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Ms Ashly Hope
Strategic Policy Advisor
Australian Securities & Investments Commission
GPO Box 9827
MELBOURNE VIC 3001

deregulation@asic.gov.au

Dear Ms Hope

ASIC's Deregulatory Initiatives

The Group of 100 (G100) is an organization of chief financial officers from Australia's largest business enterprises with the purpose of advancing Australia's financial competitiveness. We are pleased to provide comment on Report 391 'ASIC's deregulatory initiatives'.

The G100 supports the new initiatives outlined in Report 391, particularly the streamlining of ASIC forms, simplifying wholly owned financial reporting relief, amending content reported in respect of substantial holdings (refer Attachment) sunsetting of legislative instruments and auditor resignation requirements.

The G100 strongly supports the Government's "Cutting Red Tape" initiative and ASIC's actions seeking to reduce compliance costs for businesses and others.

The G100 recently made a substantial submission to the Hon Josh Frydenberg, Parliamentary Secretary to the Prime Minister. This submission included a number of items relating to regulations administered by ASIC and its approach to compliance and enforcement. Those items are outlined in the Attachment.

Sincerely
Group of 100 Inc

Neville Mitchell
President

Att:

SUBMISSION TO ASIC

ASIC'S DEREGULATORY INITIATIVES

{MAY 2014}

EXECUTIVE SUMMARY

The specific reform items are classified under four broad themes:

- **Accountability/transparency of regulatory processes**
- **Regulatory arbitrage/duplication**
- **Regulatory overreach**
- **Modernisation of regulation**

Potential cost savings are an estimate and include both implementation and on-going costs for industry (and where relevant public sector costs) over the next decade. A high level indicative view of the approximate cost impact on the industry is classified as follows:

Low	Up to $10M
Medium	$10M to $100M
High	Over $100M

The urgency of the requisite change i.e. when the change needs to be complete in order to be effective is classified as follows:

Immediate	0-6 months
Short term	6 months – 2 years
Medium term	2 – 5 years

ACCOUNTABILITY & TRANSPARENCY OF REGULATORY PROCESSES

1. ACHIEVING MORE EFFECTIVE REGULATORY CHANGE CONSULTATION PROCESSES

Issue

The G100 believes that regulatory consultation processes could be improved to avoid unnecessary cost burdens on industry. According to the World Economic Forum Annual Report into global competitiveness, Australia has slipped from being ranked 9th in 2008/09 on the transparency of government policymaking to 51st in the 2013-14 review[1]. Moreover Australia is ranked 128th on the burden of government regulation.

'Throw away costs' or 'sunk' costs are often created as a result of tactical or interim solutions put in place to meet tight compliance deadlines. These costs are significant and avoidable.

We have identified the following factors:

- new compliance requirements are not defined and are ambiguous
- lobbying activities, industry consultations and discussion papers are being published during the release period. These papers often seek feedback from industry and response dates are often only months away from the actual compliance date
- during the release period organisations have to set up processes and projects to comply even when the requirements are not defined, there are gaps and the requirements are evolving.

Proposed solution

Good policy and regulation making process should be engineered to overcome problems such as complexity and unnecessary cost.

In current practice, it appears that the substance of this process actually occurs after the release of the regulation rather than before its release. Activities such as; industry consultation, release of discussion papers for comment, assessment of whether a regulation is fit for purpose, closing gaps should generally occur before the release of the new regulatory requirement.

Government agencies and regulators should be accountable to ensure there is substance to the consultation period, to ensure it operates effectively prior to the release of regulation or guide. Adopting this approach will:

1. materially eliminate sunk and throw away costs.
2. eliminate the need to extend compliance deadlines
3. reduce complexity and incoherence
4. close outstanding gaps in new regulation issued
5. ensure legislation is relevant
6. reduce any extreme regulation.

Relevant examples of regulation:

- Stronger Super reforms
- Future of Financial Advice reforms (FOFA)
- APS 910 Financial Claims Scheme
- APS210 Liquidity

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[1] http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf

To this end, the G100 welcomes the Government's commitment to ensure all Cabinet submissions include a Regulatory Impact Statement (RIS) and that the RIS must quantify the impact to business and the community. We believe the formulation of good public policy includes thorough consultation and development of comprehensive RISs. These are important steps in minimising unintended consequences that may arise from regulation.

Cost Impact	Medium	Urgency	Immediate

2. MANDATORY APPLICATION OF BEST PRACTICE PRINCIPLES BY GOVERNMENT AND REGULATORS

Issue

Currently there is no obligation on government or regulators to follow best practice regulatory guidelines.

