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By email only

Dear Charlotte

ASIC Consultation Paper 227 *Disclosure and reporting requirements for superannuation trustees: s29QC*

The Financial Services Council (**FSC**) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees. The Council has over 125 members who are responsible for investing more than \$2.3 trillion on behalf of 11 million Australians.

With superannuation, 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 Financial Services Council promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

The FSC and its members fully support the objective of consistency as envisaged by s29QC *Superannuation Industry (Supervision) Act 1993 (s29QC)* however it is the broad and uncertain application and resulting heavy penalties in respect of s29QC that are of significant concern to FSC and its members. We thank ASIC for its proactive engagement with the industry on the implementation of s29QC. We also thank ASIC for responding to industry concerns with the breadth and uncertainty of s29QC by issuing *ASIC Consultation Paper 227 Disclosure and reporting requirements for superannuation trustees: s29QC (CP 227)*. The FSC and its members welcome the opportunity to respond to CP 227 and set out below our general comments relevant to CP 227 followed by our responses to specific ASIC questions raised in CP 227. We thank ASIC for the extension of time to lodge this submission.

ASIC proposes to issue a Class Order to clarify the application of s29QC for MySuper, and this is our preferred option. We refer to this below as the "**s29QC Class Order**". We seek that the proposed s29QC Class Order relate only to MySuper at this stage, and that the s29QC Class Order is complete and exhaustive in specifying which items of which APRA forms are subject to the s29QC requirement.

General comments relevant to CP 227

Transition to s29QC Class Order – avoiding the need for multiple product rolls/updates

1. As an introductory, but important comment, it is essential as a matter of red tape reduction, per Government policy, that any s29QC Class Order and concurrent ASIC consultation/policy review of fee and cost disclosure does not generate two separate PDS rolls. Left unchanged, the timing of s29QC could require a separate *additional* PDS roll, given the industry's separate transition to ASIC's fee and cost disclosure Class Order 14/1252 and the prospective update of ASIC RG 97 *Disclosing fees and costs in PDSs and periodic statements*.
2. To the extent that any s29QC Class Order impacts any PDS disclosures at all, to avoid duplicative and unnecessary costs in two PDS/document rolls in close succession, we request that ASIC align the transition/start dates for the *Existing* stock of documents (including PDSs already on issue) and for *New* stock (e.g. PDSs issued after a date which is an appropriate period after finalisation of any s29QC Class Order), so that there is a common transition period for changes required by Class Order 14/1252 and any s29QC Class Order. This common transition period should recognise and differentiate between Existing stocks of documents and New/prospective stocks of documents such that there is a reasonable period to update existing stocks of documents. We refer ASIC to similar comments we made in our submission to RG 97 in which we requested an extension of any RG 97 transition to ensure the fee and cost changes (Class Order 14/1252 and RG 97 recently consulted upon) and any s29QC Class Order, do not result in two sets of document/PDS rolls.
3. We note that CP227 sets out a timetable for drafting and issuing of an ASIC Regulatory Guide in the "Second quarter 2015", which we assume would also include the s29QC Class Order. If the s29QC Class Order is issued late in the second quarter of 2015 (say, May or June 2015) compliance from 1 July 2015 is not realistic. Specifically, we request ASIC:
 - (a) to provide a reasonable transition period (at least twelve months) after both the new s29QC Regulatory Guide and s29QC Class Order are *finalised*.
 - (b) to limit the s29QC Class Order to MySuper products at this time and to re-engage with the industry regarding its application to Choice products once more details on the Choice Dashboard come to hand.
4. We believe that a more appropriate transition approach would be as follows:
 - (a) To defer the commencement of s29QC until at least 1 January 2016 (or 6 months from the date of the final s29QC Class Order and associated Regulatory Guide if these are *finalised* after 1 July 2015) for new documents issued after that date (or 6 months from any later commencement date relating to the implementation of ASIC's fee and cost disclosure Class Order 14/1252 and related RG 97 update which is currently under review by ASIC).

- (b) Existing documents should be subject to a transition of at least 12 months after the finalisation of any s29QC Class Order and related ASIC s29QC guidance (or 12 months after the finalisation of any RG97 guidance if later).
- (c) As contemplated for consideration by ASIC in paragraph 9 of CP 227, we request that ASIC also provide (in addition to the transition requested in paragraphs (a) and (b) above) an extension to the ASIC facilitative approach for a further 6 months beyond the implementation date to 1 July 2016 (or later date thereafter per paragraphs 4(a) and 4(b) above). [We stress that a reasonable transition period (set out in paragraphs 4(a) and 4(b) above) are preferable to “facilitative approaches” which do not in themselves provide a transition period but rather indicate ASIC’s surveillance approach for an obligation already commenced.]

The industry requires adequate time to implement changes based on *finalised* requirements (which includes any finalised s29QC Class Order and related ASIC Guidance).

This transition approach should avoid the unnecessary and wasteful cost of rolling PDSs (or updating other documents) twice within the space of 6 or 12 months – at 1 July 2015 for s29QC, where applicable and at 1 January 2016 for CO 14/1252.

Review of draft s29QC Class Order and draft Regulatory Guide

5. We request ASIC to briefly consult with the industry on a draft of the s29QC Class Order (and any accompanying draft Regulatory Guide) to ensure that industry has an opportunity to comment on the detail of the law (as modified by the proposed s29QC Class Order). This should ensure no unintended consequences arise and that the s29QC Class Order (and accompanying Regulatory Guide) operates effectively and as intended.

