EXPLANATORY MEMORANDUM (EXPOSURE DRAFT)

Superannuation Legislation Amendment Regulation 2013 No.

Issued by the authority of the Minister for Financial Services and Superannuation

Subject - *Corporations Act 2001*
Superannuation Guarantee (Administration) Act 1992
Superannuation Industry (Supervision) Act 1993
First Home Saver Accounts Act 2008
Superannuation Legislation Amendment Regulation 2013 (No.)

Subsection 1364(1) of the *Corporations Act 2001* (the Corporations Act) provides, in part, that the Governor-General may make regulations prescribing all matters required or permitted by the Corporations Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Corporations Act. The *Corporations Regulations 2001* (the Corporations Regulations) are made under section 1364 of the Corporations Act.

Section 80 of the *Superannuation Guarantee (Administration) Act 1992* (the SGA Act) provides, in part, that the Governor-General may make regulations prescribing all matters required or permitted by the SGA Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the SGA Act. The *Superannuation Guarantee (Administration) Regulations 1993* (the SGA Regulations) are made under section 80 of the SGA Act.

Subsection 353(1) of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the SIS Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the SIS Act. The *Superannuation Industry (Supervision) Regulations 1994* (the SIS Regulations) are made under section 353 of the SIS Act.

Section 131 of the *First Home Saver Accounts Act 2008* (FHSA Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the FHSA Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the FHSA Act. The *First Home Saver Accounts Regulations 2008* (FHSA Regulations) are made under section 131 of the FHSA Act.

On 16 December 2010, the Government announced the Stronger Super package of reforms in response to the recommendations of the Super System Review final report. Following extensive consultation, on 21 September 2011 the Government announced its decisions on key design aspects of the Stronger Super reforms.

The purpose of proposed Superannuation Legislation Amendment Regulation 2013 (No.) (the Regulation) is to implement the remaining MySuper and governance measures announced by the Government as part of the Stronger Super reforms. The aspects of the Stronger Super reforms relating to governance and MySuper have been divided into four tranches of legislation. Three of these tranches have received Royal Asset. These are:

- the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012* (MySuper Core Provisions Act);

- the *Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012* (Trustee Obligations and Prudential Standards Act); and

- the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012* (Further MySuper and Transparency Act).

The final tranche of legislation – the Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Bill 2012 – is currently before Parliament.

The proposed Regulation gives effect to changes arising from all four tranches of legislation implementing the MySuper and governance reforms.

The proposed Regulation:

- makes changes to improve transparency including by:
  - prescribing the way in which information in the product dashboard is to be worked out and presented;
  - prescribing how fees for superannuation products are to be disclosed in product disclosure statements;
  - prescribing the portfolio holdings information that will be publicly available on an registrable superannuation entity (RSE) licensee's website;
  - specifying the types of documents and information that trustees will need to publish on their websites (including information on trustee and executive officer remuneration);
  - requiring RSE licensees to include the latest product dashboard in the members periodic statement; and
  - requiring trustees to inform members that they can request written reasons for decisions made (and in cases where no decision has been made) in relation to non-death benefit complaints.
- requires dual regulated entities to inform the Australian Securities and Investments Commission (ASIC) of events that may lead to material adverse changes in their financial position;
- prescribes factors that may be used for a lifecycle investment strategy;
- permits the governing rules of a superannuation fund to limit contributions that are transfers from a foreign superannuation fund;
- clarifies the circumstances in which a person is a defined benefit member to ensure they are excluded from certain MySuper requirements, and gives priority to accumulation interests (of both members and other beneficiaries)

over defined benefit interests in the event of a winding-up of a technically insolvent defined benefit fund;

- makes various technical and consequential amendments such as: requiring RSE licensees to provide the Australian Prudential Regulation Authority (APRA) with early disclosure of successor fund transfers and other information; applying relevant provisions to persons involved in the management of an RSE licensee that is also a First Home Saver Accounts provider; and to update references in the regulations; and

- repeals and/or amends existing regulations relating to subject matter that will be dealt with in APRA prudential standards and to update the definition of an eligible rollover fund.

Details of the proposed Regulation are set out in Attachment A.

The proposed Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Schedule 1 of the proposed Regulation commences on 1 July 2013 and Schedule 2 commences on 1 July 2015.

Authority:

Subsection 1364(1) of the *Corporations Act 2001*

Section 80 of the *Superannuation Guarantee (Administration) Act 1992*

Subsection 353(1) of the *Superannuation Industry (Supervision) Act 1993*

Section 131 of the *First Home Saver Accounts Act 2008*

ATTACHMENT A

Details of the proposed *Superannuation Legislation Amendment Regulation 2013 (No.)*

Section 1 – Name of Regulation

This section provides that the title of the proposed Regulation is the *Superannuation Legislation Amendment Regulation 2013 (No.).*

Section 2 – Commencement

This section provides for sections 1 to 3 of the proposed Regulation to commence the day after it is registered. It also provides that Schedules 1, 3, 4 and 5 of the proposed Regulation are to commence on 1 July 2013, with Schedule 2 to commence on 1 July 2015.

Section 3 – Authority

This section provides that the proposed Regulation is made under the *Corporations Act 2001* (the Corporations Act), the *First Home Saver Accounts Act 2008* (the FHSA Act), the *Superannuation Guarantee (Administration) Act 1992* (the SGA Act), and the *Superannuation Industry (Supervision) Act 1993* (the SIS Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Proposed Schedule 1

Items 1 and 3 Product dashboard requirements

Way information is to be set out in a product dashboard

The *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012* (Further MySuper and Transparency Measures Act) will insert new subsections 1017BA(1) and (2) into the Corporations Act. These subsections require trustees of an RSE to make a product dashboard publicly available, and to present certain information in that product dashboard. A product dashboard is to be presented in a table format setting out key information on a superannuation product. The product dashboard is designed to increase transparency and allow comparisons between superannuation products.

The Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Bill 2012 (Service Providers and Other Governance Measures Bill) will amend subsections 1017BA(1) and (2) of the Corporations Act to change the requirements for information that must be set out in a product dashboard.

As amended, subsection 1017BA(1) will provide for the proposed Regulation to set out the way the product dashboard is to be presented, and subsection 1017BA(2) will require the product dashboard for a MySuper product to display:

- a return target or targets for the product;
- a return or returns for the product;
- a comparison or comparisons between these;
- a level of investment risk that applies to the product; and
- a statement of fees and other costs in relation to the product.

Subsection 1017BA (2) states that all of these measures are to be worked out in accordance with the regulations and in accordance with the period or periods prescribed in the proposed Regulation. The legislation also requires the product dashboard to set out any other prescribed information.

The legislation requires the trustee of RSEs to publish a product dashboard for each of their MySuper products, including MySuper lifecycle products, from 1 July 2013. These requirements will only apply to an RSE that offers a MySuper product.

Regulations prescribing a product dashboard for a choice investment option will not take effect until 1 July 2014 and will be further developed in consultation with industry before being released.

Proposed regulation 7.9.07N of the *Corporations Regulations 2001* (Corporations Regulations) will require the specified information to be set out in a table which presents the target net return, the net return performance, the level of investment risk that applies to the product and a statement of fees and other costs. The completed table will form the product dashboard.

The proposed Regulation sets out the general parameters relating to the specified information to be included in the product dashboard. Further detail will be set out in the Australian Prudential Regulation Authority's (APRA's) Reporting Standard (SRS 700.0 Product Dashboard) made under section 13 of the *Financial Sector (Collection of Data) Act 2001*. The Further MySuper and Transparency Measures Act inserts section 29QC into the SIS Act, which will require RSE licensees to provide consistent information that is calculated in a way prescribed by APRA's Reporting Standards. However, for clarity, the key regulations will specifically refer to SRS 700.0 in relation to particular items in the product dashboard.

Under the proposed Regulation and SRS 700.0 Product Dashboard:

- The return target for the product will be presented as a net return target which will be a per annum estimate of the expected return for the product after investment and administration fees, costs and taxes, excluding activity and insurance fees and costs, in excess of the Australian Bureau of Statistics published Consumer Price Index (CPI) over ten years (proposed regulation 7.9.07P).

- The return or returns for the product will be presented as a net return performance, which will be a graphical representation in a chart of the annual net return for each year of the last ten years (proposed regulation 7.9.07S). This chart will also show a line plotting the 10 year moving average return that was achieved, and a line plotting the realised value of the 10 year moving average return target using realised CPI for the relevant years.
  - If the product has not been in existence for 10 years then the graph showing the historical performance (that is annual net returns, the moving average return, and the realised value of the moving average return target) will cover the period that the product, together with any predecessor (rebadged) product, has been in existence, up to a cumulative period of ten years.

    : A predecessor product is a default investment option that was rebadged as a MySuper product, if the attribution or transfer of any accrued default amount held in the default investment option to the MySuper product did not result in a circumstance mentioned in sub-regulation 9.46(2) of the *Superannuation Industry (Supervision) Regulations 1994* (the SIS Regulations).

- The level of investment risk is a measure of the number of negative returns that is expected out of every 20 years for the fund, and is to be calculated consistent with SRS 700.0 which in turn will initially apply the method provided in the *Standard Risk Measure Guidance Paper for Trustees* published by the Association of Superannuation Funds of Australia and the Financial Services Council on 1 July 2011 (proposed regulation 7.9.07Q).
- The statement of fees and costs is the annual investment and administration fees, costs and taxes reported as whole dollars, excluding activity and insurance fees and costs, for a representative member (proposed regulation 7.9.07R).
  - for the purposes of the statement of fees and costs, a representative member is a member with a $50,000 balance and with contributions of $5,000 per year (proposed sub regulation 7.9.07R(2)).

A MySuper product offered by a fund in accordance with a lifecycle exemption under subsection 29TC(2) of the SIS Act (a lifecycle product) will be required to apply these requirements to each age-based subclass of members within the lifecycle product. Thus if the entitlements of an age-based subclass of members in the product are referrable to a particular class of assets then the regulations provide for the product dashboard requirements to apply as if that subclass were a MySuper product in its own right. This is because the net investment returns, the net returns target, asset-related risks and (to the extent permitted by the SIS Act) fees and costs, have the potential to vary between those subclasses (proposed regulation 7.9.07T).

If the period relating to the age-based subclass is less than 10 years then the representation of returns is to cover that period – for example if the subclass relates to members aged from 45 to 50 then the period would be five years (proposed sub regulation 7.9.07T(3)).

The legislation prescribes that the information set out in the product dashboard must be updated within 14 days of any change to the information (paragraph 1017BA(1)(d)

of the Corporations Act). The regulation will prescribe that information on the average amount of fees and costs of a MySuper product must be updated within 14 days after the end of each financial year (sub regulation 7.9.07R(3)).

Product dashboard to be included in a periodic statement

Currently, trustees of superannuation entities are required to provide periodic statements under subsections 1017DA(1) and (2) of the Corporations Act and subdivisions 5.5 and 5.6 of the Corporations Regulations. The Corporations Act in conjunction with the Corporations Regulations list information that must be included in a periodic statement.

The Further MySuper and Transparency Measures Act will insert new section 1017BA into the Corporations Act with effect from 1 July 2013. This section introduces a requirement for trustees to publish product dashboards on their fund's websites.

