18 April 2024

Superannuation Efficiency and Performance Unit
Retirement, Advice and Investment Division
The Treasury
By email to: YFYS@treasury.gov.au

Dear Sir/Madam

Annual Superannuation Performance Test – design options

Vanguard Super Pty Ltd and Vanguard Investments Australia Ltd (together, '**Vanguard**') welcome the opportunity to make this submission to the *Annual Superannuation Performance Test – design options* consultation.

About Vanguard

Founded in 1975 and based in Pennsylvania, United States (U.S.), The Vanguard Group Inc. – the parent company of Vanguard Australia – has offices worldwide and is one of the world's largest global investment management companies, managing money on behalf of more than 50 million clients.

The Vanguard Group operates under a unique, investor-owned structure and adheres to a simple purpose: *To take a stand for all investors, to treat them fairly, and to give them the best chance for investment success*.

In Australia, Vanguard has been serving financial advisers, retail clients and institutional investors for over 25 years, with Australia being the longest-established presence outside the U.S. Vanguard is a major provider of low-cost investment management services to all segments of the Australian superannuation industry, as well as to the broader institutional, exchange traded fund and retail wealth management sectors.

In August 2022, Vanguard Super Pty Ltd was granted a license by APRA to operate as a Public Offer Registrable Superannuation Entity licensee and launched the superannuation offering in late 2022.

Principles

Vanguard supports the principles set out in the discussion paper.

We strongly support the principle of improving member outcomes and the importance of ensuring the performance test continues to meet its objective of addressing underperforming investment options and improving the outcomes delivered to members.

We agree that the test must continue to be objective and have clear consequences of failure, and that it should be efficient and timely to administer for both APRA and superannuation funds. We believe the current performance test (Option One) is the only option presented which fully meets this criterion.

The consistency of the test methodology across all superannuation products is also an important factor, especially now that the performance test is highlighted prominently in the YourSuper comparison tool (which has recently been updated by the ATO to sort the results by a product's performance test outcomes first). It is therefore critical to apply a consistent approach to testing all superannuation investment options to allow for comparability and transparency, rather than introducing a wide range of variations to account for all product or asset types.

Noting the ongoing evolution of the superannuation industry and investment markets has the potential for new investment vehicles to be developed along with asset class expansion, we support the performance testing framework including a tri-annual review to determine whether the benchmarks remain appropriate for the available product landscape and in the context of available data. We acknowledge APRA continues to consult on expanding its superannuation data collections and support the ongoing evolution of the performance test as more data becomes available over time.

In addition to the principles outlined in the discussion paper, we submit that a further principle which should be considered in the development of the performance test is simplicity. This includes simplicity in the design of the performance test methodology, simplicity for APRA to administer the test, and simplicity for trustees to be able to explain the test to members and for members to understand how the test operates. This principle would reinforce the argument for the test to maintain its current methodology rather than introduce additional complexity.

Options for Reform

Vanguard has consistently supported[1 2 3] the core foundation of the accumulation performance test, being independent and objective performance benchmarking of investment options, most particularly those operating as MySuper products. We believe that an appropriately constructed performance test is a critical component of strong regulatory oversight and trustee accountability for the investment performance and outcomes delivered to members.

As noted in our submission to the *Your Future Your Super Review*[3], we believe all accumulation investment options should be able to outperform passive benchmarks based on their own stated asset allocation over an appropriate long-term period, subject to a reasonable underperformance threshold.

We do not believe alternative approaches such as risk-adjusted or absolute (e.g. CPI-plus) measures provide a robust or appropriate benchmarking approach. It is our view that a clear and objective 'bright line' approach is the best policy framework for performance testing, and that the passive reference benchmark assessment currently in place appropriately meets this criterion.

As such, **Vanguard supports maintaining the current performance test methodology** (*Option One – Status Quo*) with consideration of minor amendments.