General comments

6. As observed in CP 227, the driver behind the introduction of s29QC is to facilitate easier comparisons between MySuper superannuation products. The Super System Review Final Report (“**Cooper Report**”) highlighted the importance of consistency and comparability in the areas of fees, costs and investment performance. Further, the Cooper Report noted that it did not believe “that it would be feasible to mandate asset types and allocation ranges within the existing nomenclature or that it would be desirable to impose that level of rigidity on products”¹.

¹ P.109, Chapter 4 *Outcomes transparency*, Super System Review Final Report, Part 2 Recommendation Packages, released 5 July 2010.

7. Later, the Government responded to the Cooper Report Recommendation 4.1 for consistency and comparability². The Government's response noted that ASIC would develop standards for use by trustees in relation to disclosures of fees, costs and investment returns.
8. FSC and its members support the need for greater transparency and the objective of superannuation members being appropriately equipped to allow them to make informed choices about their retirement savings.
 - (a) Clearly, one of the key decision criteria in this regard is past investment performance of MySuper products. We believe that consumers must be given information that they are capable of comparing and which is fundamental to those decisions; therefore we support past performance information of MySuper products being subject to s29QC.
 - (b) We note that changes to ASIC RG97 are already underway addressing fees and costs.
9. However, we caution that offering technical or extremely complex/voluminous data that requires deep analysis to make an informed judgement (such as the highly detailed APRA standardised asset allocation information) will almost certainly lead to confusion and member disengagement. Therefore, we concur with the Cooper Report that such member facing asset allocations should not have a mandated APRA asset type and allocation ranges, and asset allocations should not be subject to s29QC consistency requirements.
10. As mentioned above, we request that the proposed s29QC Class Order relate only to MySuper at this stage, and that the s29QC Class Order is complete and exhaustive in specifying which items of which APRA forms are subject to the s29QC requirement.

Response to specific ASIC Questions in CP 227

Options for dealing with the uncertainty

ASIC Proposal A1: We propose to address the uncertainty about the consistency requirements in s29QC using one of the three options outlined above: see paragraphs 31–34 of CP 227

11. We support Option 1, the use of a Class Order (along with ASIC guidance) to deliver the necessary certainty around the application of s29QC for MySuper products. We acknowledge ASIC is assisting industry to consistently apply s29QC by providing clarity and certainty on the application of s29QC.
12. The Class Order should confirm the specific MySuper information and disclosures that are *in-scope* of s29QC. Noting our comments in regard to the proposals in Section B, we believe that

² P.31, Attachment A, 'Stronger Super' – Government response to the Super System Review, December 2010.

the number of data items that are “calculated in a particular way” for the purpose of APRA reporting and the types of disclosures to which s29QC applies are sufficiently limited to enable these *in-scope* items to be exhaustively itemised in the Class Order.

13. ASIC’s proposals in Section B which also indicate ASIC’s intent to clarify in the s29QC Class Order matters which are not captured by (or are unaffected by) s29QC (i.e. matters which are not in scope or “*out-of-scope*” for s29QC purposes), is not necessary and could become voluminous and confusing if it is not exhaustive as to what is *out-of-scope*. The risk is omitting to list an “*out-of-scope*” item in the s29QC Class Order may cause confusion as to whether it is *in-scope* (and captured by s29QC). For example, below are just some practical problems of ASIC attempting to exhaustively list in the s29QC Class Order items which are “*out-of-scope*” (i.e. to which s29QC does not apply):
- (a) Recently APRA re-released forms relating to Select Investment Options (SRS 701.0, SRS 601.0, SRS 533.1 and SRS 702.1). A month previously, APRA re-released SRS 711.0. Attempting to keep the “*out-of-scope*” material up-dated may involve numerous updates to any ASIC s29QC Class Order which is not ideal.
 - (b) Recently APRA and the ABS released 4 new draft reporting forms (SRS 720.0, SRS 721.0, SRS 722.0 and SRS 730.0). Each of these forms allows for “careful estimates”. Clearly there is no intent for s29QC to apply to these forms, but as they are new APRA forms, if left off any s29QC Class Order in the “*out of scope*” area then they could potentially become “*in scope*” (unintentionally). Updating the s29QC Class Order to show what is out of scope would be very time consuming for ASIC and could be problematic for trustees.
14. Therefore, we feel that the s29QC Class Order should only need to confirm what is *in-scope* for s29QC purposes. For clarity, the s29QC Class Order should state that what is *out-of-scope* is *any* other matter not specified in the s29QC Class Order.
15. We note that irrespective of whether a matter is subject to s29QC, other laws apply to RSE licensee conduct and disclosures such as Corporations Act s.912A(1)(a), s.1041E (which is an RSE licensee law under the SIS Act) and s.1041H, and the equivalent provisions of Div.7 of Part 7.9 (noting there are many other RSE licensee laws under the SIS Act).³ Therefore, irrespective of s29QC, RSE licensees must ensure disclosures are accurate and not misleading. As such, limiting s29QC to particular items will not inhibit RSE licensee’s obligations or ASIC’s powers.

³ Corporations Act s912A(1)(a): AFS licensee to act honestly, efficiently and fairly; s1041E: prohibits false or misleading statements; s1041H: prohibits misleading or deceptive conduct; *RSE licensee law* is defined in the SIS Act and includes various provisions of the Corporations Act which is therefore part of a trustee’s SIS Act obligations (in addition to any other Corporations Act obligations which would apply to the RSE licensee as a Corporations Act AFS licensee).

ASIC Question: A1Q1 Should we adopt Option 1, under which we would issue a class order (and potentially guidance) to modify the scope and application of s29QC (please also respond to the detailed proposals in Section B of this paper)? Are there other areas that should be considered for inclusion or exclusion from the proposed class order?