The proposed Regulation amends regulation 7.9.20 of the Corporations Regulations to require the latest product dashboard for the investment options that the member is invested in to be published in the periodic statement (item 3).If a member is fully invested in a MySuper product, their periodic statement would include the product dashboard that was most recently published on the fund's website. Whereas if a member several investment options, the periodic statement will include the product dashboard for each investment option that has assets that are attributable to the member.

Items 1 and 2 Portfolio holdings requirements

Obligation to make information relating to investment of assets publicly available

The Further MySuper and Transparency Measures Act will insert new sub sections 1017BB(1) and (3) in the Corporations Act which require the trustee of an RSE to publish information regarding the RSE's portfolio holdings on a part of the RSE's website that is accessible to the public at all times. The legislation requires that the information must be set out in a table in accordance with the regulations and that this information must be sufficient to identify each financial product or other property, and the value of the RSE's investment in each financial product or other property.

The trustee must publish portfolio holdings within 90 days of each reporting day. The reporting day will occur once every six months on 30 June and 31 December, and. Portfolio holdings will have to be disclosed by RSE licensees from 1 July 2014.

To ensure the information on portfolio holdings is useful to members, it should be published separately to the financial products or other property in which the assets of the RSE licensee is invested. The specified information must be organised in two tables. The table format will comprise four columns – the name of the financial product or other property, the number of units held (if applicable), the price of the unit as at the reporting day (if applicable) and the total value invested in Australian dollars as at the reporting day.

The first table will cover all financial products and other property except those financial products that have invested the assets, or assets derived from assets, of the RSE licensee in another financial product or other property. The information is to be

presented at the investment option level and the disclosure of financial products and other property must be organised by the investment option or MySuper product to which it is attributable, or the amount of the investment that is attributable to the investment option or MySuper product.

Where an investment in a financial product is then invested in another financial product or in other property that is required to be made publicly available on the fund's website, the details of that financial product and the amount invested should be disclosed in a second table using the same format as above. This table should show the tiers of investment where assets are invested through several financial products before being invested in a final financial product or other property.

In some cases, the financial product invested in by an RSE licensee will be a managed investment scheme, pooled superannuation trust, unit trust or other pooled investment scheme that then invests the assets derived from the RSE licensee in further financial products or other property. The intent of section 1017BB of the Corporations Act (to be inserted by the Further MySuper and Transparency Measures Act with effect from 1 July 2013), is that this information be disclosed, however, to ensure that the published information on a fund's website is useful for members, a trustee should publish this information separately to the final financial products or other property in which the assets of the RSE licensee is invested (that is, the share).

In some cases a managed investment scheme may be the final financial product that is invested in for which the RSE licensee has information. For example, an RSE licensee may invest through a managed investment scheme offshore. In this case, this information (including the amount invested) should be disclosed as the final financial product invested in within the first table.

A person who invests assets derived from an RSE under a contract or arrangement will be required to notify any person with whom they are investing those assets that they will be required to provide the relevant information regarding the financial product to the RSE licensee so that the RSE licensee can satisfy its obligation to publish portfolio holdings.

Any person so notified must provide information to the RSE sufficient to identify each financial product in which assets derived from the RSE are invested, and the value invested, so the RSE licensee is able to comply with its obligation to publish portfolio holdings.

In addition, the Australian Securities and Investments Commission (ASIC) is given the power to determine how the value of an asset of an RSE and assets derived from an asset of the entity is to be calculated and described.

<u>Arrangements to which obligation to give notice and provide information relating to investment of assets do not apply</u>

The proposed regulation 7.9.16H of the Corporations Regulations provides an exemption from providing a notice under portfolio holdings provisions for the purchase, from a broker, of shares that are traded on a licensed exchange.

Section 1017BC of the Corporations Act (inserted by the Further MySuper and Transparency Measures Act with effect from 1 July 2013) will require that where a person (the first party) enters into an arrangement with another person (the second

party) to acquire a financial product, and the asset that is subject to the arrangement is an asset, or derived from the assets, of an RSE licensee then the first party will be required to give the second party a notice that the second party must provide the RSE licensee with information that will enable it to meet its obligations to publish portfolio holdings.

However, there are certain circumstances where the first party will already be providing this information to the RSE licensee and meeting this requirement would simply add to costs for the first party to provide a notice to a second party. For this reason, those arrangements for the purchase, from a broker, of shares that are traded on a licensed exchange are exempted from the requirement that the purchaser would have to provide the broker with a notice under new sections 1017BC, 1017BD and 1017BE of the Corporations Act (inserted by the Further MySuper and Transparency Measures Act, with effect from 1 July 2013).

In these cases, the purchaser (the first party) will always be aware of the financial product being acquired and will be under their own obligation to provide the relevant information to the RSE licensee (the second party) to a prior arrangement – see subsection 1017BC(3) (or disclose it themselves if they are the RSE licensee – see section 1017BB). Therefore, requiring the broker to provide the relevant information to the RSE licensee would be duplicative.

Item 4 Reasons for decision

The proposed Regulation ensures that, in general, if an eligible person makes a complaint and the decision-maker makes a decision in relation to the complaint, then the decision-maker must, within 30 days of making the decision, inform the eligible person of the date of the decision, about any external body with jurisdiction to review the decision and about how to apply to the body for review of the decision.

The proposed Regulation also ensures that when a decision is made in relation to a non-death benefit complaint, the trustee must (within 30 days of making the decision) inform the eligible person that they can request written reasons for the decision made by the trustee. The trustee must within 45 days of the complaint, inform the eligible person that if a decision is not made within 90 days of the complaint, then they can request written reasons for the non-decision.

In both cases where a decision is made and where one is not made, the decision maker must respond to an eligible person's request for written reasons within 28 days or within the extended period if that is granted by the regulator.

