Improving consumer and investor confidence

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Australian Securities and Investments Commission

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Introduction

Thank you Russell (Mason) and Pauline (Vamos) and good afternoon everyone.

This is one of my first public engagements of the year, and I'm very pleased to be speaking with ASFA and its members.

This audience is keenly aware of the growth in Australia's pool of super funds. It is estimated that super funds under management will rise to nearly $3 trillion over the next decade.

Compulsory contributions may increase to 12%, and with this increase will come greater community expectations for stronger protection and resilience in the financial system. At the same time ASIC will need to regulate and facilitate an environment where an increasing proportion of consumers are in or transitioning to their retirement phase.

This growth and the structural changes in super, and the impact this has on the markets that ASIC regulates, are considerable. Super funds are invested in equities, bonds, managed investment schemes and other more complex products which fall within ASIC's remit.

Financial advisers, superannuation trustees, investment managers, custodians, research houses, credit rating agencies, auditors and accountants all play roles in supporting investors in superannuation funds, and are all regulated by ASIC.

So the growth in super raises substantial challenges for the Commission. They are challenges we look forward to addressing with the strong support of industry groups such as ASFA.

ASIC's three key outcomes

I would like to outline ASIC's strategic priorities and its plans for the next 12 months. ASIC has three strategic priorities or outcomes we are looking to achieve in our broad regulatory role in the financial markets.

These are:

- confident and informed investors and financial consumers;
- fair and efficient financial markets; and
- efficient registration and licensing.

Our first outcome is confident and informed investors and financial consumers. We want to see increasing consumer understanding of key concepts such as risk and reward. We want to ensure that the bad apples and poor products are removed from the industry. ASIC supports this through:

- educating the public through our consumer website, MoneySmart (www.moneysmart.gov.au); and
- holding gatekeepers to account, such as advisers, directors and product issuers.

Our second outcome is fair and efficient financial markets, and this has two parts—market supervision and market competition:

- Market supervision—in August 2010, ASIC was given full responsibility for monitoring the trading on the ASX. We have been focusing on insider trading—we have the systems, the people and the powers to track down insider trading. If someone is found guilty of insider trading, there is a very good chance they will go to jail.
- Market competition—last October, Chi-X Australia commenced operations as a major Australian equity market.

Our third outcome, efficient registration and licensing, is the core part of ASIC's systems. It's the day-to-day dealings with companies, lodgement of financial statements, licensing, and helping the public access our databases, with a particular focus on assisting small business.

ASIC's plans for the next 12 months—Advertising

So what are ASIC's plans for the next 12 months for the financial services industry? ASIC's work here generally falls under our first outcome: confident and informed investors.

Regulating advertising

I'd like to step back for a moment to reflect on ASIC's approach to regulation. Much of ASIC's work in financial services in the last few years—since the GFC—has understandably focused on dealing with collapses and major financial misconduct after consumers have lost money. Storm is but one example. A range of these matters are still on foot within the Commission.

This work has been necessarily reactive. However, a key lesson from the last few years is that a proactive regulatory approach improves market resilience and reduces the risk of investor losses compared to reactive regulation. A more proactive approach, one that focuses on emerging risks, can obtain better results for consumers and industry as a whole, compared to enforcement action against a wrongdoer after the damage has been done. This message is being heard around the world—we are seeing a heightened expectation at a global level that financial regulators will be more forward looking.

In that spirit, I am pleased to announce that ASIC is today releasing our regulatory guide on advertising for financial products and advice services (RG 234). This guide contains good practice guidance to help industry comply with their legal obligations.

After all, the experience in recent years indicates that ads that do not give clear, accurate and balanced information about a financial product or service can create unrealistic expectations and lead to poor financial decisions.

If we want to promote confident and informed investors and financial consumers, we need to recognise how consumers make decisions. We need to ensure that communication about financial products facilitates good decision making. An important part of this is acknowledging the role that advertising plays in the process. Coming from the ACCC, I'd also point to the important role that accurate advertising can play in driving competition.

ASIC already regularly reviews ads to ensure they are complying with the law. In fact, since July 2010, ASIC's actions have seen almost 120 ads withdrawn or modified in response to concerns we have pursued about poor practices and potentially misleading advertising. Our new regulatory guide contains real examples of where we have raised concerns with promoters and have had the ad changed.

I think there's a clear and growing community and government expectation that ads are accurate and balanced, that they will not mislead. This expectation is evident most directly in the new powers that ASIC and other regulators have recently been given in this area:

- we can now issue infringement notices and public warning notices; and
- we also have the power under the ASIC Act to seek civil pecuniary (monetary) penalties through the courts of up to $1.1 million per breach.

So we will be reviewing financial ads more closely, and the guide indicates the types of ads where we may have particular concerns. Furthermore, the outcomes we seek will involve potentially stronger penalties than we have sought in the past.

