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To: superannuation@treasury.gov.au

Your Future Your Super Regulations

In the October 2020-21 Budget, the government released its package of superannuation reforms, ***Your Future Your Super*** ('YFYS').

Following consultation, Treasury has now released its Exposure Draft Regulations and Explanatory Statement for public consultation.

Rice Warner initially provided commentary on the reforms in its submission of 21 December 2020. This submission makes some further comments as Deloitte, which we joined earlier this month.

Stapling members to a single fund

Our previous comments are still relevant. We remain concerned that the benefits of group employer arrangement currently provided by many large employers will disappear. This could lead to reduced insurance cover and even lower contributions, as many of these employers will revert to a simple SG structure and no longer provide enhanced benefits to their employees.

Empowering Members and measuring underperformance

We note that MySuper funds will now be measured against four different criteria, namely:

- The APRA Heatmap, which measures a number of services, and which will be extended in due course to life insurance and retirement benefits;
- The new APRA Performance measure, which will highlight those funds performing at least 0.5% a year worse than the legislated benchmarks over an 8 year period;
- The ATO consumer website, which will be a simplistic measure looking at investment performance (net of investment and administration fees) over the last 8 years; and
- The fund's own target for members (usually expressed as CPI + X% over 10 years).

While we support different measures as they each bring out interesting trends, we are concerned about using a single measure prescriptively without any discretion nor explanatory supporting statements.

ATO Website

We are concerned that employees seeking a fund for the first time will simply select the leading fund from the ATO list, believing that it is endorsed by government. In fact, the list is based on rigid assumptions and reflects past performance and fee scales. This is ironic given ASIC requires all financial products to include a statement that past performance is no guide to the future performance. Further its Regulatory Guide No 53 encourages all promoters (including superannuation funds) to ***not give disproportionate prominence to past performance in promotions for a product or service.***

We repeat our earlier submission that a few enhancements be made:

- The list be grouped in blocks of five funds to negate the presentation of a fund appearing at the top by a very small margin.
- The period of measurement be changed to show results over both 7 years and 10 years. These are the periods commonly used by the global investment community for long-term measurement. It does not make sense to pick a new period without any evidence to justify it. We note the Productivity Commission (whose advice the government relied upon to select its measure) did not present any rational case for selecting an eight-year period.
- Development and inclusion of appropriate measure(s) of risk.
- Inclusion of the investment target for members (e.g., CPI+ 4% over rolling ten-year periods) for reference alongside the historical absolute performance of the fund.
- The size of assets held in MySuper should be shown as many members would consider a large fund to be safer.

We further note that the ATO website measures past performance and makes no allowance for superannuation funds which have changed their investment processes or fees, such that the historical measures are no longer valid for comparison purposes.

APRA response to underperformance

We note and welcome the technical changes made to measure the relative performance of unlisted infrastructure assets.

Meanwhile, we consider the process for dealing with underperforming funds is too prescriptive and it leaves no room for any discretion by APRA. Given the initial calculations (to be made as at 1 July 2021) will be based on a period of performance pre-dating the legislation, it represents retrospective legislation giving no opportunity for funds to address any problems.

We consider APRA should be given some discretion not to apply 9AB.19 of the Regulations in some circumstances. It should measure the underperformance and then review whether the fund has taken meaningful steps to address any past issues. If they are not satisfied, the process can continue as set out in the Regulations. However, if funds have reformed in some way, APRA can agree a pathway to include new investment processes and costs. We note that members are not disadvantaged by staying in an historically underperforming fund if the (expected) future investment processes and current costs are appropriate.

We consider the form of the letter to be sent to members to be incendiary. For those members who read it, they could be alarmed and seek another fund (perhaps using the ATO website). They will make their decision based on past performance and ignore current investment processes and risks, and other benefits such as life insurance.

Further, many funds will be aware that they cannot reverse their historical underperformance in one year, so they already know that they will be writing to members in 15 months.

We are concerned that some funds will close their MySuper products and create a new product with different characteristics. For example, they could have a single investment option rather than a lifecycle strategy. The fund could SFT members into the new product, using the message that it will provide better future investment performance than the current fund.

The new product would not necessarily be created to enhance the product structure for members, but more to avoid the threat of publicly being named for underperformance. Nonetheless, it will give many funds an opportunity to reset and not be measured against the past legacy performance.

As the new product will not be measured for five years, this could lead to continued underperformance in some cases.

Summary

We support the government's intention to eliminate multiple accounts and underperforming funds.

However, we are concerned that the techniques adopted could have undesirable consequences.

Given the publicised opposition from many industry participants, we consider it prudent to defer implementation until July 2022, and to provide more discretion for APRA in dealing with underperforming funds.

We would be pleased to discuss our letter with Treasury.

Yours faithfully

Deloitte Touche Tohmatsu

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