16. We support Option 1 for MySuper products, together with ASIC guidance in the form of a Regulatory Guide accompanying the s29QC Class Order. Option 1 provides the greatest certainty to a trustee. As APRA's reporting standards cover over 4,000 data items on superannuation, the potential scope and application of s29QC is broad (albeit this is limited to information "required to be calculated in a particular way" in an APRA reporting standard). Without Class Order relief (and supporting ASIC guidance) this would leave trustees in a difficult situation as there would be uncertainty as to what information s29QC applies to. As described later, this becomes more complicated where "careful estimates" are allowed in APRA/ABS forms.
17. Limiting s29QC to specific MySuper reporting fields (named in the s29QC Class Order) and to specific disclosure documents provides the industry with a much higher level of certainty about the application of s29QC.
18. We do not support Option 2 or Option 3.
19. As noted above, s29QC is potentially very wide and to some extent uncertain in its operation. This is an area therefore where prescription is necessary to clearly specify and contain the application of s29QC. The prescription should be by ASIC Class Order. If a matter is captured by the s29QC Class Order, then s29QC should apply. If a matter is not prescribed in the s29QC Class Order then section 29QC should not apply. That is the Class Order should be exhaustive and prescriptive. Any area or matter which is not expressly set out in the Class Order should be specified as a rule by the Class Order to *not* be subject to s29QC. (Of course, irrespective of whether the s29QC Class Order applies, RSE licensees must meet other legal obligations such as ensuring communications are not misleading or deceptive – as noted previously.)
20. We believe that the number of data items that are "required to be calculated in a particular way" for the purpose of APRA reporting and the types of disclosures to which s29QC applies are sufficiently limited to enable these to be itemised by ASIC in the s29QC Class Order.
21. Other than those items expressly set out in any s29QC Class Order, we believe there are no other "areas" to which s29QC should apply. Section 29QC only applies to items that are required under an APRA reporting standard to be "*calculated in a particular way*".
22. **(MySuper initially; apply to Choice after choice dashboard is finalised)** We request ASIC to initially limit the s29QC Class Order to only MySuper products thus deferring the application of s29QC to Choice products or Choice dashboards until the Choice dashboard requirements (and any APRA Choice forms) are finalised. That is, in the interim, s29QC should be limited to MySuper products.

23. Once the Choice dashboard requirements (and APRA Choice forms) are finalised, then the FSC and its members would like to discuss the application of s29QC to Choice, which would need to occur after an appropriate transition period. This is important because of the potential issues that may arise in a Choice environment that will need dialogue to resolve. Just briefly, for Choice products the simplicity of quoting a 'net return' where there are member fees at an account level (rather than at the level of each investment option) does not result in fair or accurate comparisons. The Choice product net return would effectively favour funds with very few investment options while large platforms (wraps and baby wraps) which allow many investment choices would be penalised. Some examples of this are below (and hence the need for consultation with industry on the manner of applying, after a transition period, s29QC to Choice products):
- (a) Super Fund X: Similar to MySuper but in a Choice environment. In this scenario most members have 1 Choice investment option and the member fee is, say, \$100. Therefore for the single investment option the entire \$100 is used in the calculation of net return. This is not misleading.
 - (b) Super Fund Y: Unlike MySuper, most members have elected 4 investment options, and assume the member fee is \$130 levied at the account level (regardless of the number of investment options chosen). To include the \$130 member fee for EACH investment option would overstate the member fee by $3 \times \$130 = \390 for the account. Thus, it is misleading the member as to the overall performance of their investments compared to Super Fund X. In this case the average member fee per investment option in Super Fund Y is in fact \$32.50 which is far better than the \$100 per option member fee in Super Fund X.
 - (c) Super Fund Z: This is a wrap super fund, where members may have 10 or more investment options with a member fee of \$200 at the account level (regardless of the number of investment options chosen). To include the \$200 member fee for EACH investment option would overstate the member fee by $9 \times \$200 = \$1,800$ for the whole account. This would mislead the member as to the overall performance of their investments. In this case the average member fee per investment option would be \$20 which is far better than both of Super Fund X and Super Fund Y.
24. Clearly, within a Choice environment where fees are levied at the account level (rather than at each investment option level) they cannot and should not be represented in the performance of each investment option because there is no equitable comparison where a multiple and varied number of investment options can co-exist in a single account (with a single fee charged at the account level, not at each investment option level). In order to achieve consistency and comparability of figures released to members, investment performance returns are most appropriate in a Choice environment. This clearly needs more discussion and should therefore be excluded from the s29QC Class Order at this time.

ASIC Question: A1Q2 Should we adopt Option 2 (no class order, but provide guidance)? If so, in what areas should we expand on the guidance already given, and are there any further issues you think should be addressed? Please give reasons for your answer, and the estimated costs in complying with this provision from 1 July 2015.

25. We do not support Option 2. Option 2 provides insufficient certainty and would continue the problematic situation where s29QC is argued as applying potentially to asset allocation classifications, return targets and investment return objectives. See our responses elsewhere in relation to our support for Option 1 and ASIC applying a reasonable transition period for Option 1 (and 1 July 2015 may not be reasonable).

ASIC Question A1Q3: Should we adopt Option 3, under which the s29QC requirement would restart in its current form, as planned, on 1 July 2015? Please give reasons for your answer, and the estimated costs in complying with this provision from 1 July 2015.

26. We do not support Option 3. See our response to ASIC Question A1Q2 above. Please also see our responses elsewhere in relation to our support for Option 1 and ASIC applying a reasonable transition period for Option 1 (and 1 July 2015 may not be reasonable).

ASIC Question A1Q4: Would you prefer ASIC adopt an approach other than Options 1, 2 or 3? If so, please outline the approach you consider we should take, and give reasons.

