23 June 2014

Ms Ashly Hope
Strategic Policy Advisor
Australian Securities and Investments Commission
By email only: deregulation@asic.gov.au

Dear Ms Hope

ASIC Report 391: *ASIC's deregulatory initiatives* (Red Tape reduction) – FSC Submission

The Financial Services Council (**FSC**) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, private and public trustees. The FSC has over 125 members who are responsible for investing in the region of $2.0 trillion on behalf of more than 11 million Australians.

Thank you for the opportunity to comment on ASIC Report 391: *ASIC's deregulatory initiatives*. We applaud ASIC for undertaking the project to ascertain appropriate deregulatory initiatives, which is consistent with the Government's red tape reduction project.

We attach our comments on ASIC's proposals as well as additional deregulatory initiatives which in our view ought to be considered. Some of our comments may be addressed by ASIC. Some may require Treasury or Government input, in which case, and as foreshadowed by ASIC in Report 391, we request that ASIC liaise with Treasury and the Government on any part of our submission which cannot be addressed by ASIC.

The Report notes that ASIC has set up a deregulation team to identify further initiatives. The review of deregulatory initiatives should in our view be undertaken periodically by ASIC (perhaps every two years) – we think the valuable exercise that ASIC is engaging in via Report 391 should not be an isolated review. We acknowledge that ASIC has undertaken prior deregulatory initiatives as referred to in Report 391.

We request that ASIC adopt its common approach of publishing a report in response to submissions to Report 391, summarising submissions made to Report 391 and including in ASIC's response report the extent to which ASIC has or will adopt the deregulatory initiatives made via submissions to Report 391 or else whether ASIC has or will refer the matter to Treasury or Government.

Please feel free to contact Stephen Judge on (02) 9299 3022 if you have any questions on our submission.

Yours sincerely

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1.	**Automatic registration for managed investment schemes under s601EB of the Corporations Act (paragraphs 55 to 57)**	1.1 **We support automatic scheme registration** <u>but</u> **we do not support ASIC being provided with additional powers**. ASIC's powers are extensive and directors of responsible entities are currently required to confirm on lodgement of a scheme for registration that the scheme complies with various provisions of the Corporations Act in Form 5103. If ASIC considers, that notwithstanding a directors' certification of compliance with section 601GA, a scheme constitution is not compliant with the Corporations Act, ASIC may bring court proceedings for a court to rule on the matter (noting that responsible entities will not always agree with ASIC's interpretation of the law). 1.2 We support abolishing the pre-vetting process and two week registration period. Requisitions are often raised by ASIC that are resolved through correspondence or discussions, and this process can make the maximum two week registration period difficult to meet. The extent of unexpected requisitions has, in our members' experience, increased since the new RG 134 was published in 2013. ASIC could reduce red tape on MIS registrations by taking a less prescriptive approach in the interim until legislation can be passed to make the proposed changes. The current 14 day registration period (with no extension available) is problematic if ASIC requests clarification on a constitution clause or requires a clause to be re-drafted. The current 14 days leaves little time to liaise and settle on minor differences in interpretation or drafting which then requires documents to be re-executed, re-lodged and reassessed. The current process requires a supplemental deed to be approved, and signed by a director and secretary (or if a compliance plan change is involved, signatures by all directors or their agents) - which can prove administratively difficult within a short timeframe given how geographically dispersed directors are in many cases.

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		1.3 Under the proposal to introduce automatic registration, it is proposed that ASIC will have the power to issue stop orders and directions to prevent the issue of interests and the operation of the scheme where the scheme has been registered and in some circumstances after interests in the scheme have been issued to/acquired by investors. The stop order proposal on schemes is significant. In our view it has potentially more serious ramifications than a disclosure stop order. It seems to us that such a significant power should lie with a court, on application of ASIC, not with ASIC. 1.4 While we do not support ASIC having a stop order power (as opposed to challenging in a court, the compliance of a scheme constitution with the Corporations Act), if ASIC's powers are to be enhanced (e.g. through stop orders), such powers should only be exercised after providing the responsible entity an adequate opportunity to respond. This is especially the case where a concern is raised by ASIC in relation to a provision where a contrary view would be reasonably open. Also, the statement in paragraph 55 of Report 391 that ASIC would make "direct amendments" to a constitution to achieve compliance raises significant concerns, in light of the responsible entity's role and powers as trustee. 1.5 We do not support ASIC having the direct power to make an amendment to the constitution. ASIC's proposal to be given the power to make direct amendments to a scheme's constitution is inconsistent with the current regulatory regime that requires unitholder approval or sometimes an order of the court before any amendment to a scheme constitution is made. It is also unclear how this power will operate in circumstances where the responsible entity is not of the view that the changes required by ASIC are in the best interest of scheme members. Futhermore, direct amendments made to scheme constitutions by ASIC may impact units that have already been issued by schemes (for example, in some circumstances triggering redemptions) that will result in additional