A key reason for ASIC's focus on advertising is our concern that there is potential for inappropriate products to be marketed to investors and financial consumers looking for lower risk products in a climate of global financial uncertainty. This is where proactive regulation is vital. We will therefore have a particular focus on the way that risk is explained, or not explained, through marketing. This includes the use of terms such as 'guaranteed', 'secure', 'protected' and the like.

We have, for example, recently taken action in relation to marketing that described geared investment strategies as ‘stress free’. We have also signalled that ads for products such as CFDs must avoid claims such as ‘low risk trading’ or terms such as ‘safe’.

With the growth of superannuation, particularly self-managed super, there is a growing pool of money to be invested. It is likely that more products will be marketed towards this sector.

In this context it’s important that ads are clear, accurate and balanced as investors search for higher returns while still bearing acceptable levels of risk. The bottom line is that ASIC does not want investors holding products that are inappropriate for their circumstances, which was too often the case pre-GFC.

ASIC will also be ensuring that we ‘cover the field’ in terms of types of media and location of media. I am pleased to say that one our upcoming initiatives will be a thorough review of financial services advertising in rural and regional areas, across all channels. Irrespective of whether it’s a region that has a larger proportion of retirees, a mining town, or a remote indigenous community, we should see financial products and advice marketed in a responsible and accurate fashion. We know from past experience that sometimes these communities are targeted by unscrupulous promoters.

ASIC’s approach in regulating advertising involves working with industry participants. We encourage you to do more than simply meet the minimum legal requirement, but rather, take a role in ensuring advertising helps investors and consumers make appropriate decisions.

It’s in the business’s interest to ensure its clients understand its products and services. The GFC has made it abundantly clear that it’s not a sustainable business model to sell products that are inappropriate for the client.

This guidance follows extensive public consultation late last year, which provided valuable feedback on our proposed guidance. The regulatory guide has taken industry’s submissions into account, and we are releasing a report which responds to the feedback we received (REP 278).

We have also taken on board industry feedback about ongoing engagement in this area. ASIC will be holding regular dialogue with industry participants about advertising practice, starting with a forum in the first half of this year about financial ads with a particular focus on the online and mobile environment, which continue to be growth areas for the promotion of financial products and services. ASIC has taken action against misleading ads and marketing in the online environment, and we will do so again if necessary, but we’d prefer to see industry get it right first time.

To sum up, ASIC's advertising regulatory guide sends a message to the financial services industry that ASIC will be very active in reviewing ads, as they play an important role in the decision process of investors and financial consumers.

Promoters need to think carefully about whether they are meeting their legal obligations. Our guidance will assist them in doing that, and we will take an increasingly vigorous approach if we see breaches and poor conduct.

Financial services reforms

I'd now like to turn to several other areas of work that are of interest to you and indeed most participants in the financial services industry:

- Future of Financial Advice (FOFA) reforms;
- disclosure of underlying portfolio interests;
- Stronger Super; and
- the implementation of shorter PDS disclosure.

In one way or another most of these reform processes aim to improve consumer outcomes, which is at the heart of consumer confidence. I will not be able to go into detail on all of these areas today, but let me reassure you they are all the subject of current and ongoing dialogue with ASFA and your industry.

FOFA reforms

About one in five Australians obtain financial advice. ASIC wants to increase this in line with our strategic outcome of confident and informed investors and financial consumers. Trust needs to be improved.

It is simply unacceptable to anyone in this sector, including ASIC as the regulator, to see results such as those from the recent ANZ financial literacy survey which indicated that 42% of consumers would not trust financial professionals nor accept what they recommend.

ASIC's most recent financial advice 'shadow shop' has also produced disappointing results, which further support the need for reform. We will be providing a comprehensive report on this project in March.

ASIC has supported reform to improve the quality of advice for many years. ASIC supports measures, such as those contained in the FOFA reforms, that will improve the standard of adviser conduct, remove conflicts of interest, and improve engagement by retails clients with advisers and advice. The FOFA reforms are designed to improve trust and confidence in the financial planning sector, as well as access to quality financial advice.

ASIC has announced its intention to publish regulatory guidance on various aspects of the FOFA reforms, in particular:

- best interests duty;
- scaled advice;
- conflicted remuneration; and
- ASIC's amended licensing and banning powers.

Our guidance process will be consultative. We are already talking to many in the industry about FOFA implementation, and once the legislation is finalised we will issue draft guidance for consultation.

A key issue for ASIC in regulating FOFA is scaled advice, which is designed to expand access to quality financial advice. Our research has found that one reason more people don't get advice is that they want advice about single issues or a limited number of issues rather than a holistic financial plan. Our guidance will address issues such as having to do a fact find when giving scaled advice, and adviser and client agreement on the scope of the advice. ASIC fully expects that scaled advice can be provided in a manner that is consistent with the best interests duty.