27. No. We strongly prefer ASIC adopt Option 1.

ASIC's general approach to limiting the scope of s29QC

ASIC Proposal B1: We propose to limit by class order the scope and application of s29QC. There are a number of ways to do this, including by limiting s29QC to particular disclosure topics as outlined in this paper. However, we also propose to limit by class order the scope and application of s29QC to consumer-facing disclosure such as advertising or promotional material.

28. The s29QC Class Order should specify the specific MySuper information to which s29QC applies – that is information in APRA reporting standards that is “required to be calculated in a particular way” (returns).

29. The meaning of “advertising or promotional material” needs to be made clear – either in the Class Order or by separate guidance. Our preference for certainty and clarity is that the s29QC Class Order limit the application of s29QC to regulated disclosure documents and mediums such as websites and advertising.

30. The scope of information to which s29QC applies is reasonably clear in that it is clearly limited to information required to be calculated in a particular way by an APRA reporting standard:

“29QC (1) Subject to subsection (2), if:

- (a) an RSE licensee is required to give information to APRA under a reporting standard (within the meaning of the *Financial Sector (Collection of Data) Act 2001*); and
- (b) under the reporting standard, the information **is required to be calculated in a particular way**; and
- (c) the same or equivalent information is given by the RSE licensee to a person other than an agency of the Commonwealth or of a State or Territory, whether or not by publishing the information on a website;

the RSE licensee must ensure that the information given to the other person is calculated in the same way as the information given to APRA”

- 31. Section 29QC clearly supports the recommendations and outcomes of the Cooper Report by anchoring consistency in the APRA reporting standards that require information to be “calculated in a particular way”.
- 32. The potential universe of information items included in the APRA reporting standards is significant. However, the number of items that are required by APRA reporting standards to be “calculated in a particular way” and which might be “given by the RSE licensee to another person” is a sub-set of the data items provided to APRA. Section 29QC only applies to items “required to be calculated in a particular way” in an APRA reporting standard.
- 33. **Appendix 1** of this submission lists the items in the current APRA reporting standards which we believe are required to be “calculated in a particular way”. We believe that, based on current finalised reporting standards for MySuper, only the items listed in Appendix 1 are required to be “calculated in a particular way” and therefore subject to s29QC. The specific items (referencing the APRA SRS and SRF) should be listed in the s29QC Class Order – if an item is not listed in the s29QC Class Order, then s29QC (as modified by the s29QC Class Order) should not apply to that item.
- 34. To support this assessment, there is evidence that only certain APRA reporting standards were intended to be in-scope of s29QC, namely:
 - (a) The Explanatory Statement to the determinations dated 20 September 2013⁴ for standards SRS 700.0, SRS 702.0, and SRS 703.0 made specific reference to the operation of s29QC in the context of APRA’s reporting requirements under these standards, whereas earlier determinations for other SRSs made in June 2013 made no reference to a link with s29QC; and
 - (b) Each of SRS 700.0, SRS 702.0, and SRS 703.0 notes that information in that standard is “required for the purposes of the Australian Securities and Investments Commission”,

⁴ Financial Sector (Collection of Data) (reporting standard) determinations Nos. 92, 98 and 99 of 2013 Explanatory Statement.

which we assume is for the purpose of monitoring compliance with s29QC. Contrast this with SRS 533.0 which does not observe that the standard is required for ASIC purposes.

35. ASIC Proposal B1 suggests that s29QC be limited by applying it only to “particular topics or areas”. This, together with some later proposals, seem to go beyond the intended scope of s29QC which is already limited to information that is “required to be calculated in a particular way” for the purposes of APRA reporting. The exact wording of s29QC does not support an application of s29QC beyond information “required to be calculated in a particular way” for the purposes of APRA reporting. The s29QC Class Order should provide certainty by expressly defining, in the Class Order, the information items to which s29QC applies by stating the specific MySuper information items noted in **Appendix 1** of this submission.
36. The primary remaining uncertainty arising from s29QC is the types of disclosure that are impacted by the requirement. The proposed approach of applying s29QC to “consumer-facing disclosure such as advertising and promotional material” may not be sufficiently specific or clear and may therefore result in residual uncertainty without accompanying guidance. We note that, although the proposal in B1 refers to the Class Order limiting the types of disclosure in this way, paragraph 49 of CP227 later states that the Class Order “would specify the particular disclosure material that may require the use of consistent methodology” - an approach which we prefer. In this regard ASIC might specify regulated disclosure documents such Product Disclosure Statements, Product Dashboards and Annual Reports. Any application to advertising and promotional material should be clearly defined in the s29QC Class Order and should not apply to any material which is not directly issued by the RSE licensee (such as for example rating agencies, financial planning dealerships, and fund manager’s data provided to the RSE licensee for reporting on superannuation platforms).

ASIC Question: B1Q1 Do you agree that s29QC should be limited in its scope and application generally?

37. Yes. We believe the scope of s29QC should be limited to particular data items in specific APRA reporting standards. It would be inappropriate and not conducive to industry certainty and comparability to try to define “topics or areas” to which s29QC applies. Please also see our general response to ASIC Proposal B1 above (paragraphs 28 to 36 of this submission) and the MySuper items listed in Appendix 1 (on page 21 of this submission).

ASIC Question B1Q1 continued: If yes, is limiting s29QC by reference to particular areas or topics the most appropriate way to do this? Are there other topics or areas where consistency would be beneficial, such as executive officer remuneration disclosure, which are not included in this paper (please outline these topics and areas)?