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		costs to responsible entities and may cause possible detriment to scheme members.
2.	**Repeal the requirement for a constitution to provide a method for dealing with complaints (Table 3 in Appendix 2 of Report 391)**	2.1 We **support** this change. Dispute resolution is adequately dealt with under Australian financial services licence obligations (sections 912A and 912B, and Regulatory Guide 165).
3.	**Expand scope of people qualified to audit MIS compliance plans (Table 3 in Appendix 2 of Report 391 - "Enable alternate persons…to audit a MIS compliance plan")**	3.1 This is a complex issue. **We neither support nor oppose** but we make the following comments. Some points which ASIC, Treasury or Government may need to consider: • What other groups of professionals should be permitted to audit compliance plans? • One potential category is lawyers, as the audit is more in the nature of a compliance audit rather than a financial audit (FSC however neither supports nor opposes a particular category of persons who may be permitted to audit an MIS compliance plan). • What professionals outside the accounting profession would be willing to take on such a role (noting client alignment and conflict issues)? What independence requirements would apply? Can the new category of persons obtain appropriate professional indemnity insurance cover? 3.2 This proposal would need further consideration as to whether it is appropriate to expand the scope of persons who should be permitted to audit MIS compliance plans. Whichever category of person is permitted to audit a compliance plan, they should be subject to professional obligations and have the relevant experience and skills, in addition to our questions we pose above in relation to this proposal.

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4.	**Continuous disclosure – amend the law to allow website disclosure for unlisted disclosing entities rather than lodgement with ASIC (paragraphs 58 and 59)**	4.1 We **support** this change. The current position, which relies on an ASIC no-action policy, is unsatisfactory as it exposes product issuers to civil liability should they elect website disclosure. The lodgement of notices with ASIC is less effective than website disclosure in making information available to the market and consumers. The reality is consumers are not going to think about going to ASIC to find out information about continuous disclosure matters for unlisted disclosing entities. ASIC's proposal is imminently sensible.
5.	**Exception to prohibition on forming a large partnership for registered MISs (s.115). (Table 3 in Appendix 2 of Report 391)**	5.1 We **support** this change. Partnerships are the investment vehicle of choice for many jurisdictions outside Australia. While there are some other impediments to adopting a partnership investment structure in Australia, this change is a positive step in the move to establish Australia as a regional financial services hub.
6.	**Simple MISs:** ➢ **key fact sheets** ➢ **investor self-assessment** **(paragraphs 65 to 69)**	6.1 We think that instead of refinements for simple MIS disclosure there should be a holistic review of the disclosure regime. For that reason, we do not support time being allocated to an alternative disclosure regime for simple MISs. Instead there should be a holistic review of the disclosure regime. That review should involve ASIC, Treasury and industry. There are inconsistencies between disclosure for superannuation, managed investments and "platforms" and this should also be part of any disclosure review. 6.2 We applaud ASIC exploring options to improve consumer engagement with disclosure. The issue of effective and concise disclosure is a difficult issue, particularly given the current disclosure regime. We think that the disclosure regime has now become so complex and so convoluted and fragmented, that rather than focussing on a part of the disclosure regime (namely, simple managed investment schemes), a holistic re-think of disclosure is required and this should be undertaken as part of a separate review involving ASIC, Treasury and industry and other stakeholders. For example, the two

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		tier (and binary) regime of shorter PDSs and full PDSs is complex and unwieldy. The bifurcated PDS regime has its difficulties, as time is spent ascertaining which of the PDS regimes apply. 6.3 If however ASIC's proposal in relation to key fact sheets and investor self-assessment were to progress, it is important that fact sheets are optional because: ➢ responsible entities have only relatively recently spent considerable sums of money developing their shorter PDSs; and ➢ the shorter PDS regime is already designed to provide investors with a short summary of key information. 6.4 The investor self-assessment proposal raises a number of concerns that will need to be investigated: ➢ e.g.: the general philosophy of Australian regulation is to impose disclosure obligations on product issuers, rather than suitability requirements. Suitability is dealt with through financial advice. The proposal may therefore amount to a fundamental change to financial services regulation in Australia. ➢ What is an issuer to do if a self-assessment indicates (or may indicate) that the investor does not understand the product? ➢ Also, if the fact sheet is required to link to additional material (paragraph 67), potential liability for the material may mean that compliance costs are not reduced by the proposal.