One type of scaled advice is intrafund advice. This is obviously of interest to your sector, and will be the focus of consultation and work with your membership:

- This was consulted upon as part of the Stronger Super reforms. It will allow trustees to spread the cost of intrafund advice across the fund as a whole, rather than directly charging the individual member.
- The Government is working through the definition of intrafund advice. I should note here that ASIC's examples in earlier regulatory guides (RG 200 and CP 164) will not form the basis for the definition.
- We anticipate draft legislation on intrafund advice in the coming month.

ASIC will also be releasing guidance on personal and general advice in the context of the best interest duty.

We will release the final guidance as soon as possible. We have also announced that we will take a facilitative compliance approach during the first 12 months of the FOFA reforms. That is, ASIC will adopt a measured approach where inadvertent breaches arise, provided industry participants are making reasonable efforts to comply.

Stronger Super

The Government's Stronger Super announcement was released in September 2011 and covered key aspects of MySuper, Governance and SuperStream.

The implementation of these reforms will be a major focus for ASIC over the coming years.

Stronger Super requires the close interaction of the regulators in the super environment.

Many of the MySuper reforms that are relevant to ASIC will be disclosure reforms that are anticipated from the recommendations in the Super System Review report.

A number of these reforms focus on data collection by APRA regarding transparency matters such as fees and costs, and fund performance. ASIC will take a keen interest in how disclosure will be made to members and potential members about the features of MySuper products, including fees and insurance. This is particularly important for disclosures that are made to members who are transitioning into the new MySuper environment.

Super is a major investment for most people, and even disengaged members may choose to engage with their super at a later time. The availability of relevant and up-to-date information for all members is crucial.

ASIC will focus on how this data is presented to existing and potential fund members. We are looking at consistency of approach between our disclosure requirements and the APRA data collection standards. This means industry can anticipate further regulatory guidance from ASIC with regard to disclosure.

Disclosure of underlying portfolio interests

You might have read the recent comments by ASIC's Chairman, Greg Medcraft, on disclosure of underlying portfolio interests in super.

On that issue, I would like to recognise ASFA's work, with the Financial Services Council (FSC), in developing voluntary guidelines for super and managed funds, which are expected in the middle of this year.

The compulsory nature of superannuation and its tax advantages raise the threshold of what the community expects in terms of disclosure and transparency.

ASIC encourages issuers to make relevant and complete disclosure, and we consider that enhanced disclosure regarding major portfolio holdings may play an important role in an investor's decision to invest, remain invested or to exit the product.

Some super funds are already disclosing major portfolio holdings, most commonly on websites. Others provide this information to members who request it. We are pleased for industry to lead the way in this. The move is to give those who want more information about their investment, the right to get that information.

Implementation of shorter PDS disclosure

Our commitment to appropriate disclosure extends to the shorter PDS disclosure regime, which will be fully implemented by 22 June 2012.

We are addressing some issues around complex products, interpretational issues and the definition of 'simple MIS'.

Further amendments to the regulations with regards to platform products and multifunds are also proposed.

The Minister's announcement made on 22 December 2011 states that in order to address the need to transition to the new regulations, the Government will be undertaking further consultation with industry and consumer groups to determine whether these products should be:

- completely out of the shorter PDS regime; or
- in the regime but with modified content requirements.

On an interim basis, superannuation platforms and multifunds will be excluded from the shorter PDS regime. However, ASIC will provide relief so they can, at the discretion of the provider, be included in the shorter PDS regime.

We are also working to integrate the Standard Risk Measures disclosure (the ASFA/FSC guidance) into the shorter PDS regime.

MoneySmart

I can't finish my talk without giving a plug to ASIC's MoneySmart website (www.moneysmart.gov.au).

While the typical Australian's level of engagement with superannuation is lower than we'd like, ASIC is helping Australians become more engaged through MoneySmart. As their engagement level rises, they will want to know more details about their investments.

As part of the stronger super reforms, the Government supports the MoneySmart website as the centralised superannuation website for consumers. MoneySmart is a useful resource to which you can refer your members for basic information about superannuation and other financial products.

Its content will be updated to reflect the Stronger Super changes and will explain these reforms in a consumer-focused way. The changes to MySuper are just as important for consumers as they are for the superannuation industry.

Conclusion

There's a lot on! I hope that today I've given you a sense of some of the work that ASIC is doing in your industry.

ASIC's regulatory guide on advertising for financial products and advice that we released today will support our strategic outcome of confident and informed investors. It also signals a clear objective on the part of the regulator to be more proactive in our approach to industry practices, especially where consumers may be at risk.

There is also a lot of reform underway, and I look forward to further engagement with ASFA and its members as we work through these issues.

Thank you for your time.