The intent of the proposed Regulation is to address the concern that people might not know that they can request reasons from a trustee, nor about the process for doing so.

Items 5 to 14 Enhanced fee and other disclosure in product disclosure statements

This proposed Regulation prescribes a table format in which fees for superannuation products must be disclosed in product disclosure statements (PDSs). This format reflects the type of fees that can be charged in a MySuper product and which must be disclosed for all superannuation products which include a MySuper product.

The Corporations Regulations prescribe that PDSs (see Schedule 10) and shorter PDSs (see Schedule 10D) must set out fees charged in a table format. Item 7 introduces a new table into the Corporations Regulations which will prescribe, for superannuation products, that the amounts of investment fees, administration fees, investment switching fees, exit fees and buy-sell spreads must be disclosed in a superannuation PDS.

In most cases, a trustee of a MySuper product will be required to prepare a PDS under the shorter PDS provisions, the fees and costs information would need to be presented in accordance with the proposed template for Schedule 10D. In limited circumstances where a trustee is permitted to use the long form PDS format, the fees and costs information would need to be presented in accordance with the proposed template for Schedule 10.

The types of fees that can be charged in a MySuper product are defined in Division 5 of the SIS Act. The amendment to the table at clause 8(3) will incorporate the five headline fees in relation to a MySuper product: investment fee; administration fee; exit fee; switching fee; and buy/sell spread.

As is already the case for the longer form PDSs, any other fees that are charged that do not fall into the categories set out in the table would have to be disclosed under the heading additional explanation of fees and costs. For example, activity fees for contributions splitting could be included in this part of the PDS.

For shorter PDSs, if the fees charged do not fall within these categories it would have to be cross-referenced as is required by Schedule 10D.

Items 15 to 17 Amendments to the *First Home Saver Accounts Regulations 2008*

It is proposed to amend regulation 4 of the *First Home Saver Accounts Regulations 2008* (the FHSA Regulations) to apply relevant provisions of the SIS Regulations to persons involved in the management of an RSE licensee that is also a First Home Saver Accounts (FHSA) provider in the same way that the relevant provisions of the SIS Regulations apply to a responsible officer of an RSE licensee that is a trustee of a public offer superannuation fund.

The proposed amendment mirrors an amendment to the FHSA Act contained in the Service Providers and Other Governance Measures Bill that deals with the application of provisions of the SIS Act.

It is also proposed to amend subregulation 6(1) of the FHSA Regulations to replace the reference to paragraph 52(2)(h) of the SIS Act with a reference to paragraph 52(2)(j) of the SIS Act. From 1 July 2013, as a result of changes made by the *Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012* (Trustee Obligations and Prudential Standards Act), the provision currently contained in paragraph 52(2)(h) will move to paragraph 52(2)(j) of the SIS Act. The provision requires trustees to provide fund beneficiaries with access to prescribed information and documents.

Finally, it is proposed to amend Schedule 1 of the FHSA Regulations to delete the references to regulations 8.02A, 8.03 and 8.04 of the SIS Regulations. Schedule 1 lists those provisions of the SIS Regulations that apply to FHSA providers. Items 15 to 17 of Schedule 1 to this proposed Regulation propose to repeal regulations 8.02A,

8.03, and 8.04 of the SIS Regulations. While it is proposed that regulations 8.02A and 8.03 be reworded to deal with self managed superannuation funds (SMSFs), these provisions would no longer be relevant to FHSA providers.

The proposed amendments would take effect from 1 July 2013.

Items 18 to 24 Definition of defined benefit member and circumstances in which a member is taken to be a defined benefit member

From 1 January 2014, employers will only be permitted to make contributions for employees who do not have a chosen fund, to a fund that offers a MySuper product. The Further MySuper and Transparency Measures Act will insert new subsection 19(2CA) into the SGA Act, with effect from 1 January 2014, which will provide an exemption from the rules relating to MySuper for defined benefit schemes as MySuper is designed to apply to accumulation arrangements.

Item 18 of Schedule 1 will insert proposed regulation 6A into the SGA Regulations, which will set out the circumstances in which a member is taken to be a defined benefit member. These circumstances are where the member:

- is a member of the scheme established under the *Military Superannuation and Benefits Act 1991* and is not a defined benefit member for subsection 19(2CA) of the SGA Act, but is a defined benefit member of another scheme established under the *Military Superannuation and Benefits Act 1991 Act*;

- holds an interest, as a non-member spouse within the meaning of the section 90MD of the *Family Law Act 1975*, in a superannuation scheme established under the *Superannuation Act 1976* or the *Superannuation Act 1990*;

- has made an election under section 137 of the *Superannuation Act 1976*; or

- is a preserved benefit member within the meaning of the *Public Sector Superannuation Scheme Trust Deed*, as in force from time to time.

Similarly, item 22 of Schedule 1 will insert proposed subregulation 1.04(2) into the SIS Regulations, which will set out the circumstances in which a member is taken to be a defined benefit member. These circumstances are where the member:

- is a member of the scheme established under the *Military Superannuation and Benefits Act 1991* and is not a defined benefit member for section 20B or Part 2C of the SIS Act, but is a defined benefit member of another scheme established under the *Military Superannuation and Benefits Act 1991 Act*;

- holds an interest, as a non-member spouse within the meaning of the section 90MD of the *Family Law Act 1975*, in a superannuation scheme established under the *Superannuation Act 1976* or the *Superannuation Act 1990*;

- has made an election under section 137 of the *Superannuation Act 1976*; or

- is a preserved benefit member within the meaning of the *Public Sector Superannuation Scheme Trust Deed*, as in force from time to time.