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		Compliance costs are best reduced by having the same regulatory regime for all products issued by a licensee. 6.5 The reform agenda should include refinements to areas where the shorter PDS regulations do not work well, such as duplication of the fee section in the PDS and booklet, the fact that the fee table is inappropriate for stapled schemes with "internalised" management, and the fact that the prescriptive nature of the shorter PDS rules means there is not room for a fund summary table at the front of the 8 pages. The reference to negotiating fees with your employer also should be removed from the regulations relating to managed investment PDSs.
7.	**AFS licence application process (paragraphs 41 to 43).**	7.1 The recent changes to the AFS licence application form, and ability to lodge proofs by email, have been helpful. 7.2 A further helpful change would be to increase the certainty for applications/variations concerning which additional proofs ASIC will actually request. ASIC's requests for additional proofs can delay the process, and may require additional proofs to be prepared in a short space of time. Additional certainty could be achieved through guidance in the Licensing Kit. 7.3 Also see FSC paragraph number 16 relating to obtaining AFS licence authorisations relating to acquiring insurance for direct real property.

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8.	**Harmonising market integrity rules (paragraph 70)**	8.1 We **support** this proposal. ASIC should also encourage market operators to increase the consistency of operating rules across all licensed markets. Currently operating rules differ where there is no apparent reason to do so, and this can increase the potential for errors and increase compliance costs.
9.	**Length of ASIC Regulatory Guides (General FSC comment)**	9.1 ASIC Regulatory Guides are generally useful in providing assistance as to how ASIC will apply the law. The Guides are easy to navigate. As a general comment though, some ASIC Regulatory Guides can be in our view unnecessarily lengthy with some repetition. We accept that a balance is required between fulsome guidance and brevity. Topics in some regulatory guides are covered multiple times in separate sections. Reducing the length of ASIC's regulatory guide, where appropriate, would be a useful deregulatory initiative. (We accept that the counter to this is sometimes ASIC is requested by stakeholders to incorporate guidance on a specific matter into ASIC's Regulatory Guides.) We acknowledge, ASIC from time to time, reviews Regulatory Guides to streamline them. Further work in this area is encouraged.

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10.	**Statutory limited liability for members of registered MISs (FSC deregulatory comment)**	10.1 On winding up of a company limited by shares, the shareholders' liability to contribute in respect of their shares is limited by statute to any amount remaining unpaid on their shares (section 516 Corporations Act). There is no equivalent provision giving statutory limited liability to members of a registered MIS and, although a MIS constitution typically attempts to limit liability, there is no high judicial authority that makes the position of investors clear. Statutory limitation of liability was proposed as long ago as the Turnbull report in 2001, and supported in the 2012 CAMAC report. It would not only assist Australian investors but resolve uncertainty for foreign investors in Australian funds. 10.2 We recommend legislative amendment to confirm limited liability for members of registered schemes.

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11.	**Improve the MIS constitution amendment power (FSC deregulatory comment)**	11.1 Responsible entities have a greater need to amend a scheme constitution than is the case for company constitutions because companies have broad statutory powers by virtue of registration, whereas a trustee only has the powers set out in the trust's constitution. The decision of the Victorian Court of Appeal in the 360 Capital case takes an extremely narrow view of section 601GC(1)(b) of the Corporations Act, and effectively prevents constitution amendments without a members' meeting. 11.2 Legislative change to clarify the expression "members' rights" along the lines of Barrett J's decision in the ING case would return the section to its (arguably) intended operation and reduce confusion and costs for industry while maintaining key investor protections. We recommend that consideration be given to legislative change, subject to the usual consultation processes.
12.	**Streamlining ASIC forms (paragraphs 45 to 47, and Appendix 1- Tables 1 and 2)** **Greater use of electronic lodgement at ASIC is an imperative. Archaic paper lodgements impose unnecessary costs on the regulated population as well as being inefficient and a poor use of ASIC resources.**	12.1 ASIC Form 5103 Directors Statement relating to application for registration of a managed investment scheme requires a director's signature for each director on the same form. This takes a great deal of administrative time to facilitate. This is even more so when the directors of a responsible entity comprise of non-executive directors working in various national locations. The form could be amended to allow for separate pages for each director, or provide for an agent to sign on the director's behalf if the agent's authority is lodged in a similar way to the execution of a compliance plan. 12.2 **Many ASIC forms are not able to be lodged electronically at ASIC**. Making this facility available

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		would streamline reporting and ease administration. In particular, ASIC could allow for the electronic lodgement of form 7051 (half yearly accounts). For example, some FSC members have hundreds of accounts to lodge which entails approximately 50,000 pieces of paper to be printed, delivered and then processed by ASIC staff. 12.3 Many ASIC forms require payment on lodgement. There is a significant inconvenience for a large institution to arrange a cheque for small sums and the internal administration (in obtaining cheques within a large institution, where cheques are an increasingly outmoded method of payment) can mean lodgement by a regulated entity is delayed for many days while the cheque requisition is processed within the institution. A simple BPay facility (or other electronic payment facility) for ASIC forms would streamline the process. **We urge ASIC to provide for a BPay facility or another simple, quick and efficient means to pay ASIC fees**. 12.4 (**Table 1 in Appendix 1 of Report 391**): We support the removal of the ASIC forms in Table 1, including the removal of FS 89. 12.5 (**Table 2 in Appendix 1 of Report 391**): We support the consolidation/simplification of the ASIC forms in Table 2, including the removal of FS 88 (we note ASIC proposes simplification not removal of that form). 12.6 (**Include some AFSL/ACL updating details into the Form 484**): In Table 2, the proposed consolidations into Form 484 should also consider an additional inclusion: Where a company is also the holder of an Australian Financial Services License (**AFSL**) and/or an Australian Credit Licence (**ACL**), the form should also have a section to enable records relating to the AFSL and/or ACL to be amended.