While we acknowledge some stakeholders have raised concerns that the performance test may be constraining investment decisions, our view is that the main component of the test which is likely to influence investment decisions is the consequences of failure, rather than the test methodology itself.

In particular, the risk of closing to new members upon failing the test is likely to be outside most, if not all, trustees' risk appetites. As a result, while mandated product closure remains a consequence of failing the test, all trustees will need to ensure they pass the performance test to mitigate the risk of product closure. This will apply irrespective of the methodology used to test performance.

The following sections provide our detailed views on the options for reform presented in the discussion paper.

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[1] *Submission to the Productivity Commission's Draft Report: Superannuation: Assessing Competitiveness and Efficiency*, Vanguard Investments Australia, July 2018
[2] *Submission to the Your Future Your Super legislative package*, Vanguard Investments Australia, December 2020
[3] *Submission to the Your Future Your Super Review*, Vanguard Investments Australia and Vanguard Super Pty Ltd, October 2022

Option One – Status quo – SAA Benchmark Portfolio

As previously noted, Vanguard has consistently supported the current performance test methodology as the best approach to assess the performance of superannuation investment options.

Measurement of performance against a custom passive reference benchmark comprised of investible benchmarks allows trustees' investment decisions to be appropriately scrutinised against an objective measure to determine the effectiveness of those decisions and the outcomes delivered to members. This includes decisions to invest in alternative or illiquid asset classes, the use of active management strategies, and strategic tilting or dynamic asset allocation strategies.

In our view, such approaches should only be adopted by trustees if they are expected to deliver superior returns to members (net of the additional costs that they invariably entail) when assessed over reasonable time periods compared to a simple, passive execution of the same strategic asset allocation. We believe investment strategies that fail to achieve this goal should be assessed as underperforming.

We acknowledge the current test could be improved through minor amendments, such as:

- **Lookback period** – acknowledging the limitations of available data for MySuper products (which commenced from 1 July 2014), we support extending the test period to 15 years as more data becomes available. To the extent superannuation funds invest for the long term (i.e. 30 to 40 years), a longer period would be more reflective of superannuation funds' investment objectives and would also be more reflective of the actual performance of an investment option.

- **Benchmark indices** – the benchmarks could be expanded to include additional asset classes not yet represented in the performance test. We note APRA has recently expanded its superannuation data reporting to include collection of more granular asset allocation information. Expanding the benchmarks to reflect the greater level of available data would allow trustees to further diversify their portfolios without having to take on additional tracking error to do so.

- **Underperformance threshold** – we believe the current threshold of 50 basis points is appropriate for most investment options. As the performance test is expanded to include options for which there are no appropriate benchmarks, the Government may wish to consider increasing the threshold above its current level to manage unintended consequences. We submit this should only occur in extremely limited cases and would not support a threshold that exceeds 100 basis points.

- **Representative Administration Fees and Expenses** ('**RAFE**') – we support increasing the representative member balance to better reflect the average accumulation member balance. We believe it is important to maintain a consistent representative balance for both MySuper and choice investment options, and suggest a weighted-average of $85,000 would be appropriate. This is discussed in detail later in this submission.

- **Consequences of failure** – we support maintaining the consequences of failure for MySuper products. However, given the differing nature of choice members, choice investment options, and the way those options are used in member portfolios, we submit that mandating product closure upon failing the test is not appropriate for choice investment options. This is discussed in detail later in this submission.

Option Two - Alternative single-metric test – Risk-adjusted returns

As previously noted, we support the continuation of the current performance test as the most appropriate methodology against which to measure investment performance. Our views on the alternative single-metric tests outlined in the paper are outlined below.

Sharpe ratio

We strongly believe that the Sharpe ratio is not an appropriate measure of investment performance and will lead to more unintended consequences than the current performance test methodology.