Items 19 and 20 of Schedule 1 are proposed to amend the current definitions of 'defined benefit fund', 'defined benefit member', and 'defined benefit pension' in subregulation 1.03(1) of the SIS Regulations, as well as inserting a new definition for 'defined benefit sub-fund'.

Item 21 of Schedule 1 inserts proposed regulation 1.03AAA into the SIS Regulations, which will clarify that for certain specified provisions, a fund will be taken to be a defined benefit fund if it has at least one member who receives a defined benefit pension.

Item 24 Disclosure of remuneration

New paragraph 29QB(1)(b) of the SIS Act (to be inserted by the Further MySuper and Transparency Measures Act, with effect from 1 July 2013) will require RSE licensees to publish any other document or information prescribed by the regulations. The proposed Regulation will specify documents and information that RSE licensees will need to publish on the public section of the RSE's website to promote systemic transparency. The Corporations Act prescribes some of the documents to be in a certain form.

Where an RSE licensee reasonably considers that the publication of any documents or information would compromise the privacy of members of the fund, it is permitted to not place the information on their website.

Item 24 inserts proposed regulation 2.37 into the SIS Regulations, which will set out the details of information relating to remuneration that must be published, and kept up to date, at all times on the RSE licensee's website.

From 1 July 2013, RSE licensees will have a new obligation to disclose the remuneration of each director or other executive officer if the RSE licensee is a body corporate, or each trustee if the RSE licensee is a group of individual trustees. RSE licensees will need to disclose all payments, benefits and compensation paid for or provided by the RSE licensee or by related body corporates of the RSE licensee. The information is to be disclosed at the end of financial year so that after the first period, there would be comparative information available.

This regulation is modelled on the existing requirements for listed companies under regulation 2M3.03 of the Corporations Regulations. This includes general, payments and benefits, and compensation factors. An additional item to be disclosed is where monies are attributable to the service as a director and are not paid to the director. For example, in funds where the director has been appointed by an employer or employee sponsor and the fees for their service is paid to the organisation rather than directly to the person, the name of the organisation and amount paid will also need to be disclosed.

For other information that does not fall into these categories, such as remuneration policies, it is expected that ASIC will provide guidance to the industry on the minimum information that should be included in these documents. In addition, APRA has requirements for Remuneration Policy in the Governance Prudential Standard SPS 510.

Item 27 Technical amendments relating to the governing rules of superannuation entity

With effect from 1 July 2013, the Trustee Obligations and Prudential Standards Act will replace the current section 52 of the SIS Act. The new section 52 will apply to APRA regulated funds and a new section 52B to SMSFs.

Consequently, in regulation 4.01 of the SIS Regulations the reference to paragraph 52(2)(h) of the Act is being updated to refer to paragraph 52(2)(j) and subparagraph 52B(2)(h).

Similarly, proposed regulation 4.02 will refer to paragraph 52B(4)(b) of the SIS Act. The regulation will set out the circumstances in which a direction given by a beneficiary, or class of beneficiaries, of a SMSF in respect of investment choice, satisfies the covenant to formulate, review and give effect to an investment strategy.

Proposed regulation 4.02A is being made under new subparagraph 58(2)(d)(ii) of the SIS Act (to be inserted by the Trustee Obligations and Prudential Standards Act with effect from 1 July 2013). The regulation, which will not apply to superannuation funds with fewer than five members, sets out the circumstances in which a fund's governing rules can permit a direction to be given by a beneficiary to the trustee in respect of changes to an amount invested in an investment option.

Items 32 and 33 Period within which an auditor must be appointed and an audit report must be given

Subsection 35C(1) of the SIS Act requires SMSF trustees, for each income year, to appoint an approved auditor to give trustees a report in the approved form of the operations of the fund for that year. The appointment must be made within the period set out in the Regulations.

Paragraph 8.02A(b) of the SIS Regulations prescribes the period as being as soon as practicable, but in any event, no later than 30 days before the date that the auditor must give the audit report to the trustee.

Subsection 35C(6) provides that the auditor must give the report to each trustee of the fund within the prescribed period after the end of the end of the year of income.

Paragraph 8.03(a) of the SIS Regulations prescribes the period as being the period ending on the day before the SMSF trustees are required to lodge the fund's annual return.

The purpose of the proposed Regulation is to amend the SIS Regulations to require:

- SMSF trustees to appoint an approved auditor no later than 45 days before the trustee is required to lodge the fund's annual return; and

- auditors to give the audit report to each trustee 28 days after the trustees have provided all documents relevant to the preparation of the report to the auditor.

The proposed Regulation would provide that the prescribed period within which SMSF trustees must appoint an auditor is the period ending 45 days before the due date for lodgement of the SMSF annual return. The amendment would ensure that the

prescribed period for the appointment of an auditor does not vary when the prescribed period within which the auditor must give their report is extended.

The proposed Regulation would also provide that the prescribed period for which an audit report in respect of an SMSF must be given is 28 days after the trustee of the fund has provided all documents relevant to the preparation of the report to the auditor. This amendment is intended to ensure that SMSF auditors do not contravene the SIS Regulations if they cannot provide the audit report within the prescribed period due to certain circumstances beyond their control.

Items 35 to 41, 50 and 56 Auditor/actuary changes

These proposed amendments update references to 'auditor' and 'actuary' as used throughout the SIS Regulations.

The definition of approved auditor will be repealed by Schedule 1, Item 30 of the Service Providers and Other Governance Measures Bill. It will be replaced by the term 'superannuation auditor' which includes the definitions of the terms 'RSE auditor' and 'approved SMSF auditor'.

Similarly the definition of 'actuary' will be repealed by the Service Providers and Other Governance Measures Bill and replaced by definitions of the terms 'superannuation actuary', 'RSE actuary' and 'SMSF actuary' (inserted by the *Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiencies Measures) Act 2012*).

