22 January 2016

Division Head
Retirement Income Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

BY EMAIL: superannuationtransparency@treasury.gov.au

Dear Division Head

IMPROVED SUPERANNUATION TRANSPARENCY

The Financial Services Council welcomes the opportunity to make a submission to the Improved Superannuation Transparency Consultation on Portfolio Holdings Disclosure and Choice Dashboard.

The Financial Services Council (FSC) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and public trustees. The FSC has over 125 members who are responsible for investing more than $2.5 trillion on behalf of 11 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world.

The FSC is a strong supporter of improved transparency in superannuation and we welcome the reforms. Please find our submission attached below.

Should you wish to discuss this submission further please do not hesitate to contact Blake or Sara on (02) 9299 3022.

Yours sincerely,

BLAKE BRIGGS
Senior Policy Manager

SARA DIX
Policy Manager

FSC PORTFOLIO HOLDINGS DISCLOSURE SUBMISSION

1. INTRODUCTION

FSC strongly supports a Portfolio Holdings Disclosure regime to increase transparency and consumer engagement in the superannuation and funds management industries.

We support the following principles:

1. Transparency and recognise that investors are entitled to be informed about their holdings;
2. Provide timely information that allows members to be better informed about the fund's holdings and investment strategy;
3. A common 'minimum' industry standard which allows for individual funds to provide more information or information on a more frequent basis if they desire;
4. Reasonable protection of portfolio managers' intellectual property, in part to protect investor returns (for example, fluid trading positions where a fund manager is actively building, or reducing, a position in a security should not be disclosed in such a fashion to detrimentally impact that trade) ;
5. Flexibility on format of disclosure based on the most efficient format for business structure;
6. Desire to ensure a level playing field across RSEs in terms of the level of disclosure provided to members about an Investment Option's holdings;
7. Promotion of these standards by members to related entities and third party organisations they invest with; and
8. Alignment with global best practice.

We support the Government's initiative to simplify the portfolio holdings disclosure framework. We are supportive of the intent of striking the right balance between increasing transparency and minimising a RSEs compliance burden. This will ultimately reduce costs to consumers and make the information useful and understandable for consumers. We thank Treasury and the Government for improving the Portfolio Holdings Disclosure regime with this proposed amended legislation.

We welcome the proposed time lag in reporting of information as this addresses some concerns regarding the disclosure of commercially sensitive information and opportunities for third parties to use the portfolio information to engage in predatory trading practices that harm fund members. This also follows global best practice.

We acknowledge ongoing views regarding the value of this data to consumers and believe funds should continue to have the flexibility to further enhance their Portfolio Holdings Disclosure (over and above the law), if desired. However, the legislation should continue to be the base-line standard for the industry and allow trustees the flexibility in how they disclose this information (see comments on the regulations proposed method for setting out information).

The removal of some reporting requirements also solves the extraterritoriality issue where funds risked not being able to obtain information from foreign fund managers who had no obligation to provide it and foreign fund managers rejecting applications from Australian super funds because of the portfolio holdings disclosure regime.

There are certain aspects of the draft legislation that require some clarity as outlined below, and we also outline substantive comments on the layout of the table format in the Exposure Draft Regulations.

Other comments we have on the legislative amendments are largely definitional or where industry requires more clarity. We also outline some issues and options for the materiality provisions.

The current legislative and regulatory requirements will result in some members seeing in excess of 10,000 lines of data organised by hierarchy rather than asset class or value, which is neither useable nor understandable.

Accordingly, we recommend moving to an aggregated (rather than hierarchical) view by asset in descending value order to avoid duplication. We also see merit in presenting the assets as a percentage of the investment option.

Importantly, we recommend that the hard start date be moved back to 1 July 2017 to allow industry sufficient time to implement the new systems required (both IT and legal) as well as ensuring consumers receive good quality disclosure. A 'soft start' date could begin at 1 July 2016.

We include comments below separately on the legislative amendments and the draft regulations. We appreciate the regulations and the table format may take longer to get right and so would welcome further discussions on these points with Treasury including consideration of various options. Our comments are based on principles of useability and understanding for superannuation fund members.

2. LEGISLATIVE AMENDMENTS

Start Date

While work can commence on designing IT systems, RSEs should not finalise the design of IT changes or implement any IT changes until the regime has been passed by Parliament and final regulations released. As a rough guide, industry expects it would take around 9 months to implement IT changes after the regime has been finalised.

Given the Exposure Draft Bill and Exposure Draft Regulations are unlikely to be finalised until May-June 2016, this will not allow RSEs sufficient time to implement the systems required to collate all the required information and prepare and design disclosure on the website, particularly from an IT and legal perspective.

To ensure industry has enough time to implement the changes and associated IT and legal systems and consumers are given good quality disclosure, we would recommend a hard start date of 1 July 2017 and first reporting date of 31 December 2017. Those super funds who are able, could begin reporting on a no compliance obligation 'soft start' date from 1 July 2016.

Recommendation: Amend the start date of the regime to 1 July 2017 with a 'soft start' date of 1 July 2016.

Definition of an Investment Option

The Exposure Draft Bill requires portfolio holdings disclosure of investment options. The definition of investment option in the Exposure Draft Bill is: "a choice product that does not contain multiple investment options" and "a MySuper product".

However, no guidance on the application of the definition is provided in the explanatory materials.

An RSE may offer the same investment option in multiple products, which causes duplication in reporting and disclosure under this definition.

APRA uses the following clarification: *"If an investment option is offered through multiple product channels or with multiple fee structures, with no change to the underlying investment strategy, apply the principles outlined in Attachment B to determine how many times the investment option is to be classified as a separate select investment option and therefore reported to APRA"* where Attachment B defines multiple Investment Options with the same underlying investment strategy as one Investment Option for reporting purposes (APRA SRF001.0).

Further clarity is required on this point. Our preference would be for the investment option to only have to be reported once, with identifiers to the multiple products offered using this investment option.

Recommendation: Amend the Explanatory Statement to clarify that an investment option would only need to be reported once, even if that option is offered under multiple products.

Reporting of associated entity investments

There appears to be no definition in either the Exposure Draft Bill or Exposure Draft Regulations of "associated entity of the entity". The different formulation of this term means that the definition of "associate" in the Corporations Act is not immediately applicable. It is important that this definition be included, say, in subsection 1017BB(6) of the Act.

Recommendation: Define 'an associated entity of the entity' in the legislation.

The 5% threshold and materiality provision

We support the addition of the 5% threshold as this should be sufficient for now to protect those assets where disclosure of the fund name or holdings is not permitted as a result of confidentiality undertakings (e.g. private equity assets).

However, it would be useful to include some more definitive language around this provision.

The provision, for example, could be defined as the use of the 5% allowance for "commercially sensitive" positions to be used when: building or exiting a position in a security; or to mask a holding in a sensitive, unlisted physical asset.

This 5% may be at times exceeded in the future, as more alternative and commercially sensitive asset investments are entered into. This threshold should be monitored over time be amended when necessary in response to changes in industry practice.

We outline some options for the materiality provision below.

- An option for dealing with additional requirements relating to commercially sensitive investments could be where the asset is commercially sensitive or subject to confidentiality undertakings, and the 5% per investment option threshold will be exceeded, allow the RSE to disclose the nature or type of the asset using more general wording (rather than identifying the asset) but which gives the consumer sufficient information about the asset to aid transparency.

- Another alternative is for RSE licensees to seek exemption from ASIC to provide relief (either Class Order or specific relief) in situations where the 5% threshold has been exceeded and for example, the Private Equity or unlisted asset manager refuses to allow the fund details to be disclosed. Corresponding ASIC guidance on the circumstances that fall within such an exemption would also be useful. We note that ASIC has an exemption and modification power under section 10120F in Part 7.9 of the Corporations Act.

In addition, we would like clarity on the materiality threshold in the regulations and for this to be defined (see regulations section below).