Proposed solution

The G100 believes that this can be addressed by:

- compulsory analysis consideration of cost/benefit in all regulations prior to their release;
- mandatory application of relevant principles (COAG, OBPR) on government and regulators, including issuance of consultation regulatory impact statements (RIS) and extension of Office of Best Practice Regulation (OBPR) powers. Formal guidelines imposed in relation to provision of adequate transitional provisions in all regulatory instruments e.g. minimum timeframes for transition.

The G100 welcomes the Government's commitment to cut excessive regulation by reforming the process by which regulations are created, implemented and reviewed. This should apply to all Departments and regulators.

Cost Impact	Medium to High	Urgency	Immediate

3. ASIC AND APRA NOT TO CREATE POLICY

Issue

During the previous Parliament, there were instances where the financial services regulators (APRA and ASIC) would stray from regulation and enter the policy making arena, particularly for Stronger Super and FOFA.

The Government should ensure that APRA and ASIC operate within their mandate and do not develop policy – this clearly is the realm of Executive Government.

Proposed solution

Develop and publish a clear demarcation between policy creation by Government and the compliance and enforcement of legislation giving effect to this policy by APRA and ASIC. The mandates of ASIC and APRA also need to be clarified to ensure both organisations do not depart from the boundaries of regulation and into policy making.

Accept and adopt the ANAO recommendation to ensure Treasury retain the lead role in consultations concerning financial sector levies, to avoid conflicts for regulators.

Cost Impact	Low to Medium	Urgency	Short Term

4. GOVERNMENT EFFORTS IN INTERNATIONAL REGULATORY FORUMS

Issue

The OECD (2009) noted that "better regulation principles at the national level are implemented too late in the decision-making process when regulations are set at the international level."

Australia's increased involvement in international forums has contributed to the growth in domestic regulation. There is a specific concern that measures agreed in other jurisdictions should not be subject to high levels of scrutiny at a domestic level.
This can partly be traced to the pace of reform in recent years and international coordination efforts on measures such as short selling.

One of the risks of this is that regulation suitable for larger markets is unsuitable when those same principles are applied in Australia.

Background

There is a growing tendency for our domestic regulators to link international financial sector reforms to Australia. This is arguably running ahead of faster access to new markets for product distribution in different markets and the attendant opportunity to offset higher obligations with higher revenue.

For example, APRA's arrangements with the Bank for International Settlements (BIS) and ASIC's arrangements with the IOSCO, suggest a firm linkage between international policy settings being considered by Australia, with little evidence to show how they contribute positively to our domestic economy. On prime facie evidence these arrangements do little to improve our access to international markets.

Proposed solution

Ensure international liaison and financial services policy activity is repositioned to better deliver growth and opportunities for Australian business, and that international stability reforms are subject to a proper process of scrutiny led by Treasury, not regulators. Identifying and facilitating international policy setting and market opportunities should be led by Government, due to its foreign affairs and trade capabilities.

Report biannually on the extent to which Australia is meeting the OECD Guiding Principles of Regulatory Quality and Performance and The Policy Framework for Efficient and Effective Financial Regulation (PFEER)

Cost Impact	Low to Medium	Urgency	Medium Term

REGULATORY ARBITRAGE/DUPLICATION

5. TAX AGENTS SERVICES - DUAL REGULATION OF FINANCIAL ADVISERS BY ASIC AND TAX PRACTITIONERS BOARD

Issue

From 1 July 2014 Tax Agent Services Act (TASA) imposes obligations for providers of a new class of advice, tax (financial) advice. In a nutshell, the obligations require Authorised Representatives and Licensees who provide tax (financial) advice to:

- register with the Tax Practitioners Board (TPB) and be subject to a dual regulatory regime (as they are also regulated by ASIC);
- meet significantly increased TPB educational standards including mandatory university level study and study in Australian taxation law and commercial law, whilst also meeting ASIC's forthcoming increased requirements of study for financial planners which will include an awareness of taxation;
- potentially amend business models including supervisory models to comply with the TPB's requirements, as the TPB does not seemingly recognise the difference in supervisory models between tax agents and financial planners.

Industry argues that the regime was both duplicative and onerous in submissions made prior to the passage of the legislation. Both the operation of the dual regulatory regime and the nature of the underlying requirements are questionable in terms of overall benefit to consumers of financial advice or indeed tax (financial) advice services.
In addition, in some cases, the introduction of this framework may prevent individuals from entering the financial planning industry as they may not meet the relevant experience requirements to qualify for registration as a tax (financial) adviser.

