensure consistency but we prefer the format of the disclosure not be prescribed, this would allow for incorporation into existing SOA arrangements for advisers but other mechanisms would also be available for non-advisers involved in supporting SMSFs;
- we prefer the disclosure obligations be technology agnostic, i.e. the disclosures should be able to be provided over the phone and verbally assented to rather than requiring a wet signature from the customer to acknowledge disclosure. Additionally, rather than an adviser collecting an acknowledgement from their client (verbally or in writing), it may be preferable for the trustee to make this acknowledgement in their SMSF Annual Return lodgement or through their Auditor. Existing SMSF could be made aware of these disclosures, and acknowledge them, in their SMSF Annual Returns;
- because advice to a SMSF can involve accountants and financial planners, we would welcome clarity from ASIC about who carries the liability for the proposed disclosure requirements. For example, if the accountant recommends the establishment of an SMSF, can the financial planner then rely on them having provided the client with the required disclosures. The alternative could result in both the accountant and the planner duplicating the process; and
- as guidance to those establishing an SMSF can involve accountants and financial planners, we urge an approach to deliver parity in relation to the provision of the proposed disclosure requirements. For example, if the accountant recommends the establishment of an SMSF, can the financial planner rely on them having provided the required disclosures. Alternatively, if a planner provides advice within the context of the best interest obligation, and this is reflected in an SOA, will this be sufficient to avoid the planner needing to duplicate the disclosures?

If ASIC proceeds with its proposals, then to accommodate technology and change management processes we would expect a transition period of at least 12 months would operate from the date of the publication of the final Regulatory Guide.

Conclusion

In summary, we believe regulatory refinement should seek to support the SMSF sector, delivered by raising the expectations of those advising SMSFs and ensuring individuals considering establishing a SMSF have the time, desire and skill (as well as a requisite minimum balance) to do so.

We would be pleased to discuss these comments further, in this regard please contact me

Yours sincerely

JOSH MOYES
Head of Product & Distribution Regulatory Affairs

Appendix

	Proposal	Comment
B1Q1	Do you agree with our proposed disclosure requirement in Table 1? If not, why not?	Agree. But we note: • Some flexibility in relation to the precise (plain English) formulation of the disclosures will help to ensure it is receptive to consumers. • The point may be better made by linking the compensation APRA-regulated fund Members may be entitled to with the additional costs to APRA-regulated funds (and their Members) as a result. There is a strong focus in the later part of CP216 on the costs of APRA-regulated funds but part of that cost is to account for this type of compensation arrangement. Members need to be able to make an informed decision about the impact of fraud or theft on their portfolio and the proposed disclosure requirement only paints part of this picture. • With a significant proportion of SMSFs continuing to be set up outside of financial planning, either directly by Trustees or through accountants (prior to either transitioning to a full or limited AFSL by 2016), we believe this disclosure only being provided where a licensed financial adviser is involved excludes a large number of Member/Trustees who should be aware of the implications of transitioning to a SMSF. • To ensure more universal coverage we note that, perhaps in addition to being disclosed in the SOA, this information should be provided as part of the existing ATO on boarding process. However, it will need to accommodate the fact that the current ATO process arises only after the decision to establish a SMSF has been made by the individual.

B1Q2	Do you think that the proposed warning will benefit clients who are considering setting up or switching to an SMSF? If not, what other warnings would help clients decide whether it is appropriate in their circumstances to establish or switch to an SMSF?	Agree. For clients establishing a SMSF with the assistance of an adviser, the warning can assist. However, this is a very limited warning given the broader range of considerations a client should consider in switching to a SMSF. Other elements might include: • the need for advice and professional assistance that may be required in establishing a complying SMSF; • insurance retention on existing superannuation policies; • asset allocation / liquidity considerations based on age and expected retirement age; and • overall responsibilities of a Trustee – with more information than being available or provided under proposal B2.
B1Q3	Do you think the proposed warning should be given to clients in a prescribed format? For example, should the warning be given in a stand-alone document, or should it feature more prominently in the SOA? If you do not think the warning should be given in a prescribed format, please explain why.	We agree that within the advice process the SOA brings together recommendations and risks the financial adviser has considered in reaching their advice, on this basis it is a suitable place for the warning. However, where the support is not coming from an adviser, then to ensure all Trustees / Members receive the same warnings than separate disclosure should be provided.
B1Q4	Do you think that clients should be asked to sign a document acknowledging that they understand that SMSFs are not entitled to receive compensation under the SIS Act? Are there any alternatives to obtaining client acknowledgment that will help to ensure that investors understand the lack of compensation available to SMSFs?	Rather than the adviser collecting an acknowledgement, this could be incorporated into the Auditor or the SMSF Annual Return lodgment process. For clients with an existing SMSF, to ensure they are also aware of this, the ATO could request this confirmation within the SMSF Annual Return lodgement. A similar requirement already operates as part of the ATO SMSF Trustee Declaration when the SMSF is established.