38. The most appropriate way to provide the prescription necessary is by limiting s29QC to named items in named APRA forms (SRFs) and by listing these exhaustively in the s29QC Class Order and accompanying guidance. That is, industry should only need to look to the s29QC Class

- Order (and ASIC guidance) to know whether s29QC applies (if it is mentioned in the Class Order) or does not apply (if it is not mentioned in the Class Order). Of course, as noted earlier, irrespective of whether the Class Order (and s29QC applies) RSE licensees must meet other legal obligations such as ensuring communications are not misleading or deceptive.
39. We refer ASIC to **Appendix 1** of this submission which lists the items which we consider s29QC would apply to on the basis the items are required to be “calculated in a particular way” and reported to APRA.
40. RSE licensees should not be required to update documents which have already been issued prior to the date of the s29QC Class Order. Further, in relation to documents issued after the date of the Class Order, there should be a transition period to allow issuers to update systems, documents and procedures to comply with the s29QC Class Order in respect of new documents. This is required to allow RSE licensees time to update their systems, documents and procedures to apply the s29QC Class Order prospectively.
41. We support the application of s29QC to performance information. However, individualised returns should not be subject to s29QC as such (individualised) returns are not reported to APRA – of course, RSE licensees must meet other legal obligations such as ensuring communications are not misleading or deceptive.
42. We do not think a case has been made to apply s29QC to executive remuneration, and ASIC CP 227 provides no case or reasons why it is appropriate or necessary to apply s29QC to executive remuneration. The application of s29QC to executive remuneration also was not called out by the Cooper Report. However, we think investment performance information is an area in which it is important that s29QC applies and this has consistently been raised.
43. As discussed earlier, s29QC should not apply to asset allocation as asset allocation is not information required to be “calculated in a particular way” in terms of s29QC. Nonetheless, licensees must meet other legal obligations such as ensuring communications are not misleading or deceptive.

ASIC Question: B1Q2 Do you think fee and costs disclosure should be excluded from the s29QC requirement so that RSE licensees know they only need to refer to the Corporations Act and Corporations Regulations for these requirements?

44. The FSC and its members believe that fee and costs disclosure should be excluded from the s29QC requirement. Apart from fee and cost items for “Representative” or “Example” members (as noted in Appendix 1), applying s29QC to fee and costs disclosure is confusing and unnecessary. The fee and costs disclosure regime is extremely complex. The regime is set out in extensive and prescriptive detail in the Corporations Regulations and an ASIC Class Order (14/1252), with the benefit of ASIC Guidance in RG 97 (now under review).

45. Our interpretation of s29QC is that it applies to the particular data items in specific APRA reporting standards that require the calculation of fee and cost disclosures for ‘Representative’ or ‘Example’ members and also to the Statement of Fees and costs. To avoid uncertainty and confusion, fee and cost disclosure in PDSs and periodic statements should be governed *solely* by one regime, namely, the Corporations Act, Corporations Regulations and ASIC’s related fee and cost class order – CO 14/1252. Fee and cost disclosure in PDSs and periodic statements should not be governed by *two* regimes (namely, the Corporations Act, Corporations Regulations and ASIC CO 14/1252, as well as – by s29QC - APRA Reporting Standards).

ASIC Question: B1Q3 Does limiting s29QC to particular topics help to clarify that s29QC should not override any existing disclosure requirements (such as those in the periodic statement regime)?

46. We agree with the s29QC Class Order prescriptively and exhaustively providing for what s29QC applies to. However, this should not be by specifying “topics” (given the potential definitional difficulties of doing so) but instead by specifying the exact data items in the APRA reporting standards and forms.
47. The s29QC class order should make it clear that s29QC and the periodic statement regime provisions, in particular as to content including fees and costs disclosure, operate independently of each other. It could do this by stating that a ‘holder’ for the purposes of section 1017D is not a ‘person’ in paragraph 29QC(1)(c). The periodic statement regime should be governed by the Corporations Regulations fee and cost disclosure requirements and not be governed also by s29QC.
48. We note the Corporations Regulations (long term returns in periodic statements) are inconsistent with the manner of calculation in SRS 702.0. (See Regulation 7.9.20AA which refers to a compound average effective rate of net earnings; and SRF 702.0 (Instructions, page 9) which refers to a time-weighted rate of return.) Applying s29QC where one legislative requirement (the regulations) are inconsistent with another requirement (APRA reporting) is difficult and problematic – complying with one will breach the other. In short, s29QC should not override other disclosure requirements (such as those applying to periodic statements).

ASIC Question: B1Q4 Do you agree that s29QC should be limited to specific types of disclosure?

49. Yes, so as to provide certainty as to the application of s29QC. The s29QC Class Order should limit the application of s29QC to consumer facing information given directly by an RSE licensee, such as regulated disclosures (e.g. PDS, product dashboards).

ASIC Question B1Q4 Continued: *If so, should the application of s29QC be limited to consumer-facing disclosure such as advertising or promotional material? Should this be in addition to limiting s29QC to particular topics or areas?*

