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## Corporations Amendment (Portfolio Holdings Disclosure) Regulations 2021

Thank you for the opportunity to comment on the exposure draft regulations published by Treasury on 17 August 2021.

IFM Investors was established more than 25 years ago by a group of Australian industry super funds to protect and grow the retirement savings of their members by investing in nation-building infrastructure. Today, we manage \$172 billion invested across four asset classes – infrastructure, debt, listed equities and private equity – on behalf of 555 like-minded pension funds and other institutional investors worldwide. Their members include more than 10 million Australians and more than 30 million working people worldwide.<sup>1</sup>

This submission follows:

- our submission to Treasury on the Your Future, Your Super package on 23 December 2020;
- our submission to the Senate Economics Committee on the bill on 18 March 2021; and
- our submission to Treasury on the draft Your Future, Your Super regulations and associated measures, including portfolio holdings disclosure rules, on 25 May 2021.

### Implications of the draft regulations

We recognise the Government's policy objective of increasing transparency in the superannuation system, and that well-designed disclosures can provide important information to members about how their retirement savings are invested.

Unfortunately, the rules the Government is proposing are not well-designed. Not only would they generate reports of tens of thousands of line items for some products, which are unlikely to be meaningful to members, they still do not provide flexibility to avoid the disclosure of commercially sensitive information.

**They would require super funds to disclose this information – effectively, the private financial information of working Australians – to sophisticated market participants such as foreign-owned fund managers, derivative traders, hedge funds, sovereign wealth funds, actuarial firms and overseas private equity firms that are likely to interrogate this data to their financial benefit.**

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<sup>1</sup> As at 30 June 2021.

This would not be in members' best financial interests – the very interests the Government has said it wants to protect and enforce through the Your Future Your Super reforms. **Ultimately, the reforms being pursued by the Government have the very real potential to hurt the returns of super fund members.**

## Implications for unlisted infrastructure investment

**The proposed approach would place at risk a key feature of an investment model that has delivered strong, long-term, risk-adjusted returns to support the retirement security of millions of Australian workers – the competitive advantage derived through investing in private markets.** Through this model, pioneered by industry super funds and IFM, Australian workers have been able to pool their retirement savings to get access to deals in private markets in Australia and around the world that they could never access individually.

Unlisted infrastructure has been a source of outperformance for industry super funds, helping to deliver members higher long-term returns compared to their counterparts in retail super funds. Unlisted infrastructure and private market investments also play an important role in the portfolios of other profit-to-member and public superannuation funds.

Despite this, the revised regulations ask for even more granular reporting than the previous version released for consultation in April. They would require funds to disclose the percentage they own of directly held infrastructure assets, as well as the valuation of their stake.

While most superannuation investment in infrastructure is executed through fund structures, larger super funds also take direct equity stakes in infrastructure and other unlisted assets from time to time. **Due to the ownership structures of many large privately held infrastructure assets, in which managers like IFM often invest alongside super funds, these regulations would effectively mean that the valuations of a number of large Australian and global infrastructure assets would be made public.** This would be unprecedented both in Australia and in overseas markets.

This would have several implications.

- **Fund members will be less likely to enjoy sales premia for infrastructure assets held on their behalf by super funds, reducing their returns and their retirement savings.**
  - IFM and super funds with direct investments tend to favour holding infrastructure assets for the long term, due to their attractive investment characteristics. However, from time to time owners do initiate sale processes and receive unsolicited offers from external parties.
  - Prospective buyers have different factors in mind when deciding how much they will pay for a large unlisted asset, such as the degree of control the ownership stake would confer and the strategic role that the asset's sub-sector, sector and geography would play in their portfolio. If they are able to learn the owner's effective reserve price for an asset, this will inevitably serve as an anchor point for offers and the owner is much less likely to be able to achieve the best outcome for members. These reforms are the equivalent of forcing a home owner to publish their reserve price before an auction. It undermines the seller's ability to get the best price, and gives prospective buyers an unfair advantage.