Recommendation: We make two recommendations on the 5% provision. Firstly, to include definitive language on the current 5% provision for commercially sensitive assets, and secondly to include an additional allowance for where the 5% may need to be exceeded (options outlined above).

Exclusion of Wrap Products in PHD Scope

FSC believes that Portfolio Holdings Disclosure legislation should exempt Super Wrap Products from reporting. If a member has the discretion to make their own investment choices using non-trustee determined "publicly available" information, then this should be excluded for Portfolio Holdings Disclosure purposes.

The trustee's role in these products is limited to determining which investment options to offer on its investment menu (and the level of exposure a client could be allowed to invest up to in a particular option or class of options). Therefore the intent of Portfolio Holdings Disclosure in increasing awareness of where superannuation funds are investing is not satisfied under wrap products.

Some wraps have hundreds of managed funds available as investment options. These are usually categorised on investment lists according to the nature of the fund - e.g. Australian Equities, Emerging Companies etc. Moreover, each customer has its own approved product list, this list might include investment options that are specific to a particular customer and these options are not made available to other customers. The member and their adviser select which managed funds they wish to invest in and review the disclosure documents provided by the fund manager before investing which set out the fund's objectives, investment guidelines, fees etc.

Wrap platform superannuation products are specifically designed to give members a wide selection of investment options and assets in which to invest. In collaboration with their financial adviser, an investor has selected the direct asset or managed investment scheme so they already understand where they are invested. This is because ASIC's Regulatory Guide 148 and Class Order 13/763 currently requires platform / wrap operators to regularly disclose this investment information at an individual investor level through their annual statement. This data already includes the identification of each "single asset" and their respective values.

Regulatory Guide 184 and section 1012IA of the Corporations Act applies to Trustees of super funds that "offer choice of investment strategies to its members, where any of those strategies include specific financial products (accessible financial products) that will be acquired under the member's choice of strategy." These requirements stipulate that "the trustee must give a member a product

disclosure statement (PDS) about any accessible financial product included in an investment strategy before acquiring the product as part of implementing the strategy".

Please see Appendix B for a summary of some of the current obligations on platform and IDPS operators. Please note, we can provide further information on this to Treasury.

The majority of the investments are made through non-associated entities and therefore the disclosure under the proposed PHD regime would be limited to the number of units held, the value and the total invested in each managed fund, term deposit or equity (depending on the regulation requirements).

Given the typically broad nature of the available investment menu, the proposed Portfolio Holdings requirements would result in the Trustee being required to display holdings for each individual investment option, detracting from both the usefulness and transparency of the regime as it would not reflect an individual's own investment portfolio. On average, an investor investing through a wrap will have exposure across 10 different investment options, at varying weightings of exposure making the investment option reporting somewhat meaningless.

The disclosure could be viewed as being misleading as it is not showing the trustee's investment decisions unlike other choice funds and could result in a member choosing an investment option that is not suitable for their circumstances simply because it is the most popular option without any regard for the personal circumstances of other members of the fund and their own risk profile.

Applying the legislative requirements to superannuation wrap products would produce an odd result whereby underlying investments in associated entities on the platform are disclosed, but not underlying investments in non-associated entities.

In addition, platforms are in many cases set up with super and non-super products which are identical except for differences required by legislation. Another odd outcome would be that portfolio holdings information for associated entities in the super product would be made available, with no corresponding disclosure for the non-super product.

Given significant level of investment tailoring and current level of customised disclosure for each individual investor, aggregated PHD data will not be relevant and may be misleading to the investor.

Recommendation: Remove Wrap Platform Products from the scope of Portfolio Holdings Disclosure. That is, provide a carve out from the regime for choice investment options where the trustee does not have absolute discretion to vary or replace the financial products or any other property allocated to the investment option.

<u>Investment options closed to new members</u>

Paragraph 1017BB(4)(b) provides an exemption from the portfolio holdings disclosure requirement for an investment option that has been closed to new members for at least 5 years. We welcome and strongly support the inclusion of this exemption as it aims to reduce the compliance burden on RSEs. As highlighted in the Explanatory Memorandum this exclusion has been included because the benefit of disclosure of investment details for members within closed investment options is limited.

We note that some organisations have closed legacy products with only a handful of members and small total assets. We believe that, for legacy products, the costs could far outweigh the benefits associated with preparing PHD reports. As such, consideration should be given to advocating a fund value (for investment options that have been closed for less than 5 years) below which entities would also be exempt from the PHD requirements (e.g. $3 million). Alternatively, consideration could be given to advocating for a shorter timeframe for the exemption to apply (e.g. 3 years).

Trustees should also be able to identify in the Investment Option's table where a fund is closed.

Recommendation: Give consideration to advocating a fund value (for investment options that have been closed for less than 5 years) below which entities would also be exempt from the PHD requirements (e.g. $3 million) or a shorter timeframe (e.g. 3 years).

Further, allow trustees to identify in the Investment Option's table where a fund is closed.

Investment options closed to new contributions and terminated funds

The Exposure Draft Bill requires disclosure of the portfolio holdings of all investment options in all situations. However, the benefit of portfolio holdings disclosure is extremely limited for investment options which are closed to new contributions or investments. We note that terminated funds would not be required to be reported on.

Recommendation: Clarity is provided in the Exposure Draft Bill for investment options closed to new contributions / investments or which have been terminated before the date information is made available on the website.

Defined benefit funds

Subsection 1017BB(4)(d) proposes to exempt trustees from disclosing assets invested in a financial product or other property allocated to a defined benefit fund (within the meaning of Division 3A of Part 8 of the SIS Act).

The way this subsection is currently worded suggests that, for a hybrid fund which is predominantly accumulation but with a small defined benefit sub-fund, none of the assets of the accumulation section would need to be disclosed. We believe that this overall fund-level exemption is not what is intended under the portfolio holdings disclosure requirements. Rather, it is only the defined benefit assets that are specifically intended to be exempted. There are a number of different arrangements involving defined benefits that would need to be catered for, as follows:

Defined benefits in super fund	**Defined benefits in super product**	**Defined benefits in employer plan**	**Application of PHD exemption**
One super fund	All members are entitled to defined benefits only	N/A	Exemption applies to whole fund
One super fund	Number of super products offered in super fund	At least one super product divided into employer plans Some employer plans provide accumulation benefits and some provide only defined benefits	Exemption applies to employer plans which provide only defined benefits

One super fund	Number of super products offered in super fund	At least one super product divided into employer plans. Some employer plans are divided into different member categories, some categories provide accumulation benefits and some provide only defined benefits	Exemption applies to defined benefit members in employer plans
One super fund	Number of super products offered in super fund	At least one super product divided into employer plans. Some employer plans are divided into different categories, some categories provide accumulation benefits and some provide "hybrid" benefits – eg. the higher of accumulation benefits and defined benefits, a defined benefit component plus an accumulation component	Exemption applies to hybrid members in employer plans

To remove any confusion and ensure that all funds disclose in a consistent manner, the wording in subsection 1017BB(4)(d) should be amended to clarify that it is only the assets allocated to a defined benefit interest in the fund that are exempted from the portfolio holdings disclosure requirements. This concept is captured in the definition of "defined benefit interest" in regulation 1.03AA of the *Superannuation Industry (Supervision) Regulations 1994*.

Recommendation: the wording in subsection 1017BB(4)(d) should be amended to clarify that it is only the assets allocated to a defined benefit interest in the fund that are exempted from the portfolio holdings disclosure requirements.

Annuities and Guaranteed Products

The amended draft legislation would require that guaranteed life policies held in a superannuation fund and issued by an associated entity of the superannuation fund be reported. In the case of annuities and other guaranteed life policies this will produce inaccurate and misleading disclosures for the reasons set out below.