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		12.7 Currently, the company details update is undertaken separately to the change of the same information for the AFSL and/or ACL, and on different ASIC data-bases. This triggers two (or three) sets of fees, two (or three) login requirements and gives rise to the risk that the records are inconsistent (in larger organisations in particular where the Company Secretary and Compliance teams are separate). 12.8 A consolidation of Form 484 should include the FS20 changes for the registered office and service of notices. 12.9 (**Automate all managed investment ASIC forms – make them e-lodgements not paper lodgements**): There is further opportunity to remove compliance costs by automating all ASIC forms for managed investments (currently, approximately 65% of these are physical lodgement only which is inefficient and costly). 12.10 Financial accounts can be lodged online, however the compliance plan audit is still manual – is there any reason the later (Form 5111) is not electronic? 12.11 Managed investment scheme lodgements/documents <u>should be a priority</u> for e-form conversion and e-lodgement at ASIC. 12.12 (**Other ASIC forms should be automated where they are still paper based**): Similarly, unless there is a specific reason for physical lodgement, we would urge all ASIC forms to progressively be made automated over as short a period of time as possible to improve the lodgement process for all

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		entities required to make lodgements at ASIC (whether that is a company not otherwise licenced, or a licenced entity). **Greater use of electronic lodgement at ASIC is an imperative. Archaic paper lodgements impose unnecessary costs on the regulated population as well as being inefficient and a poor use of ASIC resources.** 12.13 We suggest paper based lodgements be removed completely and replaced with electronic options with an appropriate transition. This would remove instances where the current lodgement is misaligned, for example the Corporations Act (s601HG) requires the Compliance Plan Audit report to be lodged at the same time as the financial statements. ASIC currently allows financial reports to be lodged electronically, but the Compliance Plan Audit report is only able to be lodged manually. Manual paper lodgements are inefficient for all entities, and particularly disadvantages licensees in regional areas where there are no lodgement agents. This later issue will be further exacerbated by the proposed reduction in Australia Post services. It is our view that electronic lodgement should be available for all ASIC lodgements. 12.14 (**Multiple lodgements for compliance plan audits for multiple schemes**): An FSC member informed FSC that it obtains a single audit report from its auditors – with the list of schemes appended. The FSC member noted that previously it could lodge a single ASIC form with the list of schemes appended. The FSC Member notes that in the last couple of years, ASIC has required the member to complete separate forms for each scheme. ASIC may consider, from a red tape reduction perspective, whether it is feasible and appropriate to facilitate a common lodgement (a single lodgement) covering a number of registered schemes. Whether this is appropriate would probably depend on the type of lodgement being made. 12.15 (**Use of digital/electronic signatures**): We request that ASIC consider (subject to appropriate

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		integrity controls) the use (or provision of) a secure digital signature facility to enable directors to sign forms digitally and securely. This would reduce the challenges on licensees where specific forms require each director to sign and directors are geographically dispersed.
13.	**Simplifying wholly owned financial reporting relief (paragraphs 49 to 50)**	13.1 We support the proposal to incorporate the relief in CO 98/1418 directly into Chapter 2M of the Corporations Act and a corresponding amendment to the insolvency provisions to remove the need for deeds of cross-guarantee.
14.	**Market stablisation (paragraphs 51 to 54)**	14.1 We support the market stabilisation proposal, and recommend that this be achieved through either a specific regulation to exclude genuine market stabilisation practices from the market misconduct provisions; or by way of legislative amendment. ASIC might also consider if it could pass the primary oversight of this directly to ASX as this is an issuer matter and could be subject to ASX Compliance oversight, with any suspected or actual breaches reported through to ASIC as is currently the practice for other activities. Obviously this would require ASIC to consult with ASX.
15.	**Substantial shareholdings (amending content of forms and other more substantive review (paragraphs 60 and 61) and additional FSC member comments on substantial shareholding requirements** **A 677 page substantial holder notice (lodged recently) – is symptomatic of the need to revisit the substantial holding regime (including the forms).**	**Review of Substantial shareholding forms** 15.1 We support a review of the substantial shareholding forms. **Forms 603/604/605 - Interests of substantial holder** *The following suggested changes are directed primarily at alleviating the compliance burden arising from substantial holder reporting obligations. However, a move towards shorter, more user friendly substantial holder notices is also likely to have the result that less sophisticated investors make greater use of these disclosures, improving information symmetry and market efficiency.*