These changes will apply from 1 July 2013.

Item 42 Winding-up proceedings: priorities in relation to technically insolvent defined benefit funds

The proposed Regulation amends regulation 9.25 of the SIS Regulations to modify the current prescribed order of payments for a technically insolvent defined benefit fund to ensure that accumulation benefits do not subsidise defined benefits in the winding up phase.

Currently winding-up proceedings in relation to a defined benefit fund are carried out in accordance with Division 9.4 of the SIS Act, under which priority must be given to the liabilities of the fund as set out in regulation 9.25. The order of priority, after payment of wind-up costs, ranks the full benefit entitlements of former members equally with the "funded minimum requisite benefit" (not the vested benefits) of current members. Former members include account based pensioners, defined benefit pensioners, spouse members and retained/deferred members. Current members consist of both accumulation members and defined benefit members.

If the minimum benefit index is less than one then full benefit entitlements of former members, and the "funded minimum requisite benefit" of current members, are multiplied by that index and therefore may be reduced proportionately.

The minimum benefit index is calculated under regulation 9.15 of the SIS Regulations. That regulation provides for the net realisable value of the assets of the fund, less benefit entitlements of former members, to be divided by the "funded minimum requisite benefit" (essentially, the minimum requisite benefit entitlements

of all members) in the fund. If the "funded minimum requisite benefit" is greater than the numerator then the minimum benefit index will be less than 1, and the fund will be technically insolvent.

A defined benefit fund may include accumulation interests as well as defined benefit interests. However, should this be the case, the current regulation 9.25 does not differentiate between the treatment of accumulation interests and defined benefit interests.

If the defined benefit fund includes members with accumulation interests, and the minimum benefit index is less than 1, those accumulation benefits could be reduced proportionately (that is, multiplied by the minimum benefit index), in the same way as the minimum requisite benefit of a defined benefit member and the benefit entitlements of former members.

The current arrangement is unfair to accumulation members, who bear the investment risk, as any shortfall would ordinarily arise because of the defined benefit elements of the scheme. Current accumulation members would have already borne the effect of poor investment returns on their benefits (the minimum requisite benefit relating to an accumulation interest, unlike the minimum requisite benefit relating to a defined benefit interest, will rise and fall as it is affected by investment returns). By reducing the minimum requisite benefit of an accumulation member in the same way as a defined benefit member, subregulations 9.25(4) and (5) can have the effect that the interests of accumulation members are reduced twice: once by the adverse investment return and once by the application of the minimum benefit index.

The new arrangement will give priority to all accumulation interests, that is, of both current members and other beneficiaries (such as deferred beneficiaries who are not standard employer-sponsored members), over defined benefit interests in the event of a winding-up. This is achieved by subregulation (3) which provides that in determining the priorities to be given to the remaining liabilities of the fund (after winding up costs etc), the trustee must give an accumulation interest priority over a defined benefit interest.

As a consequential amendment, subregulation (6) provides that, in applying the minimum benefit index formula from regulation 9.15 (which will be applied to the defined benefit interests and benefit entitlements of former members), accumulation benefits in the fund must be subtracted from the numerator and denominator of that formula. This is necessary because otherwise the inclusion of accumulation benefits (which, as noted, are separately given priority) would distort the formula.

Finally, subregulation (7) provides that "fund" includes a defined benefit sub-fund. The intention is that regulation 9.25 can be applied to allow the separate winding up of a defined benefit sub-fund as if it were a fund in its own right.

Items 43 to 49 Incorporating MD 23 – actuarial requirements for SMSFs paying defined benefit pensions

In 1999, the SIS Regulations were modified by Modification Declaration No 23 (MD 23), made under Part 29 of the SIS Act. MD 23 ensures that superannuation funds offering defined benefit pensions were subject to an appropriate level of prudential supervision by treating them as defined benefit funds for certain purposes. Such funds became subject to an annual actuarial certification that there is a

reasonable probability that those pensions will continue to be paid under the governing rules of the funds.

APRA issued Prudential Standard *SPS 160 – Defined benefit matters* in 2012 which incorporates the actuarial investigation and reporting requirements set under MD 23 and applies them to APRA-regulated defined benefit funds and sub-funds.

These items amend Division 9.5 of the SIS Regulations to ensure similar requirements continue to apply to those legacy SMSFs that were defined benefit funds at 12 May 2004, or commenced paying defined benefit pensions prior to 12 May 2004. The amendments also apply to a defined benefit sub-fund of a SMSF.

MD 23 will be revoked upon registration of these regulations.

Items 25, 26, 28, 29, 30, 31 and 34 Repeal existing regulations

APRA has the power to make prudential standards in relation to superannuation under section 34C of the SIS Act.

A 'prudential matter' is broadly defined in subsection 34C(4) of the SIS Act. The Further MySuper and Transparency Measures Act introduced new section 29X to the SIS Act to allow the prudential standards to cover the transfer of accrued default amounts; new section 389 to allow transitional issues to be addressed; and new section 242Q to allow eligible rollover funds to be covered.

Subsection 34D(2) of the SIS Act provides that prudential standards are of no effect to the extent they conflict with the SIS Act or SIS Regulations. Thus, in order to allow APRA to issue prudential standards on a full suite of issues, and to enable those standards to have full effect, a number of regulations which relate to subject matter to be dealt with in the prudential standards need to be repealed.

It is proposed to repeal the note to subregulation 3A.03(2) as well as Division 3A.2 of the SIS Regulations (items 25 and 26). These relate to the current capital requirements for the trustees of public offer superannuation funds contained in the SIS Act which will be repealed by the Trustee Obligations and Prudential Standards Act on 1 July 2013 and replaced by an operational risk financial requirement. Details of the operational risk financial requirement will be contained in APRA's Superannuation Prudential Standard (SPS) 114.