Where a superannuation fund invests in a life policy providing guaranteed returns, the information about the underlying investments of the life company does not provide information about the risk of that investment, and is in fact fundamentally misleading. For these types of investments, the investment risk is borne by the life company as the member (via the superannuation fund) receives a guaranteed return irrespective of the performance of the statutory fund's underlying assets. The

superannuation fund does not have exposure to the assets, nor does it hold the capital or have any control over the assets. The returns are not directly linked to the performance of those assets. In addition, the relevant capital regime to support a statutory fund is not reflected if the underlying investments reported.

If the superannuation fund were to look through to the underlying assets of the associated life company, it is unclear how this would be achieved and how this would benefit members. Potential approaches would include reporting all the assets of the statutory fund, which is clearly not the underlying value of a particular investment option, or a subset of the assets of the statutory fund equal to the liability to the superannuation fund which represents a pro-rata share of all assets of the statutory fund, potentially plus a share of capital held by the life company. Such an approach would result in a risk profile being disclosed which is clearly different from the risk profile of the actual investment option. Either option in our view would not reach the policy objective.

These types of products should be contrasted with market linked products and consequently should be disclosed differently to superannuation investors in order to avoid misleading the user of this information.

In terms of comparability with similar investments, the economic substance of the guaranteed life policies is similar to that of bank term deposits. The FSC understands that superannuation funds that invest in deposits in banks are not required to look through to the underlying assets of the bank.

There is recognition of the different nature of guaranteed investments and the associated disclosure in relation to product dashboards, as these products are excluded from the operation of the product dashboard legislation (see section 1017BA(4) of the Corporations Act). In the FSC's view, a similar carve out should exist for portfolio holdings disclosure.

Recommendation: Include an exemption for products where the overall return of the investment option is not directly correlated to the portfolio holdings. This includes products where there is a guarantee, such as annuities and other longevity risk products. Guaranteed life policies should be classified as directly held investments nominating only the relevant life office statutory funds and not reported on a look through basis. The exemption in section 1017BB(4) should extend to:

-a life policy under which contributions and accumulated earnings may not be reduced by negative investment returns or any reduction in the value of assets in which the policy is invested ; or

-a life policy under which the benefit to a member (or a relative or dependant of a member) is based only on the realisation of a risk, not the performance of an investment; or

-a life policy under which the returns are not directly linked to the value of the assets in which the policy is invested.

<u>Real Property</u>

The legal requirement is to disclose portfolio holdings information about "financial products and other property". The term "other property" is extremely wide and potentially captures a variety of assets which we assume are not intended to be covered by the portfolio holdings regime. For example, the term could extend to assets such as goodwill, leases, rights to compensation, insurance claims and security interests (e.g. liens). None of these assets should be covered by this regime.

Recommendation: The requirement to disclose be limited to apply only to financial product and "real property".

Value of financial products

There is an inconsistency between the Exposure Draft Bill and the Exposure Draft Regulations. The Exposure Draft Bill requires the trustee to provide information about the value of financial products as at the end of each reporting day, while the Exposure Draft Regulations require the provision of information about price at the end of each reporting day. In practice, there will always be a difference between value and price of a financial product or other property.

We would recommend that the Exposure Draft Regulations be amended to require disclosure of value rather than price for various reasons – this is explored further in the regulations section below. However, including the overall Funds Under Management (FUM) figure by line will likely confuse consumers as it will not add up to the total investment option FUM due to derivatives exposure etc. The 'true' FUM value of the investment option could be displayed outside the table.

Recommendation: The Exposure Draft Regulations be amended to require disclosure of value rather than price. This is explored further in the regulations section.

Include the true total funds under management value of the investment option outside the table.

Net value of an asset

Neither the Exposure Draft Bill nor the Exposure Draft Regulations clarify whether the amount to be disclosed is the gross value or net value of an asset. Many superannuation trustees will obtain information on the value of assets from their custodian. However, industry practice is for custodians to report to superannuation trustees the value of assets net of brokerage. Custodians would need to implement significant and costly systems changes in order to report gross values for portfolio holdings purposes, which could be particularly difficult for global custodians and prime brokers offering custody services. We recommend that values are therefore reported net of brokerage.

Recommendation: The Exposure Draft Bill be amended to permit trustees to report values net of brokerage.

Securities lending

The Exposure Draft Bill requires trustees to provide information on financial products and other property but only to the extent "allocated" to an investment option. Question arise about the meaning of the term "allocated" in situation such as securities lending.

Securities lending is a common practice in the superannuation industry. In a securities lending arrangement, securities are lent to a third party in return for an agreed amount of collateral. Under the loan arrangement, title to the securities is transferred to the third party and the superannuation trustee holds title to the collateral. Upon the expiry of the loan, equivalent securities are transferred to the superannuation trustee and the collateral returned to the third party.

It is not clear from the Exposure Draft Bill whether securities which are subject to a securities lending arrangement on a reporting day should be reported as part of portfolio holdings disclosure or whether they should be ignored and the collateral should be reported. We believe common industry practice is for that the securities are reported as a holding by the RSE.

Another common practice for superannuation trustees who engage a prime broker is for the prime broker to "re-hypothecate" the collateral. In this situation, the prime broker could hold the collateral on behalf of the superannuation trustee under a custody arrangement and pledge the collateral to a third party. Under this arrangement, title to the collateral does not change upon

granting of the pledge to the third party, but title would change if the pledge was exercised by the third party.

Recommendation: Note industry practice on securities lending in terms of how to disclose this under the portfolio holdings regime. Guidance on compliance with the portfolio holdings regime in the context of securities lending and re-hypothecation be included in the Explanatory Memorandum.

Drafting issues

Please see Appendix A for comments on legislative drafting issues.

Recommendation: amend legislative drafting errors as outlined in Appendix A.

3. COMMENTS ON EXPOSURE DRAFT REGULATIONS

Materiality

We seek clarification on the regulation power noted in the Exposure Draft Legislation to prescribe a materiality threshold and would like this to be defined in the regulations to provide certainty for industry. (In addition to the 5% threshold in the Exposure Draft Legislation).

For example, those assets where the exposure is less than 0.1% of the investment option could be considered immaterial. To illustrate this, if we take one of these diversified funds with over 7000 assets and excluded all assets where the value of the exposure is less than 0.1% of the total value of the investment option, you would reduce the number of line items by over 90% while still retaining the majority of the value disclosed. We feel that this is a much more succinct and useful list of assets that would be of interest to a member rather than a long list of investments where the exposure is less than 0.1%.

This separate allowance could provide the ability to exclude assets that are deemed immaterial, where the definition of immaterial would be say <0.1% of the Investment Option value (but where the total amount of immaterial assets excluded would not be greater than 10% of the Investment Option's total value).

Recommendation: clarify and define materiality in the regulations.

Non-unitised investments

The Exposure Draft Regulations provide for disclosure of financial products and other property in a table format which sets out information such as units and price of unit. This format is tailored towards those types of assets which are divided into "units". The table becomes problematic when other types of assets are considered, such as over-the-counter derivatives, hedges and foreign exchange. Further, some derivative or collateral positions may have a negative value and there is no guidance on how to handle this. Removal of the price column would largely solve these issues.

Recommendation: The Exposure Draft Regulations permits superannuation trustees to depart from the table format for disclosing non-unitised assets such as derivatives. Our recommendation would be to remove the price column.

Confidentiality

Superannuation trustees will be subject to legal obligations of confidentiality which may be breached if they name the counterparty to a transaction. For example, it may be possible to identify the type of asset (e.g. commercial loan), but it may breach confidentiality if the portfolio holdings table disclosed to whom the loan is given.

Recommendation: The Exposure Draft Regulations be amended to confirm that information about third parties need not be included if it would breach an existing obligation of confidentiality.

Foreign exchange exposure

Superannuation trustees often hold foreign currencies. The Exposure Draft Regulations require the provision of information on price. There is no clear statement that the price must be in Australian dollars, although the table in the Exposure Draft Regulations refers to "$".