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		Forms 603, 604 and 605 15.2 There is a requirement to document changes in relevant interest in Part 3 of the applicable ASIC substantial holding form. Listing all transactions may be confusing for the market and can render the Form 604 excessively long and complex as it requires all transactions since the last notice (which in some cases may have been months or even years earlier). **One FSC member informed FSC that it had lodged a 677 page Form 604 notice in 2013** (i.e. the length of a very long novel). It is suggested that the transactions that give rise to the notice should be the only transactions reported (similar to requirements in other off-shore jurisdictions) or that ordinary course on-market transactions be reported on an aggregate (net) basis. 15.3 There is a requirement to include details of relevant agreements giving rise to the change in relevant interest in Part 3 (note 6). Attaching ISDA agreements for OTC option trades renders the ASIC form lodgement very lengthy. Some of the pricing information may be commercially sensitive. The market could be provided with a brief summary of the relevant information in the Confirmation notes, with the requirement to provide full ISDA documentation to ASIC on ASIC request subject to appropriate confidentiality protections (similar to the relief provided in ASIC Class Order 11/272 for certain securities lending and prime broker agreements). 15.4 The relevant interests of entities within a corporate group may have to be repeated in the notices due to technical differences in the nature of those interests. For example, a fund manager's relevant interests in securities having to be restated because another group entity is the responsible entity or custodian, as well as other upstream entities also having to separately report their indirect relevant interests – this results in duplicated lines in section 3 making the form more difficult to understand and, as totals are not used, this creates confusion as all the

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		holdings in section 3 will not add up to the front page totals. 15.5 The back pages of Forms 603/604/605 have an Annexure that contains all the entities within the corporate group of the entity giving the substantial holder notice. This list often extends for multiple pages. As well as being difficult to keep current (particularly for large and/or multinational corporate groups), this list is arguably largely irrelevant and makes the forms longer and less likely to be used by non-sophisticated investors. Potential improvements which ASIC (or Treasury or Government) should consider include only reporting entities that sit between the parent and the entity having the "primary" relevant interest, perhaps with a full corporate group list being able to be requested by issuers, investors or ASIC. **Streamlining of the substantial shareholding requirements** 15.6 FSC members often comment to FSC that substantial shareholding notices are unwieldy, cumbersome and lack informational content by virtue of their complexity and length. 15.7 For entities with global operations, their can be practical issues with collecting and collating information from multiple global entities. 15.8 One of FSC's global based members notes that in other jurisdictions entities do not need to supply the full transaction history since the last lodgement. For global players leveraging a global system there are inefficiencies in this approach (given the more detailed Australian requirements) as offshore related entities do not need transaction history, and therefore the global group system does not cater for this such that manual adjustments are required for Australia.

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		15.9 The requirement to incorporate standard agreements (such as investment management agreements) by which the relevant interest arose adds complexity and length to substantial holding notices. We recommend that ASIC consider providing Class Order relief (similar to that ASIC provided for securities lending and prime broking arrangements in Class Order 11/272) for other common types of agreements (such as investment management agreements, ISDA master agreements and other common/standard industry agreements). 15.10 The requirement to include all related entities (which of course, also have a relevant interest) results in hundreds of companies being listed in some substantial shareholder notices. 15.11 (**Recommendation – review the substantial holder notice regime with a view to simplifying notices**): It would be useful if there was a review of the substantial holding regime as it operates in practice. Particularly with a view to simplifying notices and reducing their length (and therefore their digestibility.) As mentioned above, a move towards shorter, more user friendly substantial holder notices is also likely to have the result that less sophisticated investors make greater use of these disclosures, improving information symmetry and market efficiency. We refer to the example above of the 677 page substantial holding notice – which is symptomatic of a need for a review of the substantial holder notice regime.

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16.	**AFSL general insurance authorisation when insuring real estate – compliance and regulatory burden (FSC comment – not raised in ASIC Report 391)**	16.1 Where an issuer of a managed investment scheme deals with direct asset classes and the assets are insured, such as real estate in particular, the existing AFSL deal authorisations require the AFSL holder to have an authorisation to deal in general insurance products as the responsible entity/trustee is the principal (on behalf of the trust/scheme) for the insurance contracts held for scheme assets. 16.2 This also triggers semi-annual reporting via APRA Form 701 (see comments later in this submission on regulatory co-operation). 16.3 In practice, this activity for a scheme/trust is the equivalent of an individual taking out home and contents insurance – except on a larger scale and it is only undertaken to manage a risk for the members/unitholders in relation to the scheme/trust assets. 16.4 Further, this requirement only occurs where the assets of the schemes are direct physical assets, typically limited to real property, agri-business and infrastructure scheme assets. That in effect creates different rules in the same RE licensing regime given that operators of traditional asset classes of CMT, bonds, fixed interest and equities do not insure the assets (in the form of general insurance) and hence do not require this (general insurance dealing) authorisation. 16.5 We recommend that this technicality be abolished where a responsible entity/trustee is taking out general insurance on assets of the scheme. This would then also remove the APRA Form 701 requirements, further reducing compliance cost and red-tape.