50. Section 29QC should be limited in its application to material directly issued by an RSE licensee. It should not apply to material not issued directly by an RSE licensee (for example, such as a rating agency or financial planning dealership). Information provided by an RSE licensee should comply with s29QC (to the extent s29QC applies) but the RSE licensee should not be responsible for the currency of information or any refinement or amendment to the information made by another person (such as a rating agency or financial planning dealerships). In addition, data from a fund manager which is reported on platforms should also not be caught by s29QC.
51. Section 29QC should be limited both as to (a) the issuer of the material to which s29QC applies (namely RSE licensees) and (b) named items in named APRA forms (SRFs). As set out previously, the named items in named APRA forms (SRFs) should be set out in the s29QC Class Order so as to provide clarity, consistency, comparability and certainty as to the application of s29QC.
52. In applying s29QC to “consumer-facing disclosure” this would need to be defined clearly in the s29QC Class Order.
53. As set out above, s29QC should not apply to Choice products until the choice dashboard requirements and Choice APRA forms are finalised, and then only after an appropriate industry consultation and transition period.
54. We support limiting the application of s29QC to consumer-facing disclosure such as regulated material (e.g. PDSs) and advertising or promotional material prepared by the issuer (or on behalf of the issuer/RSE Licensee). However it is necessary to clearly define promotional material.
55. Our view is that s29QC should not apply to asset allocation because asset allocation is not required to be “calculated in a particular way”. ASIC should confirm in any guidance accompanying the s29QC Class Order that s29QC does not apply to asset allocation for this reason. Of course, RSE licensees must already meet other legal obligations such as ensuring communications are not misleading or deceptive.

ASIC Question: B1Q5 *What would be the estimated costs in applying s29QC to consumer-facing disclosure such as advertising or promotional material and/or to particular areas or topics?*

56. If s29QC is applied beyond investment performance (to the extent that is in fact feasible as s29QC can only apply to information “required to be calculated in a particular way” by an APRA reporting standard) the costs could be significant. To the extent s29QC is confined to investment performance the costs would be significantly less than applying s29QC wider than

investment performance. One member has indicated as a broad “ballpark” that limiting s29QC to investment performance information may result in the order of one-tenth of the costs compared to applying s29QC wider than investment performance information. The corollary (based on this member’s guide) is that applying s29QC outside of investment performance information may result in costs which are in the order of a multiple of ten times the costs of s29QC being limited to investment performance information.

Limiting the scope to past investment performance

ASIC Proposal B2: We propose to limit by class order the scope of the application of s29QC to past investment performance. Any area covered by APRA’s reporting standards not specifically listed in the class order would not be included in the consistency requirements.

57. We support this limitation to past investment performance. However, we request that the S29QC Class Order exempts the application of s29QC to disclosures of past investment performance which has been published by an RSE licensee prior to the s29QC “**Start Date**”. For example, an RSE licensee website may currently make available copies of past Annual Reports for an RSE which include past performance. The s29QC “Start Date” means a date which is after a (transition) period after the commencement of the s29QC Class Order. (For example if the Class Order is issued on 1 July 2015, it would be unreasonable to expect RSE licensees to meet any s29QC requirement as modified by the s29QC Class Order in relation to past investment performance information published prior to that date, as RSE licensees need a period to review the Class Order and, if necessary, modify systems and disclosures.)
58. The s29QC Class Order should include provisions to ensure that the introduction of s29QC does not trigger the recalculation of past performance data, nor a SEN, nor withdrawal of past disclosures.
59. As noted in **Appendix 1** of this submission, particular data items in the APRA reporting standards define how to calculate a number of measures of past investment performance. Apart from including in the s29QC Class Order the relevant data items in APRA reporting standard(s) for calculating past investment performance for MySuper, we do not believe that ASIC should specify that it is only ever appropriate to use the methodology in the reporting standards as suggested in paragraph 48 of CP227 – to do so would be inconsistent with the provision of member-specific returns.
- (a) We consider that it is critical that funds still be permitted to provide past return information to members on bases other than the ‘net investment return’ and/or the ‘net return’ – in particular to communicate the returns actually credited to members’ accounts, whether via crediting rates or changes in unit prices;
- (b) Hence if the s29QC Class Order is to specify that the only past performance measure(s) permitted to be used in advertising and promotional material is the ‘net investment return’ and/or the ‘net return’, the material specified to be *advertising*

and promotional material must not be so wide as to preclude the communication of past returns calculated on other reasonable bases that are relevant to members (e.g. crediting rates, returns based on changes in unit prices) in member communications material such as newsletters and annual reports;

- (c) FSC does not believe there should be a single prescribed measure permitted to be used in advertising and promotional material for past investment performance - both “net return” and “net investment return” provide useful information and should be permitted.

ASIC Question B2Q1: Do you agree that s29QC should be limited in this way to past investment performance information?

60. Yes, we agree that s29QC should be limited to past investment performance information. The s29QC Class Order should reference the specific item of the specific APRA form (SRF) which is subject to s29QC (we refer ASIC to Appendix 1 of this submission and our submission above). Further, initially s29QC should be limited to MySuper products pending finalisation of any Choice dashboard requirements, industry consultation (on the application of s29QC in a Choice environment) and a transition period.

ASIC Question B2Q2: Should a class order require promotional material for the fund that uses past performance information to quote the net investment return provided in the MySuper product dashboard in line with APRA’s reporting standard?

61. We note that the past performance measure used in the MySuper Product Dashboard return information is the “net return”, not the “net investment return”. As set out in our comments in paragraph 59, FSC does not believe there should be a single prescribed measure permitted to be used in advertising and promotional material for past investment performance - both “net return” and “net investment return” provide useful information and should be permitted. Clearly the bases of the performance information should be explained.

ASIC Question B2Q3: What would be the estimated costs in applying s29QC to past performance information?

62. Applying s29QC to past performance information only and not wider than that, would involve significantly less costs of implementation than applying s29QC to other information as well.

Clarifying ‘return target’ and ‘investment return objective’

ASIC Proposal B3: We propose to clarify by class order that the ‘return target’ in the MySuper product dashboard and the ‘investment return objective’ in shorter PDS disclosure should not be considered the same or equivalent information for the purposes of the s29QC consistency requirements. ASIC would also clarify by class order which elements of the MySuper product dashboard are the same as, or equivalent to, other information in documents such as shorter PDSs.