Recommendation: Guidance be included in the Exposure Draft Regulations on how to disclose holdings of foreign currency. Although our preference (as outlined below) is to remove the price column as it holds little meaning for members.

Proposed method of organisation of Portfolio Holdings data (Subdivision 2E.2 (7.9.07ZA))

Based on the principles of useability and usefulness for the consumer, we see some potential issues and complexities with the table format as currently drafted. The current regulatory requirements may result in a member seeing around 10,000 lines of data including duplication of securities which is neither useable nor useful.

The comprehensive comments are provided below. We recommend moving to an aggregated (rather than hierarchical) view by asset to avoid duplication. We also see merit in presenting the assets as a percentage of the investment option, rather than the dollar value. Further, several assets are not unitised which raises further issues in the current form.

Column 1 and 'levels'

The monetary values of parent and child relationships are all displayed in the same column and it may not be immediately clear to a data user that only some of those values are included in the total value of the option. It would be beneficial for first level holdings to have their own column so that a single column adds to the total holdings. Given that some internal trust structures contain more than 5 levels for example, setting out values all in one column will be very confusing for a data user. However as described below, our preference is for the table to be set out in an aggregated view by assets and ordered using either descending value or name.

We note that the regulations use the term "level" but don't define what this means. Many superannuation funds invest in internal trust structures which can consist of several 'levels' – we note the intention of the regulations and the table is not to disclose these internal structures but the final investment holding of the member.

Sub-reg(1)(f) refers to "the classes (or levels) of financial products or property". This implies that "classes" and "levels" can be used interchangeably. In our view, these two words have different meanings – within the superannuation industry you might have multiple classes within one financial product. Suggest substituting "layers" for "classes" as "layers" has the same or similar meaning to "levels" and can be used interchangeably.

Not all assets in an option are unitised

Not all holdings will have units. Derivatives holdings, cash and outstanding values in addition to any other accounting entries (e.g. deferred tax assets) that constitute the value of the option will not necessary be valued according to the standard price x units = value equation. This also applies to forwards and futures. Clarity is also needed on the treatment of forward purchases and sales (e.g. a bond that is purchased on 30 December but which is not settled until 2 January). How is this to be treated given the reporting date is 31 December?

Fractional holdings

Investment options are made up of an ever moving proportion of underlying RSE assets they do not have holdings of "whole" units. If fractional units are displayed this may cause confusion with users of the data. What is Treasury's intention in this regard?

Method of organisation of table

With a key disclosure principal to present information that is simple and meaningful to members, the FSC feels that this proposed method provides an overly complex view of the look through data (namely, a hierarchical view of Portfolio Holdings with assets referred to multiple times and the sum of rows not equalling the value of the investment option). The FSC proposes that the best way to deliver data to members that is simple and meaningful would be in an aggregated, non-hierarchical format where assets are organised alphabetically or by descending value/weighting.

We feel that the following issues in the proposed hierarchical format and the columns of data being proposed make the information for members much harder to understand thus preventing them from gaining a true understanding of where their money has been invested. For each issue identified, the FSC has also provided a recommendation that we feel better meets the key principal of presenting information that is simple and meaningful to members.

Issue 1: Hierarchical view of data

A hierarchical view of the data (as shown in Schedule 8F) provides members with a high level of complexity in understanding where their money has been invested.

The sum of the rows being presented does not equal the value of the fund making it confusing for members to understand what makes up the value of their investment option. For example, in Schedule 8F example the value of the investment option is $6m but the value of rows aggregated is $10.9m. For this reason, the total FUM of the investment option should be displayed outside the table rather than a total column of value.

Members will find the hierarchical nature of column 1 very difficult to interpret trying to understand where they are in the investment structure and what asset values are already counted elsewhere. This will be particularly acute when an investment option has greater than 10,000 rows of data to be presented which is the case for many diversified options in the industry.

Also, the example in Schedule 8F goes down three levels but many diversified funds go down 6 or 7 levels. The three level example in column 1 might be 6(A)(1) but 6 levels could be 6(A)(1)(5)(14)(2) This would be very confusing for members to understand what is going on with the assets within the investment option.

A holding in a particular asset may appear 10 times within the hierarchy so it becomes difficult for members to get a consolidated view of their exposure to a particular asset.

The FSC believes that the order of the assets presented is not in line with how a member would expect to see where their money has been invested – it is not by highest value first nor by name.

Recommendation:

- The data should be provided to members in a tabular, non-hierarchical format. This provides a simpler and more meaningful view of where their money has been invested. For example, if shares in BHP is held 10 times within the investment structure, they are presented with one consolidated row showing their exposure to BHP.
- Remove "Column 1" as this would be redundant in a non-hierarchical format
- Merge "column 3" and "column 4" as only one column would be required based upon a non-hierarchical requirement.
- Order the data either alphabetically by security name or, preferably, by descending value so that members can quickly and easily determine the assets that make up the largest exposures to the investment option and, ultimately, to their superannuation.
- The total FUM of the investment option should be displayed outside the table rather than a total column of value.
- Please see re-worked example below.

Re-worked example 1 (Schedule 8F) – by descending value

Portfolio Holdings Information for Growth Fund A				
Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**
Name of that product or property	**Asset Identifier**	**Number of units held in that product or property**	**Total invested**	**Weighting**
Commercial property	CP123	1	$1,600,000	26.7%
Managed Investment Scheme 456	MSAA456	100,000	$1,000,000	16.7%
Managed Investment Scheme 123	MSAA123	15,000	$750,000	12.5%
Share A	AAA	75,000	$750,000	12.5%
Managed Investment Scheme 789	MSAA789	10,000	$700,000	11.6%
Commercial property A	CPA456	1	$500,000	8.3%
Share B	BBB	20,000	$400,000	6.7%
Share C	CCC	20,000	$300,000	5.0%
Total			**$6,000,000**	**100%**

Issue 2: Weighting of exposure

The value of each asset presented bears no relation to the exposure of that asset. For example, the value of an individual asset within an option may be listed as $75m but this does not indicate the relative exposure of this to the total investment option. Therefore a weighting of assets within a fund provides a more useful data point. (In most cases the Investment Option's weightings will reflect all of the member's weightings, so this should be consistent across all investors in the option).

Recommendation:

- Add "weighting" to the table to show, for each asset, what percentage of value of the holding in the investment option is in each particular asset. For example, if the exposure in

the investment option to BHP is 5% and a members total holding in the investment option is $50,000, then their individual exposure to BHP can easily be calculated as $2,500.

- To see this illustrated please refer to "Reworked Table" above for an example of the table presented above.

Issue 3: Price column

The market "price" of an asset should be removed from the table. More specifically there are many instances where there will not be a perfect relationship between price, units and value. International assets for example have the added factor of currency in determining the value of a position and not just the prices of the security. Similarly the way many derivatives are valued do not lend themselves to a simple price display. Trying to display price will increase the cost of reporting but will have limited value, and may even confuse, for these reasons it is rarely reportable in other jurisdictions with Portfolio Holdings Disclosure.

Also, there are many variants of price (buy, sell, mid, allocation etc.) for an individual asset which deems the inclusion of price confusing as a user will not know what price is being shown.

Recommendation:

- Remove "Price" from the table as this will only provide confusion to members for all security types where 'price' x 'units' does not equal 'total invested'.
- To see this illustrated please refer to "Reworked Table" above for an example of the table presented in Schedule 8F above.

Issue 4: Derivatives

It is not clear in the Regulations how to correctly treat derivatives.

Firstly, the text in the Draft Regulations refers readers to Schedule 8F in terms of how to "*organise the data so that the financial product is identified as a derivative*" (7.9.07ZB / 7.9.07ZC). However, the example in Schedule 8F does not appear to show any derivatives and, thus, how to show them. Should the derivative and underlying assets be disclosed, or just the derivative itself?