Background

In the final sitting of Parliament under the previous Government, legislation was rushed through that placed new, onerous obligations on financial advisers who provide incidental tax advice as part of their financial planning services. Senator Cormann's statement at the 12 June 2013 Parliamentary Joint Committee on Corporations and Financial Services which scrutinised the Bill, describes the problem best:

> "*Irrespective of any transitional arrangements, before you actually enter into a change, people should have a very clear understanding of what is involved, how it is going to impact on them, how they can get themselves into readiness for compliance and what the cost-benefit equation is.*
>
> *On all of these levels, I do not think we are quite there. My view is that the most sensible approach is to have an extension to let a government, outside a pre-election period, deal with this in an orderly and professional fashion rather than to rush this at the tail end of what was a very difficult parliament, quite frankly. That is my view.*"

Commencement of the new requirements was deferred until 1 July 2014 due to the significant concerns raised. This provides an opportunity for the Government to consider the unnecessary regulatory burden posed by these requirements and consider suitable amendments. The previous government did not undertake a cost benefit analysis of the requirements.

Further, consideration of efficiencies and overlap between ASIC and the TPB has been left to the agencies and to date there is considerable overlap, inefficiency and unnecessary cost burdens in the operation of the two regimes.

Proposed solution(s)

There are numerous potential amendments that could be made to reduce unnecessary cost and regulatory burden associated with the regime:

1. Abolish the requirements.

2. ASIC are re-instated as the sole regulator of financial advice [including tax (financial) advice], with relevant educational requirements incorporated in the ASIC regime.

3. Formal protocols are established to ensure ASIC and TPB are accountable for working in unison to ensure that licensing and educational requirements for financial planners are streamlined and do not prevent individuals from entering the financial planning industry.

4. Synthesise ASIC's and the TPB's CPE requirements so that overall they do not become overly burdensome on the adviser or duplicative. Like the broader educational requirements this process should be streamlined and considered in conjunction with one another.

   For example, the requirements for tax (financial) advisers should be incorporated in the relevant ASIC AFSL requirements and consider where the existing ASIC requirements may be adequate for the nature of tax (financial) advice provided.

5. The educational requirements pay due regard to "incidental" tax (financial) advice, and do not require upgrade from the ASIC status quo unless it can be demonstrated that the relevant ASIC tax modules are inadequate for the type of advice provided. This may require segmentation of the educational requirements based on how "intensive" any tax (financial product) advice is.

6. The regulations explicitly carve out general advice.

Cost Impact	Medium	Urgency	Immediate

6. PAYMENT SYSTEMS EFFICIENCIES AND SUPERSTREAM (ELECTRONIC CONTRIBUTIONS)

Issue

There are currently multiple agencies setting data messaging and electronic data standards in the financial sector including APCA, RBA, ASIC, APRA, and the ATO. There is no consistency across the agencies resulting in duplication of processes and increased costs for participants and customers. Within superannuation multiple clearing houses increases inefficiency and operational risk. Trust is being placed in institutions that have no record in payment management rather than in the banking system where providers are bound by EFT codes of conduct and are subject to prudential supervision.

For example, in parallel with the implementation of the SuperStream reforms, Australian Payments Clearing Association (APCA) and its members are working with the Reserve Bank of Australia (RBA) to implement a new payment system by the end of 2016. The upgraded payment system will deliver the ability for employers to pass on rich data with direct credits so super funds can reconcile and allocate members monies (the principal goal of the second phase of SuperStream).

Background
SuperStream is a Super System Review (Cooper Review) initiative to introduce mandatory data and payment standards into the superannuation market place. The initiative is broadly supported by the superannuation industry who are currently implementing phase one of SuperStream which introduces electronic rollover of benefits between different superannuation providers upon a member's request.

Phase two of SuperStream is currently legislated to commence 1 July 2014 and will apply mandatory data standards to large and medium sized employers for superannuation contributions that they make for their employees.

The G100 is concerned that the implementation timeline for phase two of SuperStream does not adequately take account of the time it will take to fully implement phase one and underestimates the amount of work it will take for government and superannuation funds to educate employers about their new obligations.

Proposed solution
There is an opportunity for the Government to review the achievability of the second phase of SuperStream, and todelay the commencement date by 12 months while this review is conducted.

Delaying the second phase will also allow the Government, in conjunction with industry, to analyse the substantial progress made by APCA and the RBA to improve the payment system and to determine if aligning the two projects would substantially reduce the implementation costs for government, employers and super funds.

A co-ordinated and consistent approach across the sector is required as currently there are many agencies involved. Leveraging the banking system where providers are bound by EFT codes of conduct and subject to prudential supervision will reduce operational risk and complexity.