Given its nature, which is inherently volatile and unstable, the use of a Sharpe ratio may result in periods where the entire industry fails the performance test and is likely to lead to both false positives and false negatives. It also does not address concerns that the test is an implementation test which could result in a good strategy underperforming the test or a poor strategy outperforming.

A product with a high Sharpe ratio may still be a low-returning product that does not provide good outcomes to members. Accordingly, using the Sharpe ratio would reduce the effectiveness and accuracy of the test from the perspective of measuring the member outcomes achieved as a result of trustee investment decisions.

In addition, strategies with a higher Sharpe ratio may have achieved that result through holding a lower proportion of 'growth' assets. Given growth assets are expected to outperform over longer time periods and lead to better member outcomes in the long term, employing a Sharpe ratio for the test could have a counter-productive effect by encouraging trustees to adopt investment strategies that may not provide the best member outcomes in order to pass the performance test.

We further note that APRA has raised concerns about the valuation frequency of unlisted assets and is actively encouraging trustees to value assets more frequently[4]. These efforts, which Vanguard strongly supports, may be undermined by using a Sharpe ratio for the performance test, as trustees would be incentivised to value their assets less frequently to reduce their calculated volatility.

Peer comparison of risk-adjusted returns – Return vs Growth Asset Ratio

The measurement of investment performance relative to peers was frequently employed by the industry prior to the introduction of the performance test. However, such an approach does not provide an objective measure of investment performance or the outcomes delivered to members and may result in a reduction in the accuracy of the test.

In circumstances where the peer universe is underperforming against an objective measure, some investment options will pass a peer-relative performance test over periods in which they may not have met an objective test. Conversely, if the peer universe is outperforming against an objective measure, some well-performing options (on an objective basis) will be deemed to have failed the test despite providing good outcomes to members. This may result in inaccurate performance test outcomes.

The discussion paper notes that stakeholders have raised concerns that the current performance test has led to "benchmark hugging" whereby trustees have developed investment strategies designed to replicate the benchmarks. The paper suggests that stakeholders have noted this creates a disincentive to invest in assets not well-represented in the benchmarks, leading to reduced diversification across the industry.

We suggest that using a peer comparison will have a similar impact, only rather than developing strategies to align with the performance test benchmarks, a peer comparison is likely to encourage trustees to develop strategies which resemble those of their peers. We submit that this is likely to have a greater impact on diversification across the industry than the current performance test.

As noted in the discussion paper, to undertake a peer comparison of risk-adjusted returns against an option's exposure to growth assets requires a clear and objective classification of 'growth' and 'defensive' asset classes. This has long been a contentious issue and there has been little agreement amongst the industry as to the line between asset classes. As such, we submit it will be challenging to determine an appropriate classification given the subjectivity of the attributes of some asset classes.

[4] *Speech to the AFR Super & Wealth Summit*, APRA Deputy Chair Margaret Cole – 1 February 2024

Risk-adjusted returns relative to a simple-reference portfolio (SRP) frontier

In addition to the drawbacks noted in the discussion paper, we submit that measuring volatility based on monthly or quarterly price movement misrepresents the true volatility of infrequently valued and priced assets and is likely to encourage trustees to value unlisted assets less frequently to reduce their measured volatility. In order to ensure equity and alignment, the valuation frequency of all assets within an illiquid portfolio would need to align with the rolling time-horizon used to calculate volatility.

To align with practices whereby each individual asset is revalued annually, the impact of infrequent asset valuations could be corrected by calculating volatility using rolling annual returns. However, this would result in a substantially reduced data set over the measurement period and fewer data points against which to assess performance, which will reduce the statistical significance of the test and lead to higher incidences of inaccurate results than the current performance test methodology.

Furthermore, employing a simple-reference portfolio could exacerbate issues with 'benchmark hugging' that have been identified as a concern in the discussion paper. The use of a simple-reference portfolio would not only lead to trustees seeking to align with the benchmarks utilised in the test but may also affect trustees' decisions relating to the strategic asset allocations of their portfolio. This may lead to reduced diversification in portfolios and increased risk to member outcomes as a result.