Secondly, it is not clear what valuation methodology to use for derivatives – economic/effective or accounting exposure.

Draft regulation 7.9.07ZB needs clarification. It requires valuation in accordance with rules (which we understand to be the ASIC Derivative Transaction Rules (Reporting) 2013) which only applies to OTC derivatives. The disclosure of derivatives on the various valuation bases set out in the reporting instrument may lead to skewed results where an investor may be led to think the overall proportion of the holding is greater than the amount invested or put up as collateral. We therefore recommend that values are not disclosed (as they may also be negative), including a sum of all values. Rather, percentages (where greater than the minimum of 5% or 10% for each holding) would be more appropriate, as stated above.

Recommendation:

- Provide further detail and a worked example of how the Regulations expect derivatives to be represented.
- We recommend derivatives be reported using effective exposure rather than accounting exposure.

Issue 5: Name of product or property

The "Name of the product or property" (column 2) provides the name of the asset being shown. However, it should be noted that across the industry "asset name" is unlikely to be applied consistently and that sometimes the name of the asset held at a Fund Manager does not provide enough detail for members to find additional detail about the asset if they wish to.

Recommendation:

- To provide enhanced detail about assets, the FSC suggests that an additional column is added representing a place to output an identifier for each asset. This would provide enhanced information and a way for members to ascertain additional detail about the asset, if required, from other sources.
- It should be noted that Fund Managers will have a range of identifiers available for each asset but that there is not one standard available to all. For example, Sedol, ISIN, ASX Code, Bloomberg ID, Morningstar ID etc. are known asset identifiers. Trustees should also provide information as to which identifier is being used.
- Also, some identifiers can be problematic across different asset classes or geographical boundaries. Therefore, we suggest that "where possible", a known identifier is provided for assets and that these identifiers can be any one of the standard, known asset identifiers. A particular identifier should not be prescribed in regulations as different organisations can hold different identifiers and a prescribed identifier may lead to significant additional costs to certain investment managers.
- Noting that typically, non-market identifiers will be used if a market identifier is not known or the asset is off-market.

Issue 6: Definition of Investment Option

As discussed in the previous section, an issue with the current definition of an investment option is that the same option may be offered across multiple products within an RSE and, therefore, be disclosed multiple times on an RSE website.

This will lead to confusion for members in that they will be presented with multiple options with the same investment option name not knowing which one that they are invested in. As an example, a "Balanced Option" may be offered across multiple products within an RSE and all have the same name. A member may be presented with a list of investment options with the same name not knowing which to choose from the website.

Recommendation:

- Assuming it is possible to move to a non-hierarchical view of the data, the proposal described below resolves the issue of investment options being repeated many times within the same RSE website unnecessarily given they will all have identical underlying assets being disclosed.
- Given that all of these investment options have invested in the same underlying assets, remove references to dollar values and units from the table and provide only weightings. This means that the multiple investment options with the same name can be represented once on the website removing any confusion from members in choosing the correct investment option. This is because the weightings across all investments options of each asset will be identical thus allowing the data to be disclosed once only.

- This also then aligns with the reporting of investment options at APRA in that if an option has the same underlying investment strategy they are grouped together as one investment option (APRA SRF533.1).
- To see this illustrated please refer to Example 2 below.

Re-worked Example 2 (Schedule 8F) (catering for multiple, identical options to be displayed once)

Portfolio Holdings Information for Growth Fund A		
Column X	**Column Y**	**Column Z**
Name of that product or property	**Asset Identifier**	**Weighting**
Commercial property	CP123	26.7%
Managed Investment Scheme 456	MSAA456	16.7%
Managed Investment Scheme 123	MSAA123	12.5%
Share A	AAA	12.5%
Managed Investment Scheme 789	MSAA789	11.6%
Commercial property A	CPA456	8.3%
Share B	BBB	6.7%
Share C	CCC	5.0%
Total		**100%**

Overall Recommendation: Rework the proposed method of organisation of Portfolio Holdings data using an aggregated approach to ensure data is presented in the most accurate and useable way for members.

4. SUMMARY OF RECOMMENDATIONS – PORTFOLIO HOLDINGS DISCLOSURE

LEGISLATION

1. Amend the start date of the regime to 1 July 2017, with a 'soft start' from 1 July 2016.

2. Define 'investment option' and clarify that an investment option would only need to be reported once, even if that option is offered under multiple products.

3. Define 'an associated entity of the entity' in the legislation.

4. We make two recommendations on the materiality provisions. Firstly, to include definitive language on the current 5% provision for commercially sensitive assets, and secondly to include an additional allowance for where the 5% may need to be exceeded (options outlined in this submission).

5. Remove Wrap Platform Products from scope of Portfolio Holdings Disclosure. That is, provide a carve out from the regime for choice investment options where the trustee does not have absolute discretion to vary or replace the financial products or any other property allocated to the investment option.

6. Give consideration to advocating a fund value (for investment options that have been closed for less than 5 years) below which entities would also be exempt from the PHD requirements (e.g. $3 million) or a shorter timeframe (e.g. 3 years).

7. Allow trustees to identify that a fund is a closed one in the portfolio holdings table**.**

8. Clarity be provided in the Exposure Draft Bill for investment options closed to new contributions / investments or which have been terminated before the date information is made available on the website.

9. The wording in subsection 1017BB(4)(d) should be amended to clarify that it is only the assets within the defined benefit sub-fund or the assets allocated to a defined benefit interest in the fund that are exempted from the portfolio holdings disclosure requirements.

10. Include an exemption for products where the overall return of the investment option is not directly correlated to the portfolio holdings. This includes products where there is a guarantee, such as annuities and other longevity risk products. Guaranteed life policies should be classified as directly held investments nominating only the relevant life office statutory funds and not reported on a look through basis. The exemption in section 1017BB(4) should extend to:
    - a life policy under which contributions and accumulated earnings may not be reduced by negative investment returns or any reduction in the value of assets in which the policy is invested ; or
    - a life policy under which the benefit to a member (or a relative or dependant of a member) is based only on the realisation of a risk, not the performance of an investment; or

- a life policy under which the returns are not directly linked to the value of the assets in which the policy is invested.

11. The requirement to disclose be limited to apply only to financial product and "real property" where exposure to the underlying investments is reflected in the return.

12. The Exposure Draft Regulations be amended to require disclosure of value rather than price. This is explored further in the regulations section.

13. Include the total funds under management value of the investment option outside the table so the accurate value is reported.

14. The Exposure Draft Bill be amended to permit trustees to report values net of brokerage.

15. Note industry practice on securities lending in terms of how to disclose this under the portfolio holdings regime. Guidance on compliance with the portfolio holdings regime in the context of securities lending and re-hypothecation be included in the Explanatory Memorandum.

16. Amend legislative drafting errors as outlined in Appendix A.

REGULATIONS

1. Clarify and define materiality in the regulations.

2. The Exposure Draft Regulations should permit superannuation trustees to depart from the table format for disclosing non-unitised assets such as derivatives. Our recommendation would be to remove the price column.

3. The Exposure Draft Regulations be amended to confirm that information about third parties need not be included if it would breach an existing obligation of confidentiality.

4. Guidance be included in the Exposure Draft Regulations on how to disclose holdings of foreign currency. Although our preference (as outlined) is to remove the price column as it holds little meaning for members.

5. Rework the proposed method of organisation of Portfolio Holdings data using an aggregated approach to ensure data is presented in the most accurate and useable way for members.

