

TREASURY EXECUTIVE MINUTE

Minute No. 20111031

1 April 2011

Assistant Treasurer and Minister for Financial Services and Superannuation cc: Deputy Prime Minister and Treasurer

FOFA AND INTRA-FUND ADVICE

Timing: For information - briefing requested by your Office.

Recommendation:

- That you note the attached briefing on issues associated with intra-fund advice.

Noted

Signature:/...../2011

KEY POINTS

- For regulatory purposes, intra-fund advice is financial advice provided to a member by a superannuation trustee about a member's interest in a superannuation fund.
 - Industry perception of what is intra-fund advice is broader and also includes advice about a members interest in the fund that is provided by an outsourced financial adviser at the request of the superannuation trustee.
- In April 2010, the Government announced the extension of intra-fund advice into five new areas. Following feedback from industry, Treasury's current thinking is that the best way to implement this announcement is through the extension of ASIC guidance around how anyone (including superannuation trustees) can provide limited person advice in these areas in a tailored and cost effective manner. This approach could be outlined in the April 2011 announcement with a timeline for the development of this guidance.
 - The extent of the guidance on each of the five new areas will vary depending on the level of complexity around each of those areas.
 - This is similar to the approach taken for the existing intra-fund advice topics.
 - This approach is broadly supported by industry as a means of extending intra-fund advice in a way that promotes a level playing field.

Manager
Corporations and Financial Services Division

Contact Officer:

Ext:

ADDITIONAL INFORMATION

What is intra-fund advice?

Current situation

The initial foundation for intra-fund advice was established through ASIC Class Order relief (CO 09/210) supplemented by ASIC regulatory guidance (RG200). The concept of intra-fund advice does not exist in the Corporations Act or Regulations.

The ASIC Class Order defined intra-fund advice as advice that relates to the member's interest in the fund and does not relate to any other financial product. Under this Class Order, if a superannuation trustee provides this advice, they are exempt from the obligation under the Corporations Act to have a reasonable basis for the advice (s945A). The Class Order does not seek to limit who can provide this advice, but only to make it easier for superannuation trustees to provide it.

The regulatory guidance provided advisers with a details on effective and tailored ways to provide intra-fund advice on specific topics:

- Making additional contributions to superannuation;
- A person's level of insurance coverage in superannuation;
- A person's investment option in superannuation; and
- Accessing superannuation on the grounds of financial hardship.

These specific topics identified in the regulatory guidance do not mean that intra-fund advice can only relate to these four topics. Intra-fund advice can relate to any topic that fits within the definition in the Class Order. However, these four topics are probably the most common intra-fund advice topics.

Over time, superannuation trustees have found that it is more cost-effective to provide financial advice on intra-fund related topics through outsourced financial advice specialists rather than financial advisers employed within the fund. Because the advice is not provided by the superannuation trustee, the exemption in the Class Order no longer applies.

s47C

For

this reason, it has become common industry practice to refer to any advice that is arranged by the superannuation trustee for a member (where internally or outsourced) to be intra-fund advice.

Proposed situation

s47C

s47C

ASIC would also develop guidance around how anyone (including superannuation trustees) can provided topic-specific (or "scaled") personal advice in a cost effective way and still comply with all regulatory requirements. It is envisaged that this would cover the four topics outlined above as

well as the topics identified in the April 2010 FOFA announcement for extending intra-fund advice. Any financial adviser would be able to use this guidance, so this should reduce concerns about any unlevel playing field. We envisage that the upcoming FOFA announcement would outline this process.

However, the Government announced as part of Stronger Super that „intra-fund advice“ would be carved out of some of the key FOFA principles (particularly the opt-in requirements). As part of this, Treasury is working on possible definition for intra-fund advice that could be used in legislation in order to implement the Stronger Super recommendations. s22

Who can provide intra-fund advice?

Current situation

As noted above, any licensed financial adviser can provide intra-fund advice. However, the ASIC Class Order exempts superannuation trustees from some regulatory requirements when they provide this advice.

Proposed situation

s47C

How will it interact with other forms of advice?

Current situation

For regulatory purposes, the main forms of advice are:

- Personal advice: This is advice that takes into consideration a personal financial circumstances or objectives; and
- General advice: This is all other forms of financial advice.

Intra-fund advice can potentially fall into either category of advice. However, the common industry perception is that intra-fund advice is mostly personal advice. The ASIC Class Order exempts superannuation trustees from complying with some of the personal advice regulatory obligations when providing intra-fund advice. These obligations do not apply to general advice.

Proposed situation

Intra-fund advice would continue to be either personal or general advice. However, ASIC regulatory guidance would outline how anyone providing intra-fund advice could meet the personal advice regulatory obligations. As there are minimal regulatory requirements around general advice, guidance is not required in situations where intra-fund advice is general advice.

How does this compare with the Government’s announcement on 26 April 2010?

The Government announcement on 26 April 2010 indicated that:

The existing package which provide for simple advice within a superannuation fund (known as intra-fund advice) will be extended to new topics to facilitate simple, single issue, personal advice in a compliant matter. This includes extensions to, for example, 1) transition to retirement, 2) intra-pension advice, 3) nomination of beneficiaries, 4) superannuation and Centrelink payments and 5) retirement planning.

We are envisaging that the announcement in April 2011 will outline that the Government intends to implement this announcement through the introduction of ASIC regulatory guidance that outlines how a financial adviser (including, but not limited to, superannuation trustees) could provide advice on the topics outlined above in a way that complies with all regulatory requirements. This would be similar to the guidance already in place for the four existing intra-fund advice topics. The announcement would also outline a timeline for the development of this guidance by ASIC.

Sensitivities/issues with the proposed approach

This approach has been discussed at numerous meetings of Peak Consultation Group and is broadly supported.

OTHER ISSUES

Your Office also requested advice on:

- *The distinction between information services and financial advice* s47C
It relates to concerns about what constitutes „general advice“ about a superannuation fund (and is regulated by the Corporations Act) and what constitutes „information“ about a superannuation fund (and is not regulated by the Corporations Act). s47C

This issue is particularly important in the context on the Stronger Super recommendations which places restriction on the extent to which „advice“ can be bundled with a superannuation product. s47C

Concerns over the boundary between „general advice“ and „information“ is not something we envisage addressing through the FOFA reforms. ASIC already has guidance in place on this issue. Further, we consider that the Stronger Super recommendations can be implemented in a way to ensure both information and general advice can continue to be bundled with the superannuation product. As such, this should not be a significant issue.

- *Advisers taking responsibility for the degree to which advice can be scaled* s47C
What they mean is that an advisor shouldn't be able to put the responsibility for limiting the scope of the advice purely on the client. The adviser needs to take responsibility for limiting the scope of the advice. Otherwise, you could have a situation where the client agrees to limit the scope of the advice but they really don't understand what they are doing, whereas we rely on the adviser to judge what level of enquiry is appropriate. s47C