The proposed amendment to the SIS Regulations would take effect on 1 July 2013.

It is proposed to repeal Division 4.1A of the SIS Regulations (item 28). This Division supports the current requirements for risk management strategies and plans in the SIS Act which will be repealed by the Trustee Obligations and Prudential Standards Act on 1 July 2013 and replaced by a new requirement for a risk management strategy. Details of the new risk management requirements will be contained in APRA's Superannuation Prudential Standard (SPS) 220.

The proposed amendment to the SIS Regulations would take effect on 1 July 2013.

It is proposed to amend regulation 4.09 of the SIS Regulations (items 29 and 30), which sets out an operating standard requiring the trustee of a superannuation entity to formulate, review, and give effect to an investment strategy that has regard to the

whole of the circumstances of the entity. The amendments to subregulation 4.09(1) and paragraph 4.09(2)(e) provide that the operating standard will only apply to SMSFs. For APRA-regulated superannuation entities, this requirement will be given effect through a prudential standard. Details of the new requirement will be contained in APRA's Superannuation Prudential Standard (SPS) 530.

The proposed amendment to the SIS Regulations would take effect on 1 July 2013.

It is proposed to repeal regulations 4.14 to 4.17 of the SIS Regulations (item 31). These regulations set out standards on the fitness and propriety of RSE licensees, the adequacy of resources of, or available to, RSE licensees and outsourcing arrangements for RSE licensees. They also set out transitional arrangements for certain outsourcing arrangements. These regulations support provisions which will be repealed by the Trustee Obligations and Prudential Standards Act on 1 July 2013 and replaced by prudential standards. Details of the new requirements will be contained in APRA's Superannuation Prudential Standards (SPS) 220, SPS 231 and SPS 520.

The proposed amendment to the SIS Regulations would take effect on 1 July 2013.

Regulation 8.04 is repealed as the period to give an audit report to APRA will be replaced by prudential standards (item 34).

Item 51 Obligation to inform members with accrued default amounts

Under section 29SAA of the SIS Act, an RSE licensee applying for authority to offer a MySuper product must provide an election that they will attribute to a MySuper product each accrued default amount in each fund for which they are a trustee. Subsection 29SAA(3) provides that an RSE licensee making an election must comply with any prescribed requirements relating to the provision of notices to members with accrued default amounts.

Proposed regulation 9.46A will ensure that fund members with identified accrued default amounts are adequately informed by the RSE licensee about their transition to a MySuper product.

Once an accrued default balance has been identified in the member's account, a RSE licensee must provide members with this information in the first member statement to be sent after, and each subsequent member statement issued until the accrued default balance has been placed in a suitable MySuper product.

Under this regulation RSE licensees must inform members of both the licensees' obligation to promote the financial interests of the beneficiaries of their fund who hold an interest in a MySuper product, and of the licencees' obligation to attribute or transfer a member's accrued default amount into a suitable MySuper product by no later than 30 June 2017.

An RSE licensee must also advise each affected member of the value of their accrued default amount and, if the licensee has identified a suitable MySuper product to which they propose to attribute the member's accrued default amount, the name of that MySuper product and the expected timing of that attribution. If the RSE licensee has not identified a suitable MySuper product to which they propose to move the member's accrued default amount, the licensee must advise the member of the steps

that are being undertaken by the licensee to identify such a product, and the reason why no such product has yet been identified.

Item 51 Other factors that may be used for a lifecycle investment strategy in a MySuper product

Paragraph 29TC(1)(c) of the SIS Act seeks to prohibit the streaming of gains or losses to specific members of a fund who hold a MySuper product, except to the extent permitted under a lifecycle exception. A lifecycle exception is defined by subsection 29TC(2) of the SIS Act as a governing rule of the fund that allows gains and losses to be streamed to different subclasses of members on the basis of: age; age and other prescribed factors; or age and other prescribed factors in prescribed circumstances.

Proposed regulation 9.47 prescribes these factors to be a member's: account balance; contribution rate; current salary; gender; and the trustee's opinion of the member's likely time to retirement.

The proposed regulation would take effect from 1 July 2013.

Item 51 Limitation imposed by governing rules

Paragraphs 29TC(1)(f) and 29TC(3)(a) of the SIS Act, taken together, permit the governing rules of a superannuation fund to place limitations on the source or kind of contributions to a MySuper product, if those limitations are of a prescribed kind.

Proposed regulation 9.48 would allow funds to limit contributions where the contribution is a transfer from a foreign superannuation fund, as defined under the *Income Tax Assessment Act 1997*. This is designed to ensure consistency with other legislative arrangements under which funds can choose not to accept transfers from certain foreign superannuation funds.

The proposed regulation would take effect from 1 July 2013.

Item 52 Eligible rollover funds

The replacement of Part 10 of the SIS Regulations removes the existing definition of an eligible rollover fund (ERF) which became redundant upon the introduction (through Division 2 of Part 24 of the SIS Act) of the authorisation of RSE licensees to operate a superannuation fund as an ERF.

Proposed regulation 10.01 requires that only RSE licensees that hold a public offer or extended public offer class of licence may apply to be authorised to operate a superannuation fund as an ERF. This makes no practical change from current arrangements, as all RSE licensees which operate a current ERF hold the relevant class of licence.

Proposed regulation 10.02 simply renumbers existing regulation 10.03.

Proposed regulations 10.06 and 10.07 retain the operating standards for ERFs currently set out in regulations 10.06 and 10.07, modified only to reflect the fact that approved deposit funds will not be able to be operated as an authorised ERF, the

effect of subsection 29E(6D) of the SIS Act and the repeal of the member protection provisions.