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17.	**"Sunsetting" legislative instruments (paragraphs 71 to 73)**	17.1 We support the removal of redundant instruments, and the forward planning to remake where necessary those instruments due to expire. However, ASIC ought not to assume an instrument is not needed or relied on by industry without prior consultation with industry. 17.2 As an additional suggestion and to achieve a more "user-friendly" set of Class Orders, we observe that at present there is sometimes a suite of Class Orders relating to a common subject matter. Where appropriate, a smaller number of Class Orders should be used. For example, there are a number of unit pricing related Class Orders –it may have been possible to adopt a single instrument (a single Class Order) instead of multiple Class Orders. It is preferable to use a single Class Order rather than multiple Class Orders where possible and appropriate. The following Class Orders were issued as part of the revised RG 134 in June 2013: ➢ Class Order [CO 13/655] *Provisions about the amount of consideration to acquire interests and withdrawal amounts not covered by [CO 05/26].* ➢ Class Order [CO 13/656] *Equality of treatment impacting on the acquisition of interests*. ➢ Class Order [CO 13/657] *Discretions affecting the amount of consideration to acquire interests and withdrawal amounts*. These Class Orders are an example where it may have been preferable to instead have a single Class Order (rather than three separate Class Orders).
18.	**Improvements to auditor resignation requirements (paragraphs 74 and 75)**	18.1 We support the proposed changes to the auditor resignation process which we believe will deliver a much simpler and more efficient outcome for all parties.

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19.	**New guidance and communication projects – ASIC strategic outlook (paragraph 76)**	19.1 We support an enhanced engagement model with industry. We agree with a "no surprises" approach to regulation. We observe that a statement by ASIC (for example in a media release or in regulatory guidance or an information sheet) is often sufficient to encourage changes in industry without enforcement or regulatory action on specific entities. We accept that whether that approach is appropriate will depend on the particular matter and particular conduct of any specific regulated entity.
20.	**Cooperation between regulators (paragraphs 36 to 38).**	**Section 29QC and APRA reporting standards** 20.1 We support the continued co-operation and engagement with APRA and ASIC on section 29QC and APRA's reporting standards. **General insurance dealing authorisation (AFSL) when insuring scheme assets – and interaction with APRA Form 701** 20.2 We recognise the efforts that have been made to streamline the reporting of multi-regulated businesses, however we have identified a specific item (namely, related to the general insurance deal authorisation in certain circumstances) which if removed would reduce what we see as red-tape. 20.3 For AFSL holders with a general insurance dealing authorisation, the AFSL holder is required to complete an APRA Form 701 on a semi-annual basis. 20.4 For a pure ASIC-regulated responsible entity holding (necessarily) an AFSL, the APRA documentation is anomalous, and impractical largely due to unfamiliarity of a non-APRA regulated entity with the

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		prudential regulator's website, documentation structure and lodgement processes 20.5 We request that consideration be given to removing the APRA Form 701 requirement where it relates to an ASIC regulated entity which is a registered scheme (and which is not providing personal financial product advice on general insurance). Alternatively we request that ASIC make the APRA Form 701 available directly on the ASIC website for AFSL holders to complete this reporting requirement and lodge it directly with ASIC (or APRA), particularly for entities which are not regulated by APRA. **Dual regulated entities (RSE licensee and a responsible entity)** 20.6 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. Recently the law was changed, with effect from 1 July 2015, to remove for dual regulated entities (namely that is both an RSE licensee and an RE) the exemption from ASIC's risk management and resource requirements. 20.7 We recognise the challenges faced by APRA and ASIC in developing the various capital proposals and achieving a level of consistency and coordination. This is made particularly difficult due to their different mandates of prudential supervision and consumer protection, and their respective responsibility for different segments of the industry. 20.8 The basis of both the ASIC and APRA financial (capital) requirements lies in ensuring adequate resources to absorb operational risk losses. This is recognised by APRA in its prudential standard SPS 114 where operational risk is defined broadly and ASIC in its explanatory statement for the Class

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		Order stipulating financial requirements for responsible entities (Class Order 11/1140). 20.9 Given both the RSE and RE requirements may address operational risk (albeit via different methodologies) we believe compliance with both requirements may in certain circumstances be excessive. This is so especially as there would be implicit diversification between the risk classes and also within the same risk class, which the standards do not accommodate. 20.10 We recognise the Government's rationale for removing the existing exemption in order to address the gap in regulatory coverage that may exist for certain dual regulated responsible entities. However, there are unintended consequences which may flow without consideration of how APRA and ASIC's capital regimes operate alongside each other. 20.11 **Recommendation**: The legislation in relation to the application of financial resource (capital) requirements for dual (RSE licensee and responsible entity) licenced entities, should be clarified so that for dual regulated entities, the same assets can contribute towards both ASIC's and APRA's financial resource requirements.
21.	**Reframe s 601GB so that the obligation is not on the RE to ensure the constitution is enforceable but, rather the Corporations Act confers enforceability (Table 3, Appendix 2)**	21.1 We agree with this proposal.