Option Three – Multi-metric test

While we acknowledge that a multi-metric test could provide a more well-rounded and comprehensive picture of a product's performance, we submit that introducing this additional complexity moves away from the test's initial objective of assessing the investment performance resulting from a trustee's decisions and the resulting outcomes provided to members as compared with a simple passive execution of the same strategy.

A multi-metric test would be more complex for APRA to implement and substantially more difficult for consumers to understand. This would affect consumers' capacity to compare products or understand performance test results.

At a minimum, we believe a complex multi-metric test would be inappropriate for MySuper products given their relative simplicity and consistency in design, which is mandated by law[5].

However, notwithstanding our concerns that a multi-metric test would be overly-complex and difficult to implement or understand, it may be appropriate to consider a multi-

[5] *Superannuation Industry (Supervision) Act 1993*, Part 2C

metric approach for some choice investment options where there are challenges testing their investment strategy. For example, this may be appropriate for ESG investment options given the lack of an appropriate benchmark index against which to test their performance.

In such circumstances, it may be appropriate to consider a multi-metric test to address the significant tracking error which would apply with other methodologies. If a multi-metric test were adopted, Vanguard's view is that the most appropriate approach would comprise a combination of the current performance test with a risk-adjusted measure such as a trendline test (using Return vs Growth Asset Ratio, which would come with the associated challenges noted earlier in this submission). This could provide some latitude where substantial tracking error exists or where market conditions create systemic underperformance across a broad range of funds.

Broader considerations for reform

Scope of the test

Vanguard has consistently advocated for all accumulation investment options to be subject to an independent performance assessment. We believe that any well-constructed investment option should be able to meet an appropriately designed performance test over the long term.

Notwithstanding our broad support for performance testing of all accumulation options and our support of the consequences of failing the test for MySuper products, we believe that the consequences of the choice performance test should not include mandating products which fail the test to close to new members. This is discussed in detail later in this submission.

We have provided our comments below in respect of performance testing of specific products which require further consideration.

Externally-managed and single sector products

Vanguard supports extending the performance test to externally-managed and single sector investment options.

While APRA's *Superannuation Prudential Standard SPS 530 Investment Governance* ('**SPS 530**') includes a requirement for trustees to undertake their own assessment of performance outcomes against trustee-determined benchmarks and objectives, we support the extension of the performance test to these product types to support an objective assessment of performance.

However, we do not believe mandating product closure is an appropriate consequence of failing the test for these product types, especially for externally-managed options given the requirements of SPS 530 require trustees to act upon underperformance, which generally results in external managers being removed from the investment menu in the event of persistent underperformance.

Products without appropriate benchmarks

We acknowledge there are some product types for which appropriate benchmarks do not exist. As a result, these products will incur significant tracking error against the performance test which may lead to products which are delivering objectively good performance to members underperforming the test due to misalignment with their designated benchmarks.

In some cases, such as Environmental Social and Governance (ESG) investment options or faith-based products, members may also choose to invest in these products due to reasons not limited purely to investment performance.

While we reiterate our support for performance testing of all accumulation investment options, we suggest that further targeted consultation should be undertaken to determine the appropriate approach to address products for which there are not appropriate benchmarks.

Retirement products

At the outset, we stress the importance of fully implementing any changes to the accumulation performance test prior to considering whether to extend the performance test to retirement products and the appropriate test methodology for retirement. This includes allowing sufficient time following implementation to determine whether the updated accumulation performance test results in any further unintended consequences or impacts to member outcomes.

On retirement performance testing more broadly, Vanguard agrees with the assertion in Treasury's recent *Superannuation in Retirement* discussion paper[6] that any performance test for retirement products should not constrain innovation in product design.

