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Ms Karen Chester
Capability Review Panel
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Dear Karen,

CAPABILITY REVIEW OF THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Industry Super Australia (ISA) welcomes the Government's review of the capabilities of the Australian Securities and Investments Commission (ASIC), which implements a recommendation of the Financial System Inquiry (FSI).

Immediate and future priorities and risks including financial system conduct risks

ASIC has published a short statement of priorities which states that the regulator's priorities are:

- Promoting investor and financial consumer trust and confidence,
- Ensuring fair, orderly and transparent markets, and
- Providing efficient and accessible registration.

ASIC has also published its Corporate Plan for 2015/16 to 2018/19.

ISA welcomes this transparency about ASIC's priorities. However, ISA's view is that ASIC's priorities should include a more specific focus on pursuing the long-term interests of end-users in the markets it regulates and the risks which may prevent these markets serving the long-terms interests of end users.

The explicit focus of the Australian Competition and Consumer Commission (ACCC) on pursuing the long-term interests of end users in regulating communications markets is a useful precedent for this.

ISA's view is that the objective of the superannuation system should be, in conjunction with the Age Pension, to deliver an objectively comfortable retirement to all Australians. Consistently with this, in pursuing the long-term interests of members of superannuation funds, ASIC's regulatory role in superannuation should focus on improving the potential retirement income of all Australians.

The ACCC also publishes a Compliance and Enforcement Policy at the beginning of each calendar year which sets out its areas of focus for that year. This information is widely circulated in the markets the ACCC regulates and in particular in the industries that the ACCC selects to focus on each year. For example, for 2015, the ACCC's priorities include:

- truth in advertising, particularly where misleading claims are made by large businesses with the potential to result in significant consumer detriment, or where the conduct is likely to become widespread if the ACCC does not intervene
- competition and consumer issues in the health and medical sectors
- cartel conduct impacting on government procurement

- ensuring compliance with new or amended industry codes of conduct, including the Franchising Code and the proposed Food and Grocery Code
- working with industry to improve product safety through minimising the supply of unsafe goods, by focusing on good practice in the manufacture, sourcing and quality assurance of consumer products
- emerging systemic consumer issues in the online marketplace
- competition and consumer issues in highly concentrated sectors, including issues identified through the ACCC's monitoring of the fuel industry
- in conjunction with other agencies, disruption of scams that rely on building deceptive relationships and which cause severe and widespread consumer or small business detriment
- finalising its role in ensuring that carbon tax cost savings are being passed through to consumers
- consumer protection issues impacting on Indigenous consumers
- consumer protection issues impacting on vulnerable and disadvantaged consumers with a particular focus on older consumers and consumers who are newly arrived in Australia.

ISA's view is that it would be beneficial for ASIC to adopt a similar approach to identifying its priorities at a similarly granular level and publishing this information at the beginning of each year. The process of publicly identifying areas of focus would itself lead to industry reviewing and where necessary, improving its practices in those areas.

Resource prioritisation

Industry funding model

On 28 August 2015, Government released a consultation paper proposing moving to an industry funding model for ASIC. This reflects a recommendation by the Financial System Inquiry (FSI).

ISA is supportive of shifting to a user pays funding model which ensures that the contribution of each sector of the financial services industry is calculated based on the risk each sector poses for investors.

The funding model must also distinguish business models within a sector which give rise to greater risks to investors and consumers and therefore require greater attention from the regulator. In particular, risk assessment must recognise the succession of scandals involving the bank-owned wealth sector, which continues to receive commissions and other forms of conflicted remuneration. The Consultation Paper notes that sending price signals based on a risk assessment would establish clear price signals that would influence the behaviour of regulated activities that create the need for government oversight. An industry funding model would improve transparency and give ASIC an adequate and more predictable level of funding. It is appropriate that the industry sectors that generate the need for regulation pay for the cost of the regulator.

More broadly, ISA strongly supports an adequate level of funding for ASIC. The regulator's remit has increased significantly since it was established. For example, most recently, its responsibilities have been expanded to cover both credit licensees and auditors of self-managed superannuation funds. Each of these populations numbers are in the thousands. The activities ASIC is responsible for regulating are complex and adequate oversight is resource intensive.

Stability of funding is also critical to enable ASIC to take a long term strategic approach to planning and allocating resources. Conversely, the implications of under resourcing are likely to be experienced in 5 – 10 years in the form of further mis-selling scandals involving large consumer losses.

ISA submits that a review of ASIC's funding model cannot be dealt with separately from a review of ASIC's capability.

Superannuation industry

The superannuation industry is the second largest part of the financial sector and is forecast to hold assets that exceed those of Australia's banking system within the next 20 years. Participation in the superannuation industry is mandatory as a result of the Superannuation Guarantee (SG). As a result of this and a range of other factors, there is a high level of consumer disengagement with superannuation, with around 75% of members of superannuation funds belonging to the default superannuation fund chosen by their employer rather than exercising superannuation choice. This profoundly impacts on thinking about the design of effective regulatory frameworks.

The Financial Systems Inquiry acknowledged this. In its Final Report, the Inquiry found that:

> Behavioural biases undermine the assumption that individuals are 'rational'. They limit the efficacy of disclosure as a regulatory tool and can lead to sub-optimal outcomes for consumers.