	If so, please provide details.	
B1Q5	Are our proposed disclosure requirements likely to result in additional compliance costs for AFS licensees and their authorised representatives? Please give details, including figures and reasons.	If a warning was incorporated in the SOA, than there would be a technology cost to implement the proposal at a potential cost of at least $250,000. For an acknowledgement captured by advisers in the SOA, technology and operational processes would need to be updated to ensure this was captured as part of the process at a cost of at least $500,000.
B1Q6	Are there any practical problems with the implementation of this proposal? Please give details.	Technology changes take time to amend and are subject to limited release cycles, queues and testing, but conceptually these proposals are not difficult.
B2Q1	Do you agree with our proposed disclosure requirements in Table 2? If not, why not?	As a preliminary observation, we note that ASIC's concern is that relevant information is disclosed prior to establishment of the SMSF; which contrast with the ATO declaration that is signed after establishment. However, in our view, this should involve a disclosure of factual information at the time of assessing suitability. We would be concerned if ASIC sought to shift liability from the Trustee to the advisor as a result of these disclosures. Turning to the specific proposals, each of these points would be better provided accompanying the ATO declaration to ensure all Members receive and understand this information prior to signing and not just advised investors. Specific responses to some of the points in table 2 are below: • Point 2 - Insurance can be held within a SMSF, and conversely can also not be held in an APRA-regulated fund, so the description of the risk as a lack of insurance is incorrect. There is a lack of default insurance offers and particularly auto acceptance within SMSFs in comparison to employer default or retail superannuation. So the wording might be *"reduced benefits or increased cost of insurance in SMSFs"*. There might be an insurance point that needs to be made about consideration of General Insurance for any directly held property assets they choose to hold. For the avoidance of any doubt the reference to unusual relationships should be removed and a discussion or inclusion of information in relations to the risks on a relationship breakdown be

		provided in all circumstances. • Point 3 - The explanation could be expanded to incorporate information regarding liquidity not just the need for diversification and regular reviews. Including a focus on the need to align Investment Strategy with Asset Allocation and Liquidity of investments to ensure life stage strategies, such as income generation, can be achieved, i.e. pension payment requirements for a fund which is highly skewed to illiquid assets. • Point 4 – Consider adding examples in the final guidance to help an understanding about how this might be quantified in terms of explaining time commitment. There are many variables such as whether the client's accountant is administering the SMSF, differing degrees of administration provided by administrators or differing client enthusiasm, etc...
B2Q2	Do you think the proposed disclosure requirements will benefit clients who are considering setting up or switching to an SMSF? If not, what other disclosures do you think would help clients decide whether it is appropriate in their circumstance to establish or switch to an SMSF?	Agreed. Note, additional disclosures could help clients deciding whether a SMSF is appropriate addressing asset liquidity and a broader discussion about insurance (Life (cost and access) and General Insurance (which may be required on assets)).
B2Q3	Do you think that the proposed disclosure requirements in Table 2 should be given to clients in a prescribed format? If not, why not?	There are advantages and disadvantages. It would be important to be able to incorporate the messaging in the SOA. However, a prescribed format could add cost to the advice and to the compliance burden of dealer groups. Additionally, caution against placing advisors in a position of having to disclose fees that are not associated with their services (e.g. auditing, administration etc). We recommend clarification in any regulatory guidance about how to meet these expectations (i.e. worked examples, general advice on overall cost considerations and what is required for actual disclosure in documents).
B2Q4	Do you think that clients should also be asked to sign a document acknowledging the	We prefer the disclosure obligations be technology agnostic, i.e. the disclosures should be able to be provided over the phone and verbally assented to rather than requiring a wet signature from