APPENDIX A – LEGISLATION DRAFTING COMMENTS

Topic	Section	Comments
Allocated to the Investment Option	s. 1017BB(1)(a)(i)	"allocated to the investment option": Is this sub-paragraph necessary given that the preamble wording already refers to "…about each of the entity's investment options.."? Suggest that (a)(i) be deleted.
Materiality	s. 1017BB(4)(c)	"for 5% of the assets referred to in subparagraph (1)(a)(ii) for each of the entity's investment options". The drafting is a little clumsy and therefore the intention of the sub-paragraph may be unclear. Accordingly, there may be confusion as to whether it is intended to be 5% of the assets of each investment option or 5% of the total RSE assets? The drafting suggests the latter. Clearer drafting might be as follows (for example): — "5% of the assets of each of the entity's investment options
Materiality	s.1017BB(4)(e)(ii)	"is not a material investment in accordance with (iii) regulations made for the purposes of this paragraph." There appears to be either a typo or an unnecessary sub-para (iii)? Or a missing sub-para (5)?
Drafting errors	Subsection 1017BB(4)	The word "if" at the end of the introductory sentence should be deleted as it does not lead properly into the sub-clauses that follow. The reference to "that has" in sub-clause (b) should be replaced with "that have". Sub-clause s1017BB(4)(e)(ii) is not complete but based on the Explanatory Memorandum it seems that it should be joined

		with the first part of s1017BB(4)(e)(iii). Further, the last sentence should be separated out from sub-clause 1017BB(4)(e)(iii).
Table format **(However note here our recommendations are to amend the structure of the table format as is currently drafted)**	Example 1.1 in the Explanatory Statement does not comply with all of the requirements in Regulation 7.9.07ZA.	There are a number of instances of inconsistent terminology in the table on page 13 that do not adhere to the requirements of 7.9.07ZA(1). For example: o The final row of the table should be displayed as '**TOTAL**' (in bold capitals) in order to comply with sub-regulation 7.9.07ZA(1)(h). o The heading of column 2 should be '**Name of that product or property**' in accordance with sub-regulation 7.9.07ZA(1)(c)(ii). o The heading of column 3 should be '**Number of units held in that product or property**' in accordance with sub-regulation 7.9.07ZA(1)(c)(iii). o The heading of column 4 should be '**Number of units held in any final product or property**' in accordance with sub-regulation 7.9.07ZA(1)(c)(iv). o The heading of column 5 should be '**Price per unit**' in accordance with sub-regulation 7.9.07ZA(1)(c)(v).

APPENDIX B

Summary of some of the current obligations for Platform Operators

As noted above, platform operators are subject to obligations under both the Regulatory Guide 148 and Class Order 13/763. Below outlines all the RG 148 and ASIC class order requirements of a platform and an IDPS Operator.

Reporting and audit requirements	
CO 13/763 para 6(27)(a) RG 148.117(a)	The IDPS operator must give to each client a quarterly report within 1 month after each quarter if the client has not agreed to electronic access to the information on a continuous basis.
CO 13/763 para 6(29) RG 148.118	If the client does not agree to electronic access to information, the quarterly report must be a written report and contain: (a) all transactions carried out under a direction given by a client or on their behalf during the quarter; (b) the quantity and value of assets held through the IDPS by the client and corresponding liabilities on the quarter day, the value of assets being determined as (i) for financial assets—net market value (being the amount which could be expected to be received from the disposal of the asset in an orderly market after deducting costs expected to be incurred in realising the proceeds of such a disposal) and (ii) for all other assets—the value which would be shown in the books of the IDPS; and (c) the revenue and expenses of the client in relation to the IDPS and assets held through the IDPS by the client during the quarter.
CO 13/763 para 6(27)(b) RG 148.117(b)	The IDPS operator may give electronic access to information (concerning transactions and holdings through the IDPS) on a substantially continuous basis to client who have agreed to obtain information electronically in lieu of receiving a quarterly written report.
CO 13/763 para 6(28) RG 148.119	If the IDPS operator provides electronic access to information to clients during a quarter instead of a written quarterly report: (a) the information that was displayed at the quarter's end for the quarter must remain readily accessible to the clients through the same facility by which electronic access was given to clients during the quarter until the end of the financial year after the financial year in which the quarter day falls; and (b) the facility on which the information remains accessible must display to clients a statement to the effect that only information displayed at the quarter's end will be considered by the auditor in preparing its annual report relating to the information provided electronically.

CO 13/763 para 6(30) RG 148.119	The following information must be accessible electronically if electronic access is provided instead of written quarterly reports: (a) all transactions which the client has conducted through the IDPS for a period of at least one year (or such shorter period as the client's account has been in existence) up to a date no more than 48 hours (excluding hours on a day that is not a business day) before the time of access; (b) the quantity and value of assets held through the IDPS by the client and corresponding liabilities at a time no more than 48 hours (excluding hours on a day that is not a business day) before the time of access, the values of the assets being determined in accordance with paragraph 29(b) and being as current as is reasonably practicable; (c) the revenue and expenses of the client in relation to the IDPS and assets held through the IDPS by the client during a period of at least one year (or such shorter period as the client's account has been in existence) up to a date no more than 48 hours (excluding hours on a day that is not a business day) before the time of access; and (d) the time at which the information is current.

Obligations applicable to financial advisers who provide advice about using a platform and investing through it	
RG148.186	ASIC expects a Statement of Advice relating to a platform to include advice about why a particular platform and/or particular investments are recommended.
RG148.186(a)	The SOA should include advice about the service offered by the platform and how that service will benefit the client in comparison to the client investing directly or through one or more other platforms—where relevant, this should also describe why particular features of the recommended platform and/or particular investments are suitable to the client.
RG148.186(b)	The SOA should include advice about the range of investments offered through the platform, how they were selected for inclusion on the platform and whether they are appropriate for the client.

FSC CHOICE DASHBOARD SUBMISSION

1. INTRODUCTION

FSC supports a requirement for trustees to issue choice product dashboards for their ten largest investment options. The FSC is also broadly comfortable with the draft legislation and related documents. The FSC also welcomes the consultative and collaborative approach taken by the Government and regulators in developing this policy.

The FSC has concerns set out in this submission in relation to the implementation timeframe and some technical issues arising from the drafting of the proposed legislation.

2. SCOPE AND INTERPRETATION OF THE *QUALIFYING CHOICE INVESTMENT OPTION* DEFINITION

The definition as currently drafted is difficult to interpret and apply in relation to a 'master fund' – being a superannuation fund from which multiple products are issued. The current definition is unclear as to whether it applies to the 10 largest options issued from the overall fund, or the 10 largest options in each product. We understand the policy intent is that the provisions will only cover the 10 largest options issued from the overall fund, and we agree that this is the appropriate approach.

If the measure were to apply to each product this would give rise to a requirement to publish a large number of product dashboards in relation to legacy products with very few members. The FSC has sought member feedback on the importance of this definition to the number of dashboards that would be required, and therefore the cost of implementation for fund members. A survey of members has indicated that, should an interpretation of the definition that requires each product to be treated independently be adopted, as many as 12 000 individual dashboards would need to be implemented.

Instead, if the legislation treats each fund as a single unit for reporting purpose, a more reasonable 500-600 dashboards would be implemented. The FSC supports a framework that would result in a more manageable implementation with a lower cost to fund members.

In order to clarify the above point we recommend that the following small change be made to the drafting of the definition (addition of the text shown in bold):

> *qualifying choice investment option*, for a regulated superannuation fund, means an investment option within one of the fund's choice products, if that option:
>
> (a) is one of the 10 largest of those options **issued from the fund**, as measured by funds under management on 30 June of the previous financial year; and
> (b) is not excluded by the regulations from this definition.

Recommendation: Amend the definition of qualifying choice investment option to make it clear that it operates at the fund level rather than the product level.

3. COMMENCEMENT DATE OF PRODUCT DASHBOARD

The commencement date for the product dashboard draft legislation has currently been set to 1 July 2016, however the FSC submits that standard practice is for the Government to provide at least 6-12 months for necessary systems design and build in relationship to significant policy changes. This allows sufficient time for detailed analysis of the new requirements, clarification from the Regulators, documentation of business and system requirements, solution design, build,

comprehensive testing and other implementation activities. This also needs to coincide with predetermined IT release dates and a number of other requirements due for commencement, including APRA's new reporting requirements and SuperStream 2 changes.