Item 53 Operating standard—disclosure of certain information for funds other than self managed superannutaion funds

Item 53 repeals regulations 11.07 and 11.07AA of the SIS Regulations, and substitutes them with the provisions set out below. Provisions under 11.07A still apply.

The proposed operating standard requires the trustee of the entity to give the regulator notice of a change in the: name of the entity; the postal/registered/service address of the entity; contact details of a person for the entity and; the RSE licensee of the entity.

The notice must be given for a superannuation entity that is an ERF immediately after the change or in any other case within 28 days of the change.

The proposed operating standard also requires that an RSE licensee who is an incoming trustee of the entity to give written notice of that fact to the regulator. This notice must be given as soon as practicable but no later than 5 days after the date on which the RSE licensee becomes a trustee of the entity.

The proposed standard requires the trustee of the entity to give written notice to the regulator of a decision to wind up the entity or to retire as a trustee of the entity. This must be given as soon as practicable after the making of the decision and before the winding up has commenced or the trustee has retired.

The proposed operating standard requires the entity to give written notice to the regulator of a change in the class of the RSE before, or as soon as practicable after, the change in the class. This will facilitate the timely provision of information, which is required in order to ensure APRA's Register of RSEs under Part 11A of the SIS Regulations is kept up-to-date.

RSE licensees currently do not need to formally notify APRA where there is a change in a fund's class. For example, from a non-public offer fund to a public offer fund, provided the RSE licence is already of a class that permits the RSE licensee to be a trustee of the new class of fund.

Paragraph 11A.02(3)(a) specifies that the Register must contain the class of RSE licence that each RSE licensee holds. Currently APRA only becomes aware (after the event) of a change in an RSE's class if the fund's risk management plan is modified (per section 29PC of the SIS Act) or if the RSE licensee applies to vary its class of RSE licence. However, a change in a class of fund does not always necessitate a need for a change in licence class; hence APRA may not always be informed of such change.

This change does not apply to SMSFs.

<u>Operating standard—disclosure of certain information for self managed superannuation funds</u>

For SMSFs the proposed operating standard requires the trustee of the SMSF to give written notice to the regulator of a change in the: name of the fund; the

postal/registered/service address of the fund; contact details of a person for the fund; the fund's membership; trustees; and the directors of the fund's corporate trustee.

The notice must be given using the approved form and within 28 days after the change.

The proposed standard requires the trustee of the fund to give written notice to the Regulator of a decision to wind up the fund; or to retire as a trustee of the fund. This notice must be given before, or as soon as practicable after, the winding up has commenced or the trustee of the entity has retired.

Item 54 Operating standard – disclosure of successor fund transfer (formerly: Notice requirements for successor fund transfers)

Subsection 31(1) of the SIS Act allows operating standards to be prescribed in relation to the operation of regulated superannuation funds and to trustees and RSE licensees of those funds.

The proposed regulation 11.08 prescribes an operating standard under which funds must give to APRA early notice, in writing, of an intention to undertake a successor fund transfer or merger.

The transfer, under regulation 6.29 of the SIS Regulations of a member's benefits to another fund, for example in a fund merger situation, may be undertaken without member consent if the transfer is to a successor fund (as defined in regulation 1.03). The transfer may or may not culminate in the winding up of the fund, depending on whether all or only some members and their benefits are transferred.

For the purposes of subsections 31(1) and 32(1) of the SIS Act, it will be prescribed that a trustee is required to give notice in writing to APRA of a decision to transfer any member's benefits from the fund without the member's consent.

Notice to APRA must be given as soon as practicable after making the decision, and in the case of the winding-up of the fund, before the winding up is commenced. For successor fund transfers, notice should be given to APRA when the decision to seek a successor fund is made, rather than when a final decision is made about the identity of the successor fund. APRA is then able to maintain up-to-date information and monitor the transfer or merger, thereby ensuring that the rights of beneficiaries are protected.

This change does not apply to pooled superannuation trusts and SMSFs.

Item 55 Register to be kept by APRA

The proposed Regulation will amend Part 11A of the SIS Regulations to include further information on the Register that is to be kept by APRA.

- If the entity has a MySuper product, the Register will need to keep information on: each product name; each MySuper product unique identifier; and the type of MySuper authorisation.

- For RSE licensees that have authorisation from APRA to offer a 'tailored' MySuper product, the name and ABN of the large employer or each associated large employer must be kept on the Register.

- RSE licensees will also require authorisation from APRA to operate an eligible rollover fund. Information on whether the RSE operates an eligible rollover fund also needs to be kept on the Register.

Proposed Schedule 2

Items 1 and 2 Dual regulated entities – reporting of events leading to material adverse changes in financial position

Currently, paragraph 7.6.04(1)(a) of the Corporations Regulations requires financial services licensees (which include the responsible entities of registered managed investment schemes) to notify ASIC of any event that may result in a material adverse change in their financial position, unless they are a body regulated by APRA.

The effect of this exemption is that responsible entities which are also RSE licensees do not have to comply with the reporting requirement contained in paragraph 7.6.04(1)(a).

The Service Providers and Other Governance Measures Bill will amend the Corporations Act to require such entities to meet the requirement in paragraph 912A(1)(d) of the Corporations Act to have available adequate resources, including adequate financial resources.

To assist ASIC in enforcing this new obligation it is proposed to amend regulation 7.6.04 of the Corporations Regulations to require RSE licensees which are also the responsible entities of registered managed investment schemes to inform ASIC of events that may lead to material adverse changes in their financial position.

The removal of the exemption from the ASIC reporting requirement for these entities would occur on 1 July 2015, in line with the associated amendment to the Corporations Act.