63. Please see our responses to B3 questions below. In relation to clarifying which elements of the MySuper product dashboard are, or are not, the same as, or equivalent to, other information in documents such as shorter PDSs, we think the s29QC Class Order should be limited to past investment performance information for MySuper products.

ASIC Question B3Q1: Do you consider that the ‘return target’ in the MySuper product dashboard and the ‘investment return objective’ in shorter PDS disclosure should not be considered the same or equivalent information for the purposes of s29QC?

64. Yes we agree that the ‘return target’ in the MySuper product dashboard and the ‘investment return objective’ in shorter PDS disclosure should not be considered the same or equivalent information for the purposes of s29QC. As previously stated, the FSC and its members consider the s29QC Class Order should be prescriptive as to what is included by s29QC with all else being excluded. We note that the provisions of s29QC centre on consistency of disclosures with calculation methodology specified in a particular APRA reporting standard, not consistency between the disclosures themselves.

ASIC Question B3Q2: If you agree that this information is not the same or equivalent, do you think there are difficulties for consumers in being presented with information about investment return objectives in a shorter PDS and about return targets in the MySuper product dashboard?

65. If the information is not the same or equivalent (see our response to ASIC Question B3Q1) then s29QC does not have application. It is possible that some consumers may be confused about whether there is any relevant difference between an *investment return objective* (in a shorter PDS) and a *return target* (required for MySuper dashboards) however any confusion is a function of the different legislative/regulation terminology and requirements of a shorter PDS and a MySuper product dashboard.

ASIC Question B3Q2: If there are difficulties for consumers in being presented with differing information about objectives and returns, what are the solutions to this:

- (a) Would providing a warning to consumers about the differing information be sufficient?**
- (b) Should there be a change in terminology in either the shorter PDS or the MySuper product dashboard to highlight the difference between these two measures? Or**
- (c) Should the RSE licensee include both sets of information in the shorter PDS and the MySuper product dashboard?**

66. Given the limited time to respond to this submission, we have focused on the s29QC related matters (please see our response to ASIC Question B3Q1 in which we agree with the statement in ASIC Question B3Q1). The questions that ASIC raises in B3Q2 are a function of the different legislative/regulation terminology and requirements of a shorter PDS (as applicable to superannuation) and a MySuper product dashboard and, ideally, any resolution would be via aligning the terminology in both the shorter PDS and MySuper product dashboard (and that may well require a change to regulations). Alternatives such as a warning (ASIC paragraph (a)) or (ASIC paragraph (c)) including both sets of information in the shorter PDS and MySuper product dashboard do not address the source of the difficulty which is different terminology in the shorter PDS regime and the MySuper product dashboard. In particular, requiring RSE licensees to duplicate information (ASIC paragraph (c) above) to resolve the different terminology is a sub-optimal solution – these issues should be resolved at the source (regulations).

67. The co-existence of a Return Target (calculated in accordance with the APRA standard) and an investment objective (determined by an RSE licensee) creates confusion for consumers. Our concern centres on the term ‘Target’ which could mislead a consumer to think that the RSE licensee’s investment strategy and activities for that investment option are directly tied to this target rather than the stated investment objective.

ASIC Question B3Q4: Are there any other elements of the MySuper product dashboard where there may be uncertainty about whether the information is the same or equivalent to other information that trustees disclose, such as risk?

68. At this stage we are not aware of any additional uncertainty.

ASIC Question B3Q5: If s29QC were to apply to MySuper product dashboard information, what are the estimated costs of complying with the s29QC requirements for MySuper product dashboard disclosure and, specifically, the disclosure of return targets and investment return objectives?

69. We have not costed this. See our comment above that we agree with ASIC that the ‘return target’ in the MySuper product dashboard and the ‘investment return objective’ in shorter

PDS disclosure should not be considered the same or equivalent information for the purposes of s29QC.

Clarifying how to report asset allocation data

ASIC Proposal B4: We propose to clarify by class order that if APRA requires an RSE licensee to report data about asset allocation (including defining 'cash' or any other asset class), the licensee will not need to amend its shorter PDS disclosure to align with these definitions.

70. We agree that asset allocation is not information reported to APRA that is required to be “calculated in a particular way” and therefore is not subject to s29QC.
71. The Cooper Report noted that the panel did not believe “that it would be feasible to mandate asset types and allocation ranges within the existing nomenclature or that it would be desirable to impose that level of rigidity on products”⁵.

ASIC Question B4Q1: Do you agree with our proposal, or do you think that s29QC should apply to disclosure of asset allocation?

72. We agree with this proposal and we do not think that s29QC should apply to disclosure of asset allocation. Asset allocation classification is not information reported to APRA that is “calculated in a particular way”. Further, as noted in paragraph 71 above, the Cooper Report noted that such standardisation was not feasible or desirable.
73. If s29QC was to apply to asset allocation (which we strongly disagree with – see our comments above), the s29QC Class Order should clarify that if APRA requires an RSE licensee to report data about asset allocation (including defining 'cash' or any other asset class), the RSE licensee will not need to amend its PDS disclosure (whether a Shorter PDS or a Full PDS) or annual fund information statement disclosure (as required under Corporations Regulations 7.9.37(f) - for regulated superannuation funds/approved deposits funds and 7.9.42(d) - for pooled superannuation trusts) to align with these definitions. The rationale is that:
- (a) Actual asset allocations provided to members on an ongoing annual basis in fund information statements should be reported in a consistent manner with the investment guidelines (e.g. asset allocation ranges) disclosed in the corresponding PDS. The PDS discloses how assets aim to be invested across the various asset classes (given the investment target or objective) whereas the fund information statement shows how the assets actually were invested as at 30 June for the current and previous years.