Applying performance testing to retirement products requires careful assessment of the unique challenges present in the retirement phase (including consideration of liquidity and longevity risks).

[6] *Superannuation In Retirement discussion paper, Treasury, December 2023, p19*

In accumulation, a simple performance test provides a good assessment of whether an accumulation product has met its primary objective of saving for retirement. This holds especially true for default MySuper products where members do not make an active choice to join the product and which therefore require greater scrutiny and oversight.

However, the retirement phase has more complex objectives and challenges, a significant diversity in member circumstances and needs, and a diverse landscape of solutions delivered by superannuation funds to meet the needs of members in retirement.

The Retirement Income Covenant ('**the Covenant**') requires trustees to have a strategy to assist their members to achieve and balance three prescribed objectives - *maximising their expected retirement income, managing expected risks to the sustainability and stability of their expected retirement income, and having flexible access to expected funds during retirement*[7].

Under the Covenant, trustees must consider their members' circumstances and are afforded flexibility to determine how they will assist their members based on the specific needs of their membership. This includes determining the appropriate balance of the three objectives in their strategy, recognising some cohorts may require greater focus on managing risks or flexible access to their savings over maximising the income provided in retirement. We understand this was a deliberate policy decision to allow trustees to align their retirement strategy to the specific needs of their members[8].

The Covenant also requires trustees to conduct a self-assessment of how they have met and balanced the three prescribed objectives as part of their annual outcomes assessment. This includes assessment of investment performance, but crucially not in isolation from the other two prescribed objectives. We submit that these trustee self-assessments (which are already subject to APRA oversight through its supervision of the industry) provide reasonable comfort that trustees are required to deliver well-performing and well-constructed products.

To the extent there is a policy imperative to develop a retirement performance testing regime, we submit this should comprise multiple tests (the results of which are not combined) to test the various components of a retirement product. This could include:

- an investment performance test
- an assessment of the cost and funding of longevity products to ensure they are priced reasonably and appropriately backed, and
- an assessment of the total fees charged for the product.

[7] *Superannuation Industry (Supervision) Act 1993*, s52(8A) & s52AA
[8] *Retirement Income Covenant Position Paper*, Treasury, July 2021, p.4 & p.7

Furthermore, we stress that the consequences of failure which apply to the accumulation performance test are not appropriate for retirement income products and would likely lead to constrained innovation in retirement products. We also note there may be increased challenges associated with commuting or rolling over longevity products which fail the test.

As such, we recommend that the failure of any one component of the test should not lead to a retirement product being required to close. Rather, we support the continued oversight of APRA through its supervision process to improve outcomes in retirement products (or their components) which are identified as underperforming.

Fees

Testing period

Vanguard supports the current approach to including fees in the performance test, whereby the recent financial year's fees are included in Representative Administration Fees and Expenses.

As noted in the discussion paper, this approach has resulted in reductions to the level of fees since the inception of the performance test. Not only has this improved competition across the industry, the ongoing downward pressure on fees from the performance test is also likely to improve the outcomes provided to members.

We submit that the use of historical fees may create a perverse effect whereby funds could elect to increase their fees (thereby worsening member outcomes), with the increase being smoothed out by previously lower fee levels. In such a circumstance, a fund could increase their fees without their higher level being fully considered in the performance test.

We do not believe this would be in members' best financial interests and hence do not support using historical fees in the performance test.

Level of assessment

While we acknowledge the concerns raised through the Your Future Your Super Review about the level at which fees are assessed for platform products, Vanguard supports maintaining the fee calculation at the investment option level for MySuper and non-platform products.

We support further consideration of the appropriate approach for platforms and consultation with platform providers to ensure the calculation of representative administration fees and expenses is accurate for those products.

Representative member balance

The representative member balance of $50,000 employed in the assessment of fees was broadly appropriate at the time the performance test was introduced.