Cost Impact	Medium	Urgency	Short Term

7. DUAL REGULATED ENTITIES

Issue
Stronger Super removes the current exemption for dual regulated entities from having to meet the Corporations Act resource (capital) and risk management requirements for Responsible Entities (REs). The change has potentially significant implications in terms of the costs of the financial services industry as it is common for entities to act as a trustee/RSE licencee of an Registrable Superannuation Entity (RSE) and also as a trustee/responsible entity of managed investment schemes. We are concerned removal of this exemption creates a significant cost and compliance burden by effectively duplicating requirements.

Background
It is common in the financial services industry for a body corporate to act as both an RSE licensee (of an APRA regulated superannuation fund) and also a responsible entity (RE) licensed with ASIC. APRA's consent is obtained under the RSE licence and the RSE is subject to periodic supervisory reviews to ensure compliance with their licence requirements.

Thus, the body corporate's activities:

(a) as an RSE licensee are governed by the RSE licensing rules of SIS and (in many cases) the Australian financial services licensing rules in the Corporations Act 2001 (Cth) (Corporations Act); and

(b) as a responsible entity (RE) are governed by the managed investment scheme and Australian financial services (AFS) licensing rules in the Corporations Act.

In those situations where the trustee of a superannuation fund holds both an RSE licence and an AFS licence, section 912A of the Corporations Act exempts the trustee from the following obligations as the holder of an AFS licence:

a) the obligation to have available adequate resources (including financial, technological and human resources) to provide the financial services covered by the AFS licence and carry our supervisory arrangements; and

b) the obligation to have adequate risk management systems.

This is chiefly because APRA will already consider these matters as part of their licencing and ongoing supervisory process. Moreover, dual regulated entities generally don't separate the management of their responsibilities under their different lines of business (e.g. RE and RSE) and policies such as strategy, risk management and investment management usually cover all areas of the business. This exemption has been important in maximising these efficiencies while also minimising duplication.

The Stronger Super amendment comes into effect from 2015.

Proposed solution

The legislation should be clarified so that for dual regulated entities, the same assets can contribute towards both ASIC's and APRA's financial resource requirements.

Cost Impact	Medium to High	Urgency	Medium Term

8. CONSISTENCY AND CERTAINTY OF REGULATOR GUIDANCE

Issue

The timeliness and reliability of guidance given by regulators varies significantly and this places additional pressure on project teams with responsibility for delivering technology and other solutions in response to reforms and changes in regulation.

It is common for firms to seek the views of regulators, for example, on the meaning of a definition or guidance as to the scope of requirements, in the process of developing systems to enable compliance. It is not uncommon for 6-18 months to elapse before obtaining responses in respect of relatively low level issues, which means system development work is delayed. Frequently these requests, run up against commencement dates – reflected in the legislation that have the effect of creating compliance risks and increasing costs for entities that could have been lessened or avoided altogether.

Background
All regulators that deal with the financial services sector use a different approach when responding to industry on areas of legal clarification and reform. The ATO uses a formal rulings approach, APRA issues standards and places responses to FAQs on its website, and ASIC issues regulatory guidance. These different approaches could reflect the maturity of the organisation, relationships to stakeholder and their propensity to provide entities with the confidence that they are compliant with the legislation.

Proposed Solution
The G100 believes that the growth of supra-regulation through guidance and other forms should be limited and the extent to which it can realistically be considered relief by industry should be considered. Where regulatory guidance is necessary, standardised protocols should be developed on their timing, method of release and format. Adoption of this approach would address the increasing prevalence issues that appear to be adding to delays in guidance given by some regulators and would reduce compliance risks and costs to industry. However, it would be preferable that many of the issues requiring clarification and resolution were dealt with in the consultation period in the process of developing legislation and regulations.

Cost Impact	Low to Medium	Urgency	Medium Term

REGULATORY OVERREACH

9. EXCESSIVE REQUIREMENTS FOR EXECUTIVE REMUNERATION – TOO COMPLEX FOR SHAREHOLDERS

Issue
Corporations Act and associated ASIC Guidance on annual reporting requirements, particularly for reporting on executive remuneration is excessive.

Background
The remuneration report in its current format is lengthy and difficult to understand along with being time consuming to prepare. In 2014, the remuneration report will include the related party disclosures that previously formed part of the notes to the financial statements which could make it more difficult to follow. Generally, the reporting requirements on remuneration need to be simplified, particularly the reporting tables listing the remuneration for key management personnel, so they can be more easily understood by customers and shareholders. For example, a PWC survey of the remuneration reports of ASX 35 listed companies revealed the following about remuneration reports:

- an average length of 21 pages with the longest being 39 pages:
- comprised 14% of the Annual report;
- contained a glossary of 30 items;
- included 20 tables; and
- contained the largest number of footnotes with 98 footnotes in one report.