	responsibilities and risks associated with running an SMSF? Are there any alternatives to obtaining client acknowledgement that will help to ensure that clients understand the risks associated with SMSFs? If so, please provide details.	the customer to acknowledge disclosure. Additionally, rather than an adviser collecting an acknowledgement from their client (verbally or in writing), it may be preferable for the trustee to make this acknowledgement in their SMSF Annual Return lodgement or through their Auditor. Existing SMSF could be made aware of these disclosures, and acknowledge them, in their SMSF Annual Returns.
B2Q5	Are our proposed disclosure requirements likely to result in additional compliance costs for AFS licensees and their authorised representatives? Please give details, including figures and reasons.	Incorporation of these disclosures in the SOA will require system changes. Given the extent of the disclosure required (around 2 to 3 pages) this may impact other formatting and thus could have a higher cost to implement of ~$500k. These costs do not include any costs were the requirements to be applied retrospectively to advised SMSF clients or to non-advised Trustees/Members platform users.
B2Q6	Are there any practical problems with the implementation of this proposal? Please give details.	The ATO could send booklets to all SMSF members or provide a link to an established MoneySmart webpage.
B2Q7	Do you think we should provide further guidance on the disclosure obligations? If so, please provide details.	Consider inclusion of clear case studies or examples in the Regulatory Guide if additional disclosure requirements are incorporated.
B3Q1	Do you agree with the proposed timeframe for the implementation of proposals B1 and B2? If you think that a transition period of longer or shorter than six months is required, please explain why.	Due to system changes required to deliver this in the advice process this will take greater than 6 months, we recommend a transition period of 12 months from final modification to Pt 7.7 of the Corporations Act being finalised and the Regulatory Guidance released.
C1Q1	Do you agree with Rice Warner's finding? In particular, do you agree with: (a) the way that Rice Warner has described SMSF costs in its report? If not, why not? (b) Rice Warner's analysis about the points at which an	Of particular concern is the lack of critical examination of the costs incurred by SMSFs in management of their investments. Not in terms of compliance or administration but in relation to direct and indirect costs of owning and holding investments. There are a number of asset costs where SMSFs have a higher exposure than APRA-regulated fund Members that were excluded (i.e. brokerage for Australian Listed Assets (34% of SMSF assets) and direct property (15%) expenses (such as stamp duty, conveyance fees, legal charges, pest and building reports, council rates, water

	SMSF becomes cost-effective compared with an APRA-regulated fund? If not, why not?	rates, insurance, body corporate fees, land tax, and property management fees)). Further, we do not agree with providing ranges and comparisons with APRA regulated funds (per Table 3). Each case is different and the advisor will need to assess suitability of the SMSF on this basis. Also, the best interests obligation already requires the advisor to demonstrate the overall benefit exceeds the costs. Instead, we support the following factors as relevant to an advisor's considerations: ▪ the likely pattern of future contributions (nil once all members are in the pension phase), including any large non-concessional amounts; ▪ the current size of the fund and future cash flows (earnings plus contributions less expenses, tax and withdrawals); ▪ the asset allocation—and whether this can be replicated more cost-effectively in an APRA-regulated fund; and ▪ whether the trustee(s) is self-directed or will rely on external advice (which will add to costs). Moreover, in relation to comparisons, we think it would be more effective to compare SMSFs to two particular areas of the APRA-regulated fund environment rather than all funds. The first comparison against MySuper or even more broadly default superannuation funds – these funds offer a lot of benefits that SMSFs may not be able to compare to like auto acceptance insurance but they are at the simple end of the APRA-regulated fund market. The more direct comparison for the type of assets held within SMSFs is to compare with Wrap style products (they also have brokerage expenses etc from direct equities but they generally do not hold direct property).
C1Q2	Do you agree that we should provide guidance on the costs associated with setting up, managing and winding up an SMSF? If not, why not? If yes: (a) what are the costs associated with setting up, running and winding up and SMSF?	No. Costs are a consideration but not the only consideration in establishing a SMSF; equally, costs are not the only consideration in using an APRA-regulated fund. Decisions are also heavily reliant on real differences in products and features. This focus on costs alone may be detrimental to those solutions which may be more expensive but with greater benefits to the Trustees. Each year investors in APRA-regulated funds are provided with transparency about fees they are paying due to fee disclosure legislation. SMSFs could also benefit from the same level of