However, APRA's quarterly Superannuation Industry Publication for December 2023[9] notes that the average MySuper balance as at 31 December 2023 was approximately $65,000 and the average choice accumulation balance was approximately $118,000.

Accordingly, we support increasing the representative member balance for the performance test to be more reflective of the average member account balance.

However, we generally believe the same balance figure should be used for both the MySuper and choice performance test to allow for transparency and not over-complicate the test. We believe a consistent approach between MySuper and choice performance tests is important, acknowledging some MySuper members hold a portion of their balance in choice investment options and vice versa.

Based on the current asset weightings between MySuper and choice accumulation investment options, this would suggest a representative member balance of $85,000 would be appropriate (based on a weighted average of MySuper and choice accumulation average member balances as at 31 December 2023).

Acknowledging the principle that the performance test should be enduring for future years, we support the representative member balance being included in the scope of a tri-annual review of the performance test to ensure the balance used in the test remains representative of member account balances.

YourSuper comparison tool

We acknowledge that the YourSuper comparison tool is not explicitly in scope for the *Annual Performance Test – design options* consultation.

However, the ATO has recently updated the YourSuper comparison tool such that the default sorting order is now first sorted by the most recent performance test results, then by investment performance, followed by fees. This tool was previously sorted by fees, which are the sole forward-looking measure available for consumers to compare products.

[9] *Quarterly Superannuation Industry publication* December 2023, APRA, 12 April 2024

As noted in the *Your Future Your Super Review* consultation paper[10], one of the key objectives of the comparison tool is to encourage funds to compete by lowering fees and increasing returns for members.

ASIC has long held a position[11] that funds which elect to publish information about past performance should include a disclaimer to the effect that "past performance is not a reliable predictor of future performance" to prevent misleading consumers. Notwithstanding that ASIC's guidance relates to fund publications, the position remains that future returns cannot be reliably used by consumers to predict future returns when considering whether to invest in a superannuation product.

Given the YourSuper comparison tool is intended to be used by consumers to compare superannuation products and may lead to consumers selecting a new product, we encourage the Government to consider returning the default sorting of the YourSuper comparison tool to sort by fees in the first instance. We submit that the updated approach of sorting by the performance test and investment performance may risk misleading consumers about the future returns they could achieve.

We also note that sorting by fees further encourages trustees to reduce their fees to improve their position on the table, thereby delivering on the stated policy objective to encourage funds to compete by lowering fees. This would also increase the transparency of fees across the superannuation industry, noting there is currently no other objective source of truth for consumers to compare fees across the industry on a consistent basis.

Consequences

We consider the consequences of failing the performance test to comprise three components – the publication of results by APRA, written notification to members in the product encouraging them to move to a different product, and restriction to new membership upon two consecutive years of failure.

We believe these consequences are generally appropriate for MySuper products which fail the performance test in the context of their status as default superannuation products for members who do not select a fund. This includes the largely homogenous structure of MySuper products (which is mandated by law[12]), the nature of MySuper members and their lower levels of engagement with their superannuation, and the ways MySuper products are used (often as the sole investment option in an individual's account).

[10] *Your Future Your Super Review* consultation paper, Treasury, 7 September 2022, p.9
[11] *ASIC Regulatory Guide RG 53 The use of past performance in promotional material*
[12] *Superannuation Industry (Supervision) Act 1993*, Part 2C

Given these factors, which often do not include members making an active choice in respect of their superannuation, we support the current consequences of failing the MySuper performance test as important member protection measures for disengaged members. We believe it is appropriate for underperformance to be directly communicated to affected members and, given the disengaged nature of MySuper members and the default status of MySuper products, we support persistently underperforming MySuper products being closed to new members.

However, the significant consequences of the existing performance test are not necessarily appropriate for all types of products. We believe the consequences should be considered in the context of the type of product being tested, the nature of its membership, and the way it is used by members.

We note that choice members are inherently more engaged with their superannuation than default MySuper members, as members cannot enter into a choice investment option without having made an active choice to select a product outside the default.