Governance Australia (formerly Chartered Institute of Secretaries Australia) reported that it is not unusual for statutory remuneration reports....to be largely unpenetrable to the lay reader.

Proposed solution
Industry encourages the government not to revisit the draft legislation on remuneration reporting disclosures introduced by the previous government. The proposed changes in the lapsed Bill would have made remuneration reporting even more difficult.

Reduced effort and time to prepare the reports and clearer expectations about what needs to be included in it. Simplifying the remuneration report would allow customers and shareholders to more easily read and understand it. Also, simplified reporting would reduce management time and effort spent explaining to shareholders the content of the remuneration report due to its complexity.

Cost Impact	Medium	Urgency	Immediate

10 VARIATIONS TO SUBSTANTIAL SHARE HOLDINGS – CORPORATIONS ACT (Part 6C.1)

Background
The substantial holding provisions in the Corporations Act ("Act") require disclosure by persons that have a substantial holding in a listed entity (S671B). A person will have a substantial holding in a listed entity if they, together with their associates, have a relevant interest in 5% or more of a listed entity. Accordingly, a substantial holder must disclose their holding to the ASX within two business days of becoming aware of the information and, subsequently, when there has been a change of 1% or more in their holding. Mostly, the ownership is held on behalf of clients by a financial institution.

There have been recent changes by ASIC to their interpretation of the rules regarding substantial shareholding notices. In June 2013, ASIC released updated and consolidated guidance in respect of substantial holding notices (ASIC Regulatory Guide 5 – Relevant interests and substantial notices ("RG5").
RG5 requires a financial institution and other listed entities to provide a far greater level of detail in disclosure, including the listing of individual trades, with little, if any appreciable upside for any party.

This granular, transactional level data creates a significant administrative and cost burden in producing the notices for little market or regulatory benefit.

In most cases the requirement has resulted in financial institutions preparing voluminous data and submitting notices up to 100+ pages from the previous average of 15-20 pages. Minor variations in share holdings and routine trading activity now trigger a significant compliance burden. This level of detail and associated cost goes beyond what is reasonable and proportionate to ensure market integrity and informed trading.

Financial institutions question the value of being required to provide such granular data and does not believe an appropriate balance is being achieved between an informed market and the costs and level of disclosure. Direct costs for this change are incurred for the preparation of notices and unquantifiable indirect costs for improving internal systems to produce the level of granularity required in the reporting process. Removing this additional burden would require changes to the ASIC guidance contained in Regulatory Guide (RGS).

Proposed Solution

Recommend the Government incorporate this item in its deregulation agenda and start an immediate dialogue with ASIC urging an alternative approach to Regulatory Guide 5.

Cost Impact	Medium	Urgency	Immediate

MODERNISATION OF REGULATION

11. PRODUCT RATIONALISATION – INCREASING EFFICIENCIES AND REDUCING COSTS FOR PRODUCT PROVIDERS AND CLIENTS/MEMBERS

Issue

Appropriate product rationalisation mechanisms will enable financial service providers to provide more efficient and up-to-date products and services to consumers and avoid on-going operational risk and cost associated with the maintenance of legacy products and systems. This will inevitably result in better client outcomes including lower fees and access to more modern, superior product sets.

Background

- In June 2007 the Government released a Product Rationalisation Proposals Paper.
- In April 2008 a Government Advisory Panel on Product Rationalisation was established, including representatives from APRA, ASIC, Treasury and industry.
- In December 2009 then Minister for Financial Services and Superannuation released a Product Rationalisation of Managed Investment Schemes and Life Insurance Product Proposals Paper. The paper specifically excluded superannuation from consideration on the basis that existing successor fund transfer (SFT) processes were adequate.

Proposed Solution

The G100 believes that it is an appropriate time for Government (including APRA and ASIC) to re-engage with industry to further develop the product rationalisation proposals. For completeness, superannuation should be included in any further review and cross-sector rationalisation should be examined to enable the rationalisation of life insurance company issued superannuation into modern superannuation products.

This was recommended by the Productivity Commission in their Annual Review of Regulatory Burdens on Business: Business and Consumer Services in 2010. Recommendation 2.7 indicated that Treasury should resolve any outstanding issues associated with legacy products and then implement the product rationalisation mechanism for managed investment schemes and life insurance policies as soon as possible.

Cost Impact	Medium	Urgency	Medium Term