The draft legislation was released to the industry in December 2015 and will not be finalised until early 2016. Given that the dashboard changes will also impact systems and data collection it will be very difficult for the industry to implement changes that will ensure the current deadline met.

Recommendation: Amend the commencement date of the new product dashboard legislation to allow the industry to implement the legislation from 1 July 2016, but no later than 1 July 2017.

4. DEFINITION OF AN INVESTMENT OPTION

The Product Dashboard draft legislation (1017BA(5)) specifies that an investment option includes "the choice product, if it does not contain multiple investment options".

This definition provided by Treasury appears to be different to the definition of an investment option provided by APRA as outlined in SRF 001.0 in relation to Select Investment Options. The definition provided by APRA in SRF 001.0 is as follows:

> "If an investment option is offered through multiple product channels or with multiple fee structures, with no change to the underlying investment strategy, apply the principles outlined in Attachment B to determine how many times the investment option is to be classified as a separate select investment option and therefore reported to APRA"

where Attachment B defines multiple Investment Options with the same underlying investment strategy as one Investment Option for reporting purposes.

The investment option definition provided by Treasury does not provide clarity in the instance where RSEs offer investment options across multiple product channels where the assets held within each option are identical. Further clarification is requested as to whether a separate Product Dashboard is required for each identical investment option offered through multiple product channels (assuming both identical options fall within the 10 largest investment options by FUM, at the fund level) or only one Product Dashboard is required where identical investment options are considered as one investment option. In this instance, the aggregate funds under management of all identical investment options would be used to determine if the option qualifies based on being in the top ten by FUM.

Noting that, if product dashboards are required for each retail investment option, then large participants that offer investment options through multiple product channels may have a number of choice dashboards within the top ten by FUM that have exactly the same assets held. For example, it is possible that multiple top ten choice dashboards published may relate to the same balanced investment option which only differ by product/related fees charged.

Recommendation: Treasury to amend the legislation to clarify where identical investment options are offered across multiple products within a fund, those investments options are treated as a single unit for the purposes of determining their inclusion in the 'top ten choice dashboards' for a fund.

5. DEADLINE TO PUBLISH PRODUCT DASHBOARDS

The deadline for publishing updates to MySuper and Choice product dashboards as outlined in the draft legislation (1017BA(1)(d)) is currently set to "14 days after any change to the information".

The CPI rate, which is used in the calculation of the return target, is currently available approximately 26 days after the 30 June each year. This means that the product dashboard will be

first published 14 days after the 26 July (when the CPI rate is available). i.e. 40 days after the 30 June. Clarity is sort as to whether this interpretation is correct. Our preference is to align the dates to minimise duplication.

Recommendation: Treasury to provide more legislative clarity in regards to the deadline for publishing product dashboards after 30 June given that the CPI rate is not released until approximately the 26 July.

In the absence of this clarification being provided, an alternative is for the timeframes set out in section 1017BA(1) to be extended to 35 calendar days after the change to the product dashboard information (i.e. 35 calendar days from 1 July). Extending the timeframe to 35 days would mean that all the changes (to fees, returns etc… as well as the moving average return target, which uses CPI) can be made just once.

6. MOVING AVERAGE ACTUAL RETURN AND MOVING AVERAGE RETURN TARGET

The requirements set out in Regulation 7.9.07R(2) in relation to moving average return targets and moving average actual returns are very ambiguous.

Although subparagraphs (b)(ii) and (b)(iii) indicate these should be 10 year averages, this is contradicted in subparagraphs (f) and (g) where the requirement is to show a moving average for the average return years (which may be less than 10).

We understand the intention was to provide average returns for periods shorter than 10 years. If this is the case, then all references to 10 year average returns need to be reconsidered. In particular, mandated wording referring to 10 year average and moving average returns need to be replaced with more flexible wording.

We would not be in favour of showing moving average returns for periods of less than 5 years.

Recommendation: The draft legislation should be amended to clarify that only 10 year moving average returns are required.

7. LEGACY PRODUCTS

The FSC submits that legacy products that are closed to new members should not be captured by the choice dashboard requirements as they are in run down. To include them in the regime would create additional and unnecessary cost for members of those products. Legacy products which have been closed for a number of years have fewer and fewer members to recoup the costs associated with the production and ongoing maintenance of Dashboard reporting. Providers of such products need to ensure against "last member standing" scenarios playing out – the decreasing few paying disproportionately higher costs for a service that are unlikely to be utilised.

Whilst the FSC understands that some consumers may wish to access information in relation to whether or not they should leave a legacy product, such an argument does not warrant the additional cost, and ignores the fact that the consumer can contact the fund or their advisor should they be making a significant decision, such as whether to permanently leave a legacy product.

Further, as consumers do not have the capacity to choose to enter those products, there is limited utility in providing consumers with the relevant information to make a choice that they cannot make.

The FSC submits that a similar definition to legacy products as provided for portfolio holdings disclosure legislation would be suitable.

Recommendation: Legacy products be excluded from the choice product dashboard requirements.

8. INCLUSION OF THE INVESTMENT MIX DASHBOARD ELEMENT

The draft regulations outline that MySuper and Choice product dashboards must now include an Investment Mix dashboard element (refer 7.9.07N(1)(h) and 7.9.07U).

The regulations specify that the investment mix could be based on strategic asset allocations which align to SRS 533.0 subject to minor distinctions.

The strategic asset allocations that are reported to APRA for SRS 533.0 currently have a reporting date of 35 days after each quarter end which allows sufficient time to obtain the strategic asset allocation rates to be reported. The product dashboard legislations specify that the strategic asset allocations used in the pie chart be available and published within 14 days after each 30 June. This does not allow sufficient time to obtain the strategic asset allocations and may result in historical values being used.

The strategic asset allocations that are aligned to those reported in SRS 533.0 may also provide confusing information to the member. For example, an investment option that meets the definition of a hedge fund is required to be classified as being invested 100% in the "Other" asset class but in reality may be invested in 90% "Equities" and 10% "Cash".

It would not be in the member's best interest to display an investment mix pie chart that creates confusion around the strategic asset allocation of the option especially as already published documents could have different asset allocations that are not comparable.

Recommendation: Remove the investment mix dashboard element from the scope of product dashboard regulations. If retained, consider using industry allocations.

If the investment mix pie chart is retained it will be important to ensure that the asset classifications used to produce the investment mix pie chart are consistent with those used in SRS 530.0. We note that the list of categories outlined in the Explanatory Statement are slightly different to the asset class categories in SRS 530.0. To avoid any potential confusion, we recommend that the Explanatory Statement be amended to remove references to specific asset classification categories and replaced instead with references to the asset classifications used to prepare SRS 530.0.

9. INCLUSION OF THE SUPERANNUATION ESTIMATOR

The draft regulations outline that MySuper and Choice product dashboards must now include a superannuation estimator dashboard element (refer 7.9.07N(1)(k) and 7.9.07V).

The FSC welcomes improvements to super estimation and supports the recommendation in the FSI that superannuation funds should move towards reporting projected income streams in retirement, rather than lump sums. We submit the development of estimators should be subject to more detailed discussion with ASIC and consultation on the FSI recommendation, rather than be driven by a need to include an estimator in the dashboard. Further, for the reasons outlined below, an estimator in the dashboard would be misleading for consumers and may risk undermining perceptions of their usefulness.

The superannuation estimator appears to assume that a member's balance is invested in only one investment option which may not be the case. This may cause confusion for the member as it may under or overestimate the member's balance.

The superannuation estimator calculates an estimate of a member's balance based on any fixed dollar fees being converted to a percentage which results in an incorrect fee calculation in some instances. The member fee percentage used in the calculation is based on a representative member balance of $50,000. The estimate will be not be as accurate if a member has less than or greater

than a $50,000 balance. ASIC and most industry participants have a more accurate superannuation calculator available on their own website.