The Inquiry concluded that:

> Although disclosure remains a valuable tool to improve consumer outcomes, it should not be relied on in isolation.

Understanding of the impact of behavioural biases in consumer decision making necessitates a fundamental shift in the approach to regulating financial services, including the approach of the regulator. While ASIC has identified the role of behavioural biases in consumer decision making, it has not yet led to a fundamental rethink of ASIC's approach.

Members of superannuation funds are exposed to a range of interconnected risks, including risks relating to complex and inadequate consumer-facing disclosure, misleading advertising practices and poor quality financial advice which is driven by the culture of the financial advice industry and the concentration of ownership of financial planning practices by the large banks which also own retail superannuation funds.

ASIC has adopted a risk-based approach to surveillance which is appropriate given its limited resources and the large and diverse regulated population.

ISA's view is that as part of this approach, ASIC should develop a formal program of regular, structured engagement with large licensees, including large superannuation funds. APRA undertakes regular formal engagement with superannuation funds as part of its supervisory program. The experience of Industry Superannuation Funds is that this has resulted in APRA developing a deep understanding of individual funds which has significantly enhanced its understanding of risk at the industry and individual fund level. A similar approach by ASIC would enable it to develop deeper relationships with the superannuation industry.

At present, regulatory oversight of the interconnected risks faced by members of superannuation funds is fragmented across multiple ASIC Commissioners and teams.

ASIC's organisational structure allocates responsibility for regulating different markets and elements of the financial services sector across different stakeholder teams which report to different ASIC Commissioners. Under this structure, regulation of the superannuation industry is split across two areas of ASIC:

- Investment Managers and Superannuation, which reports to Commissioner Greg Tanzer; and
- Financial Advisers, which reports to Deputy Chairman Peter Kell.

Each of these teams also has significant additional responsibilities in addition to its superannuation focus. For example, the Financial Advisers team is responsible for oversight of the retail life insurance industry and financial advice about issues outside superannuation.

ISA's view is that there is merit in considering consolidating ASIC's regulatory oversight of superannuation into a single team with a single Commissioner responsible.

Moneysmart website

ISA welcomes the resources ASIC has allocated to the maintenance and continued development of the consumer-facing Moneysmart website. This is a valuable tool for superannuation fund members and other consumers. In particular, ASIC's suite of interactive tools for superannuation fund members is extremely valuable.

Strategic Policy

ISA also supports ASIC's Strategic Policy unit which develops cross-sector regulatory guidance to assist licencees to understand and comply with their legal and regulatory obligations. For example, ASIC Regulatory Guide 244 *Giving information, general advice and scaled advice* and its predecessor Regulatory Guide 200 *Advice to super fund members* have enabled Industry Superannuation Funds to confidently roll out advice services to members.

The thorough consultation process which led to these Regulatory Guides and the regulator's willingness to produce a suite of worked examples covering different advice topics and types of advice meant that the guidance answered the funds' questions about the regulatory requirements for scaled advice and delivered the assurance the industry needed to invest in advice services. In turn, this has meant that Industry Super Fund members have access to high quality, unconflicted advice.

A recent survey by ISA and AIST found that not-for-profit super funds delivered 130,451 pieces of financial advice to their members during 2013/14. It found that the not-for-profit superannuation sector offered a spectrum of advice services – piece-by-piece advice, intra-fund advice, personalised advice and holistic advice – delivered in a range of ways including online, telephone and face-to-face. The role of such guidance in addressing the advice gap, particularly for consumers who do not fit the profile of a traditional financial planning practice, cannot be underestimated.

External Advisory Panel

ASIC's External Advisory Panel (EAP) is a positive initiative, particularly for ASIC to communicate with industry stakeholders about its initiatives and areas of focus.

Membership of the EAP is large (currently 21 industry members plus many ASIC Commissioners and senior staff) and diverse which necessarily results in a high level focus and limits the scope for two way dialogue at this forum. ISA's view is that ASIC should consider expanding channels for advice from industry about emerging developments and risks. Given the size, compulsory nature, high level of member disengagement and particular risks to end users as a result of these features, ISA believes there is merit in establishing a superannuation industry specific external advisory panel to channel advice to the regulator.

Consumer Advisory Panel

ASIC's Consumer Advisory Panel (CAP) is also a positive initiative, particularly as a source of intelligence about market practices that harm consumers. CAP meets three times a year. ASIC recently established separate CAP sub committees for consumer and investor issues. ISA's view is that there should be a separate CAP subcommittee for superannuation issues, which do not fit readily into either existing subcommittee.

There is scope to expand the role of CAP. For example, the United Kingdom Financial Services Consumer Panel:

- Meets formally twice a month to review policy developments, question Financial Conduct Authority (FCA) staff on their policy developments and develop opinions on proposals for change in the regulation of financial services.
- Reports monthly on its activities and concerns to the FCA Board.
- Publishes responses to consultations and research on its website.
- Issues press releases and makes public statements where it feels it can make a useful contribution to public debate about financial services.
- Commissions its own independent research as appropriate.
- Produces an annual report.

ASIC should consider expanding the role of CAP, formalising the requirement to consult with CAP on all policy proposals and establishing transparency about its activities. ISA acknowledges that this would have significant resourcing implications.

Please contact Ailsa Goodwin on (03) 9923 7172 should you have any questions about this submission.

Yours sincerely

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Deputy Chief Executive