Furthermore, while MySuper products are often the only investment option applicable to a member's superannuation account, choice options are generally used by members as building blocks of a broader diversified portfolio. This could include the use of multiple single sector options, multi-sector options, deliberate splitting of holdings across two or more superannuation funds, or a combination thereof.

As noted in our submission to the Your Future Your Super Review[13], a range of other regulatory measures are available to address underperformance, including:

- APRA *Superannuation Prudential Standard 530 Investment Governance* (**SPS 530**) which includes requirements for trustees to formulate specific and measurable investment objectives for each option (including return and risk objectives), have in place an effective due diligence process for investment selection, monitor and assess the performance of investments on an ongoing basis, and review the investment objectives and investment strategies on a periodic basis.[14]
- The design and distribution obligations in the Corporations Act (which do not apply to MySuper) require trustees to make determinations to ensure their products are designed for and only distributed to members who meet specific characteristics, as set out in each product's target market determination.[15]

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[13] *Submission to the Your Future Your Super Review*, Vanguard Investments Australia and Vanguard Super Pty Ltd, October 2022
[14] *SPS 530*, Objectives and key requirements, p.1
[15] *Corporations Act 2003*, Part 7.8A & ASIC *RG 274 Product design and distribution obligations*

- ASIC's product intervention powers enable it to make a product intervention order when a product has resulted in, or is likely to result in, significant consumer detriment. This is available without a demonstrated or suspected breach of the law, allowing ASIC to take action before significant detriment is caused to consumers.[16]
- APRA *Superannuation Prudential Standard SPS 515 Strategic Planning and Member Outcomes* (**SPS 515**) requires trustees to undertake an annual outcomes assessment which determines whether the financial interests of members are being promoted by the trustee.
- As further required by superannuation law[17] trustees are also required to undertake product comparisons and benchmarking. This includes comparisons of net investment performance, investment risk, fees and costs, and other metrics, all of which must be considered in both absolute and relative terms.

These regulatory levers were either not in place[18] or have been substantially modified[19] since the Productivity Commission's review and recommendations.

The existence of these regulatory frameworks does not decrease our support for an independent performance test to be conducted for all accumulation superannuation investment options. However, we submit these factors are important to consider when determining the appropriate consequences of failure in the context of existing regulatory levers available to address underperformance.

Hierarchy of consequences

Given the different nature of choice investment options, their members, and the regulatory framework which applies to choice products, we believe the performance test for choice investment options should be appropriately constructed and its consequences of failure should be appropriate for the products and how they are used by members.

Vanguard supports accountability and transparency and believes the test results should be published by APRA regardless of the product type. We note a similarly transparent approach already exists for the APRA Heatmaps, which are published annually and provide an objective and independent assessment of performance, fees and costs, and the sustainability of member outcomes. We also support mandating that trustees notify members in products which have failed the test.

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[16] *Corporations Act 2003*, Part 7.9A & ASIC *RG 272 Product intervention power*
[17] *Superannuation Industry (Supervision) Act 1993*, s52(9)
[18] *SPS 515, Design & Distribution Obligations, Product Intervention Powers*
[19] *SPS 530*

Unlike for MySuper products (which receive contributions on behalf of members who have not made an active choice), **we do not believe *prima facie* that the failure of the performance test by a choice investment option should result in the mandated closure of the option to new membership**. Rather, it may be appropriate for trustees to be required to justify to APRA why the continuation of an option which failed the test is in members' best financial interests.

In this context, we note that APRA's recent revisions to SPS 515 include requiring trustees to include performance test outcomes in their annual outcomes assessments. Further amendments could also be made to SPS 530 to ensure that additional investment governance practices, and further trustee and regulatory oversight apply to products which fail the test. We believe these mechanisms provide appropriate and sufficient member protections whilst still acknowledging member choice and the nature of choice investment options.