There is also a risk that the users will rely on the superannuation calculations even though they are meant to be an estimate.

Industry practice includes appropriate qualifications as part of the calculator. There are no such qualifications outlined on the dashboard superannuation estimator.

It would be in the member's best interest if the superannuation estimator is removed from the scope of the product dashboard regulations.

The FSC instead recommends that the Government instead seek to implement the estimator as part of its response to the Financial System Inquiry, in particular the recommendation that reporting shifts towards income in retirement. This requires further consultation on how project income streams should be calculated, including in relation to the age pension, and where they should be reported, such as member statements. The FSC does not envisage the product dashboard to be a suitable location for this form of reporting.

Recommendation: Remove the superannuation estimator dashboard element from the scope of product dashboard regulations and commence consultation on income stream reporting as part of the Financial System Inquiry response.

10. DISPLAYING A PRODUCT DASHBOARD ON THE FUND WEBSITE

The draft regulations outline that product dashboards must be able to be accessed by clicking no more than 2 clicks from the fund's home page (refer 7.9.07X).

The FSC does not believe this is practically achievable. The FSC submits that it should be sufficient that trustees to be obligated to ensure that all the product dashboards are readily available and can be easily and quickly located by members.

If the Government feels it necessary to be prescriptive on how many clicks are suitable, the FSC recommends that the number of clicks from the home page be increased from 2 to 5 clicks. As an illustration, one industry participant that has multiple RSEs will need to display 50 product dashboards to comply with the legislation. It may be confusing for the member if up to 50 dashboard links are displayed on the one web page.

Increasing the number of clicks from the home page from 2 to 5 clicks would enable multiple dashboard links to be arranged in a less confusing manner.

Also, it is very difficult for product dashboards displayed on mobile devices to meet the requirement of only allowing 2 clicks. The smaller screen sizes mean that additional clicks are required on the menu to arrive at the same web page as displayed on a larger device such as a PC.

We understand the concern that product dashboards may be buried within a participant's website and not able to be found by members. However, only allowing two clicks leads to the risk that all dashboards will be displayed on one webpage.

Recommendation: Either require trustees to ensure the dashboards are readily available, or increase the number of clicks from the home page from 2 to 5 clicks. Make a provision to allow for mobile devices to have additional clicks.

11. PRODUCT DASHBOARDS FOR PLATFORMS

The Product Dashboard draft regulations (7.9.07M) specify that "an investment option is excluded from that definition if the trustee, or the trustees, of the fund do not have the absolute discretion to vary or replace the financial products, or other property, allocated to the investment option."

The explanatory statement specifies that "an example of a situation where a dashboard would not be required under this clause is where a member chooses their own asset allocation, for example from a platform."

It is not clear from the draft regulations and explanatory statement whether or not all platform investment options are excluded from publishing a dashboard or only certain types of platform investment options.

Recommendation: Treasury to provide more legislative clarity in regards to whether or not Product Dashboards are required to be published for each type of Platform investment option.

12. PRESENTATION OF RETURNS

There appears to be a technical inconsistency between the periodic statement calculation of fees and presentation of returns and that of the proposed choice dashboard as a result of the need to gross up fees for tax under the dashboard methodology. This means the return and fees shown on the dashboard will be inconsistent with those reported on periodic statements and this has the potential to create member confusion.

Although product dashboards are based on a representative member the following table illustrates the potentially inconsistent information that will be provided within a member's periodic statement when the proposed choice dashboard requirements have been implemented. Specifically, the need to "gross up" fees and costs plus the inclusion of direct fees will mean the dashboard will understate the actual performance achieved on a 1 year and rolling 10 year basis.

It would not be practical to attempt to align the investment performance disclosed within periodic statements with that of Dashboards as the impact of direct fees and grossing up for tax will have specific member impacts. Moreover, to undertake a retrospective recalculation of historically reported returns would be extremely burdensome on the industry for little to no value. Adopting the accepted methodology used in the periodic statements for the dashboard would seem to be sensible to ensure alignment and consistency. Also probably worth noting is PDS and Dashboard disclosure will potentially need to be aligned under s29QC (and may require reconsideration of the 'target return'). If so, CPI+ target returns in Dashboards are on a 10 year rolling basis as prescribed by APRA, however actual return objectives as currently stated in PDS are not modelled and managed on same basis.

The table below compares calculated returns and associated disclosure in Dashboard versus periodic statements for a representative member.

Illustrative example of member $50k balance	Notes	Periodic Statement	Dashboard	Variance
1 year gross performance (before fees and taxes)	1	7.00%	7.00%	
Tax on investment earnings (15%)		-1.05%	-1.05%	
Indirect costs	2	-1.50%	-1.76%	-0.26%
Direct fees	3	-0.13%	-0.16%	-0.02%
Reported peformance	4	4.45%	4.03%	-0.42%
Change in investment value on $50K	5	$ 2,225.00	$ 2,013.65	-$ 211.35
Statement of fees and other costs on $50K	6	-$ 817.00	-$ 961.35	-$ 144.35

Notes
1. Gross performance of underlying portfolio (before fees and taxes)
2. Indirect costs are deduced from unit price on after fees and after tax basis (as it needs to reflect what a member actually receives on exit)
3. Direct fees such as admin fee of $67 pa deducted from members account needs to be grossed up for Dashboard and PDS to $79 pa
4. Investment performance returns have historically (and internationally) being calculated from movement in exit prices on after fee and tax basis. For periodic statement's performance reporting it does not included the impact of direct account fees given they are individually based impacts and will impact as a % different on each member based on their average balance. As such the performance reported in Dashboards and Periodic Statements does not reconcile
5. Change in investment value is reported within periodic statements and would be reflective of both direct fees and indirect costs on after fee and tax basis. Because Dashboard's require grossing of such fees and costs the equivalent # would be lower than reality
6. Statement of fees and other costs are reported within Dashboards and would be reflective of both direct fees and indirect costs on gross of tax basis. Because Dashboard's require "grossing up" of such fees and costs the # is higher than actual reality within a member's account

13. ADMINISTRATION FEES

Under Reg 7.9.07N(e) which prescribes the statement of fees and costs to be shown on the dashboard, administration fees are required as a $ figure rather than a percentage. Rather than have to convert administration fees, presented as a % in PDSs, into a $ value it would be helpful if this provision would permit the flexibility for % based admin fees to be presented in that format.

It appears likely this may have been an oversight in drafting that does not contemplate that you may have a % based admin fee instead of, or in addition to, a $ based fee. Hence, the table should include both options. This would also allow internal consistency for the table (given the investment fee and indirect costs are both disclosed as %) and alignment with the PDS disclosure. If % based admin disclosure is not included, this may result in member confusion if they try to compare the documents and would also seem to be incongruent with the Regulator's intention of achieving consistency across documents.

14. DRAFTING

Regulation 7.9.20(1)(o) – the drafting of the replacement sub-regulation refers to "(a)", which appears to be a typographical error and should instead be replaced with "(o)".

15. SRS 702.1 ISSUES AND QUESTIONS

SRF 702.1 applies to qualifying choice investment options (i.e. options for which a choice product dashboard must be published) as well as select investment options, with the resulting implication that a single select investment option may be reported multiple times on SRF 702.1 to capture the product variants if these product variants are indeed qualifying choice investment options. This will depend on the interpretation of the draft legislation: should the APRA and ASIC definitions of an investment option be aligned? and if so how would you treat product variants from a dashboard perspective?

Only the highest fee product variant now needs reporting on SRF 702.1 which could result in a closed product option that holds only a minor share of the select investment option FUM being reported on SRF 702.1 when the majority of FUM is held by go-forward products with lower fees and therefore higher returns. The FSC has concerns with publishing this data as it would mislead consumers.

The FSC recommends further consultation with ASIC and APRA to work through the technical issues arising from these inconsistencies.