⁵ P.109, Chapter 4 *Outcomes transparency*, Super System Review Final Report, Part 2 Recommendation Packages, released 5 July 2010.

- (b) If fund information statements reported actual asset allocations on a different basis (e.g. as per the APRA reporting requirements) to the PDS guidelines, they could create an incorrect impression that the investment guidelines previously disclosed in the PDS had been breached when, in fact, they hadn't. As a very simple example, a PDS may disclose that an investment option's guidelines allow for 0-10% cash and 90-100% fixed income. A member would expect that the actual asset allocations subsequently reported were within these guidelines. However, if actual asset allocations had to be reported according to APRA's definitions of cash and fixed income and those definitions varied to the underlying fund manager's definitions, such reporting could cause them to appear to be outside these guidelines. This would be misleading to the member.
74. Our comments above are only relevant if ASIC sought to apply s29QC to asset allocation. The FSC and its members firmly consider that asset allocation is not, and should not, be subject to s29QC.

ASIC Question B4Q2: Would consistency in asset class definitions be useful in the future, if a specific reporting standard could be developed for these purposes? In particular, would standard asset class definitions help address labelling issues associated with asset classes such as 'cash'?

75. The subject of use of terminology in industry in relation to asset classes is a significant and complex matter. We refer to our comments above, including our references to the Cooper Report (which we agree with) which stated that the Cooper panel did not believe that it would be feasible to mandate asset types and allocation ranges within the existing nomenclature or that it would be desirable to impose that level of rigidity on products. Standardising asset class definitions is very difficult and likely not to be feasible in a meaningful timeframe. Undue prescription or mandating in relation to asset class definitions may actually cause difficulties as a definition is not likely to cover all scenarios, uses and nuances in relation to asset class definitions. Therefore, seeking to standardise asset class definitions may not be particularly useful. However, if ASIC were to explore this matter further, FSC requests that it be involved in any consultation, along with other stakeholders such as research houses and asset consultants.

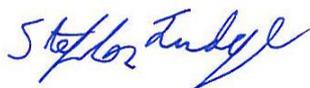
ASIC Question B4Q3: If s29QC were to apply to asset allocation information, what would the estimated costs be?

76. Please see our response to ASIC Question B4Q2 above.

Thank you for the opportunity to make this submission and for ASIC's continued and ongoing consultation and engagement with industry on s29QC.

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

Yours sincerely



Stephen Judge
General Counsel

Attached: Appendix 1; ASIC Proposal B1 - APRA reporting standard items relating to MySuper which in the view of FSC are "required to be calculated in a particular way"

Appendix 1

ASIC Proposal B1 General approach to limiting the scope of s29QC and ASIC Question B1Q1 in CP 227

APRA reporting standard items relating to MySuper which in the view of FSC are “required to be calculated in a particular way” is presented in the table below. This table would apply to the initial s29QC Class Order for MySuper.

| APRA REPORTING STANDARD (MYSUPER) | INFORMATION ITEM RELATING TO MYSUPER |
|--|--|
| SRS 700.0 Product Dashboard (MySuper) | <ul style="list-style-type: none"> • Item 1: Return target • Item 2, column 2: Return • Item 2, column 3: Comparison between return target and return – moving average return • Item 2, column 4: Comparison between return target and return – moving average return target • Item 3: Level of investment risk • Item 4: Statement of fees and other costs. |
| SRS 702.0 Investment Performance (MySuper) | <ul style="list-style-type: none"> • Item 1.5: Representative member investment fees and costs; • Item 2.4: Representative member administration fees and costs; • Item 4, column 2: Representative member net investment return – for the quarter • Item 5, column 2: Representative member net investment return – year to date • Item 7, column 2: Representative member net return – percentage value • Item 8, column 2: Representative member fees and costs • Item 9 column 2: Representative member fees costs and taxes. |
| SRS 703.0: Fees Disclosed (MySuper) | <ul style="list-style-type: none"> • Item 2: Indirect cost ratio. |

Select investment options excluding choice products – to be reported from 1 July 2015

As mentioned previously, the FSC and its members have recommended that ASIC limit the current s29QC Class Order initially to MySuper products and the key related fields (see the MySuper table

above). However, for completeness, we specify below the current APRA reporting fields that are in relation to non-MySuper products which the FSC and its members consider to be “required to be calculated in a particular way”. This is merely presented for future inclusion into the s29QC Class Order when it is extended to non-MySuper products (post Choice Dashboard). We note that future Choice Dashboard items and its related APRA reporting may add to this list, as could additional revisions to APRA reports (e.g. recent changes announced to SIO, ABS and other forms).

| APRA REPORTING STANDARD (SIO) | INFORMATION ITEM - SIO |
|--|---|
| SRS 702.1 Investment Performance (Select investment options) | <p><u>Accumulation phase:</u></p> <ul style="list-style-type: none"> • Item 1.4: Example member investment fees and costs; • Item 2.4: Example member administration fees and costs; • Item 5, columns 2 and 4: Example member net investment return – for the quarter • Item 6 columns 2 and 4: Example member net investment return – year to date. • Item 8: Example member net return – percentage value • Item 9: Example member fees and costs • Item 10: Example member fees costs and taxes. <p><u>Pension phase:</u></p> <ul style="list-style-type: none"> • Item 11.4: Example member investment fees and costs; • Item 12.4: Example member administration fees and costs; • Item 15, columns 2 and 4: Example member net investment return – for the quarter • Item 16 columns 2 and 4: Example member net investment return – year to date • Item 18: Example member net return – percentage value • Item 19: Example member fees and costs • Item 20: Example member fees costs and taxes. |