FSC Para no.	ASIC Proposal (and paragraph/Table of Report 391 where applicable) or Additional FSC Deregulatory comment	FSC Comments
22.	**Modify the s 428 and 429 requirements for responsible entities or custodial service providers to use "in receivership" in public documents etc (Table 3, Appendix 2)**	22.1 ASIC notes that instead, the requirement could be to note that a receiver has been appointed to property of the relevant scheme or held under the relevant service, but only in any public document of the responsible enity or corporation relating to that scheme. 22.2 We agree with this proposal. It would rectify a long-standing issue with the requirement to note that the company is in receivership if a receiver is appointed to a scheme/trust/custodial asset (but not otherwise to any other assets of the responsible entity/trustee/custodian).
23.	**OTC Trade Reporting – the trade reporting regime should be one sided; instead of a duplicated and costly two-sided reporting regime**	23.1 FSC has recently engaged with ASIC on the two-sided trade reporting requirements. FSC submits that trade reporting should be single sided, due to the difficulties (matching data/trades) and particularly the duplicated costs in requiring two-sided reporting. FSC has separately engaged with ASIC in relation to this as part of ASIC's pro-active engagement with the wealth management sector (the "buy-side") in respect of the OTC derivatives reforms. 23.2 FSC mentions this item as in our view, **transitioning to single-sided reporting (instead of two-sided reporting) would be a significant deregulatory initiative for the wealth management sector** without materially impacting the ability of ASIC to receive information (under one sided reporting). It has been reported that Europe is having practical difficulties with two-sided reporting.

24. Removing barriers that inhibit electronic disclosure. The table below sets our comments on facilitating electronic disclosure

FSC Para no.	ASIC Proposals on removing barriers that inhibit electronic disclosure	FSC Comments on Electronic communications/disclosure
24.	**Electronic disclosure and removing barriers that inhibit innovation in disclosure (paragraphs 62 to 64)**	24.1 Electronic communications have developed substantially since the time when the current regulations and policy settings were put in place. For example, internet banking and other secure web-portals are now standard ways for customers/members to access a range of financial products and services. Over the last few years, ASIC and government policies on electronic communication have evolved to more easily facilitate the use of electronic communications to satisfy regulatory disclosure requirements where clients explicitly agree to receive these communications in that form. We support further work occurring in this important area. 24.2 Paper-based communications are expensive and slow relative to electronic forms of communication. Paper communications involve additional costs such as paper, printing, physical transport, mailhouse functions, postage, storage and return-to-sender processes. There are also security considerations with physical post, such as those created when customers change address. The costs imposed by paper-based communications increase the costs to administer a financial product and as such there is effectively a subsidy across members depending on their communications preferences, and this creates a headwind to realising efficiencies. 24.3 Further, in some cases, clients are not given the opportunity of electing to receive disclosure electronically – for example, there is little or no opportunity to obtain client consent to electronic delivery of a PDS where the client becomes a member of a default employer sponsored superannuation fund. 24.4 We believe industry and customer behaviour is now at the point where there should be a transition to

FSC Para no.	ASIC Proposals on removing barriers that inhibit electronic disclosure	FSC Comments on Electronic communications/disclosure
		an opt-out basis for electronic communications. 24.5 We request that further work be undertaken to remove barriers (actual or perceived) to increased electronic disclosure and facilitating more electronic disclosure. **Suggestions to transition to electronic disclosure** 24.6 To better facilitate electronic disclosure, we suggest that: a. Issuers (including both product issuers and financial service providers) should be able to use electronic disclosure on an opt-out basis for both new and existing clients. b. Existing clients could be sent a paper notice (or where an email address is supplied, an email) stating that communications would be given in electronic form in future, specifying the proposed method of delivery. The client would then be able to notify the issuer at any time that the client wished to receive paper communications or specifiying an email address for delivery of such documents. c. For all new clients, PDSs and other contracts should be permitted to specify that all communications will be sent or made available electronically, and where this is the case, document issuers do not need to provide a paper option. d. Increase the flexibility of the disclosure regime to allow the PDS to focus more on product-specific information, and deliver in other ways the more general information about how superannuation and managed investments work and general benefits.