	(b) is insurance purchased through an SMSF cost effective compared with insurance through an APRA-regulated fund? If not, why not? (c) do you think we should provide actual dollar costs (or a range of dollar costs) for the following SMSF costs? If not, why not? (i) the costs associated with setting gup, running and winding up and SMSF; (ii) the time cost associated with managing an SMSF; (iii) the cost of an SMSF not having access to compensation under the SIS Act; and (iv) the cost of obtaining insurance; and (d) what are the costs or benefits of SMSF structure compared with other superannuation vehicles? Please provide details.	transparency. We recommend during the year-end process with accountants/auditors that fees, costs and expenses are not only calculated at a dollar amount but Members/Trustees are also provided with a % of account balance calculation to better understand their costs. To be clear, this responsibility should not rest financial planners, instead it is our view that the account/auditor is best placed to ensure a statement is made to the trustees of costs incurred.
C1Q3	Should advisers be required to consider and inform clients of the costs in Table 4 before establishing an SMSF? If not, why not?	Financial advisers are required to advise clients on the costs involved in using establishing and maintaining an investment in an APRA-regulated fund so similarly they should be providing information on costs to clients when establishing a SMSF. This advice should be limited to the costs associated with setting up and ongoing costs of running a SMSF where they are aware of the costs. Financial advice may only be part of the Trustees/Members SMSF set up; if the financial adviser is not associated with an attached Accountant or Auditor they may be unable to provide specific or accurate details of other likely costs. Additionally, because a large number of SMSFs are currently set up by accountants, consistent information should be required to be provided. There is a transition period for accountants to 2016 but inconsistent provision of information to SMSF Trustees/Members even during this period could lead to

		confusion about costs. The costs in winding up a SMSF should be determined in advice specific to the circumstances of winding up. The costs and advice would be different if the wind up was a result of a death or dissolution of a relationship or because the Trustee does not want to continue with the responsibilities of compliance. This should not be provided at commencement as it may be inappropriate and may lead to client confusion if they were to wind up the fund because their circumstances did not align with the assumptions made. In relation to point 4, cost is one consideration but investment flexibility, or death benefit structuring are other reasons a SMSF may still be appropriate at lower amounts. The breakeven point, even when only considering costs, will be difficult to determine for an adviser. Communicating the potential risk by way of a warning that SMSFs may not be cost effective at lower balances might be a preferable approach. As noted above, the time associated with running a SMSF will vary depending on the Trustee's existing experience, the level and nature of outsourcing and the types of assets they choose to invest in. Providing a general guide to the time may not be appropriate. Also as noted above, the costs of insurance should be covered under the requirements already discussed in table 2. This could provide a clearer picture of auto acceptance and why it can drive costs as well as insurance benefit considerations. By providing this information in conjunction with other responsibilities and risks, the message would be broader than just costs.
C1Q4	Are there any other SMSF costs that need to be disclosed to clients? If so, should they be disclosed in actual dollar costs (or a range of costs)? Please provide details.	All costs of running a SMSF, including annual regulatory fees, should be disclosed to clients by the production of their annual report/accounts.
C1Q5	Do you think that any other disclosures about the costs of setting up, running and winding up an SMSF need to be made to clients before establishing an SMSF?	No

	If not, why not?	
C1Q6	Is our proposed guidance likely to result in additional compliance costs for advisers? Please give details, including figures and reasons.	Agreed. Determining a breakeven point would rely on general information but building a general calculator, while adding to the costs for advisers, may not provide the level of information that would be meaningful to a client.
C1Q7	Are there any practical problems with the implementation of this proposal? Please give details.	See above.