FSC Para no.	ASIC Proposals on removing barriers that inhibit electronic disclosure	FSC Comments on Electronic communications/disclosure
		Application of the law (as it is) to electronic disclosure and provision 24.7 When Financial Services Reform (**FSR**) commenced in 2002, it allowed product issuers to disclose information to consumers electronically. If the consumer gave their email address to the issuer, the issuer could use it. However, in our view, ASIC's regulatory approach to the laws has been restrictive about how information is delivered electronically. In particular, ASIC has required specific consent to electronic delivery beyond providing the email address. That is, in our view ASIC's interpretation of the law has potentially not allowed the law to operate to its fullest extent. We acknowledge ASIC is undertaking targeted consultation on barriers to increased electronic disclosure (see paragraph 64 of Report 391). 24.8 This approach imposes unnecessary costs on product issuers and it has restricted the convenience to consumers of receiving electronic communications. Given the fast pace of technology, electronic communication is even more prevalent since the commencement of FSR. We welcome ASIC's embracement of electronic disclosure (as evidenced by Report 391) and the consultation referred above. 24.9 For example, if a product issuer has a customer's email address, the issuer should be allowed to use that address without seeking specific consent relating to that type of communication. We consider these matters should be explored to ensure that impediments to the use of technology and electronic disclosure are removed. Issuers already have other legal obligations to customers, such as duties of confidentiality and privacy protection. Also, ASIC should not be prescriptive or limiting about what is "electronic" (such as hyper-links). 24.9 (**Making FSGs available online**): Consideration should be given to making Financial Services Guides

FSC Para no.	ASIC Proposals on removing barriers that inhibit electronic disclosure	FSC Comments on Electronic communications/disclosure
		available online only. Further consideration would have regard to what circumstances or conditions may be required for this.
25.	**ASIC's Financial Advice Consultation Papers (CP 214, 215 and 216) – FSC's submission – proposals directed a**	The FSC provided submissions to the following ASIC Consultation Papers: ➢ ASIC CP214 *Updated record-keeping obligations for AFS licensees on record keeping;* ➢ ASIC CP215 *Assessment and approval of training courses for financial product advisers: Update to RG 146* (CP 215 related to the proposed removal and replacement of the prior maintained ASIC training register); and ➢ ASIC CP216 *Advice on self-managed superannuation funds: Specific disclosure requirements and SMSF costs* (CP 216 relates to disclosure for SMSFs). FSC's submissions to ASIC CP 214, 215 and 216 contain proposals which would assist with the deregulatory initiatives as well as assist in the provision of accessible and affordable advice to consumers. We refer ASIC to FSC's submissions to each of the above consultation papers and we request ASIC consider our submissions in the context of ASIC's deregulatory initiatives.

26. Superannuation disclosure related matters – briefly (as covered by other engagement processes)

The table below sets out some deregulatory matters relating to the Stronger Super reforms, much of which is part of other consultation processes or which ASIC or APRA has indicated is under review. For completeness, we mention these in brief though, as they are relevant to efficiencies and consideration of deregulatory initiatives.

No	Matter	Issue *What is causing additional work\cost?*
1.	**Publication of Product Dashboard for choice investment options**	The obligation to publish a separate dashboard for choice investment options duplicates much of what is already in a PDS. Duplication of this information and its maintenance (updates), as currently proposed, creates significant additional costs and complexity. (This is under consideration by Government.)
2.	**Portfolio Holdings Disclosure (PHD)**	PHD is also under consideration by Government. PHD disclosure is granular – the proposed extent of 'look through' creates undue complexity. The resultant volume of data would not be useful to members. There should be greater integration and consistency between PHD and asset related data collected by APRA.
3.	**Product dashboards in periodic statements**	The requirement to include additional pages in periodic statements is inconsistent with the shift to electronic communications. The additional systems, production and postage costs to include dashboards in periodic statements are significant. Inclusion of a dashboard in an exit statement is not appropriate given the member has exited the fund.
4.	**Website document publication – S.29QB SIS Act** ~ Publication of SEN summary; ~ Restrict information to general content that affects all members ~ Other matters	There is no materiality threshold for items to be shown in the summary of significant event notices (SIS Reg 2.38). The volume of such notices can be significant. Many Significant Event Notices (**SENs**) are only relevant to certain members. Information about SENs should be restricted to matters which affect every member of a fund and limited to events related to material information contained in a PDS. In relation to section 29QB, we note there are other aspects beyond SENs such as PDSs for each employer sponsored plan and matters relating to defined benefit plans which should be considered as part of any deregulatory agenda. . These include issues relating to governing rules and actuarial plans.
5.	**Consistency of information (29QC SIS Act)**	The application of aspects of section 29QC is uncertain and industry is currently engaging with ASIC and APRA on the application of section 29QC. We welcome this engagement.

Financial Services Council, 23 June 2014