- We have no doubt that in multiple actual transactions, IFM would have achieved vastly inferior results for investors if buyers had access to carrying value information of the target assets. **Over the last ten years, IFM has divested equity interests in over a dozen Australian and offshore assets, achieving very significant premia for our investors – and ultimately, super fund members – worth several billion dollars over and above independent valuations.**<sup>2</sup>
- **Governments – and ultimately, taxpayers – will be impacted by the disclosure of confidential valuations by super funds.** Governments are co-owners in a number of significant Australian infrastructure assets, including Ausgrid, Melbourne Airport, Perth Airport, Telstra Infracore Towers and Canberra Data Centres. These assets count super funds among their shareholders as well as public entities such as the Future Fund and state government-owned corporations. This means that the market valuation of each asset and the publicly-owned shareholding could be easily inferred, compromising taxpayer returns should governments wish to reduce or divest their shareholdings in future.
  - In relation to the Future Fund, this outcome would be at odds with a Bill the Government recently introduced to the Parliament, amending the Freedom of Information (FOI) Act 1982 to reduce the risk of disclosing sensitive, confidential and commercial material relating to the Future Fund’s investment activities.<sup>3</sup> If this would allow the Future Fund “to continue investing for the benefit of future generations of Australians”, as per the Member for Fadden’s second reading speech, it is not clear why the Government is taking an inconsistent approach with portfolio holdings disclosure, and why it would not seek to extend the same protection to funds managing millions of Australian workers’ retirement savings.
- Information sharing in Australian and global infrastructure markets won’t be reciprocal, as our competitors will not necessarily be subject to the same level of disclosure in relation to asset valuations. **This means there won’t be a level playing field in buying and selling assets, with Australian super fund members losing out.**
- Some parties, such as infrastructure managers and foreign pension funds, may be unwilling to partner with and co-invest alongside Australian super funds due to the commercial risks associated with portfolio holdings disclosure. This will impair Australia’s ability to attract foreign capital into the country and reduce Australian super funds’ access to deals on and offshore.
- **Australian super funds would be required to make disclosures that are out of step with overseas pension funds.**
  - Having surveyed a sample of the largest pension funds in the five countries with the largest pool of retirement savings (ex. Australia), **we are not aware of any pension funds that are**

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<sup>2</sup> The carrying values (or market valuations) of IFM’s infrastructure assets are determined in accordance with industry-wide best practice. Valuations are determined quarterly by independent valuers complying with well-established financial standards, and valuations are provided annually to the relevant fund’s auditor for review.

<sup>3</sup> The Investment Funds Legislation Amendment Bill 2021 was introduced to the House of Representatives on 24 August 2021.

**reporting both the market valuations of underlying infrastructure assets and their share of ownership.**

- It has been suggested we should look to the US pension market for best practice transparency in portfolio holdings disclosure. IFM is very familiar with the US market, counting over 100 US pension funds among our clients.
- There are very few US pension funds that invest directly into infrastructure. The vast majority of US pension funds seeking infrastructure exposure do this through managed funds, managed accounts, special purpose vehicles, trusts and holding companies. They wish to invest this way, not only to outsource to experts in investment and asset management, but also to maintain the confidential nature of private asset markets.
  - For example, California Public Employees’ Retirement System (CalPERS) publish a list of their investments in real assets annually. The list does not include percentage holdings, however, and in almost all cases the underlying real asset cannot be identified.<sup>4</sup>
- The large Canadian pension funds are a better comparison than pension funds from the US, as they are global leaders in infrastructure investment and invest directly, similar to the larger Australian superannuation funds.
  - For example, Caisse de dépôt et placement du Québec (CDPQ), one of the world’s largest infrastructure investors, discloses the name and percentage holding for selected assets, but provides only the aggregate market valuation for all of its assets in the infrastructure asset class. Further, Quebec law provides an exemption from CDPQ, a public entity, disclosing information that is “commercial or financial ... if its disclosure would likely substantially reduce its competitive margin or reveal a loan, investment, debt management or fund management proposal or a loan, investment, debt management or fund management strategy.”
  - Ontario Teachers’ Pension Plan annually discloses a list of investments that exceed CAD\$200 million in value to support transparency for members. A range of private market investments are included in this list, including directly held infrastructure investments – for example, London City Airport Ltd – but the percentage holding and/or market valuations are not disclosed for those private investments.<sup>5</sup>

We find it difficult to understand the policy rationale for the changes to the regulations for unlisted infrastructure when stakeholders across the industry have overwhelmingly expressed concerns about the

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<sup>4</sup> CalPERS’ annual investment reports are available at: <https://www.calpers.ca.gov/page/investments/about-investment-office/investment-financial-reports>.

<sup>5</sup> We reviewed Canada Pension Plan Investment Board (CPPIB), CDPQ and Ontario Teachers’ Pension Plan in Canada; CalPERS, California State Teachers’ Retirement System (CalSTRS), New York State Common Retirement Fund and New York State Teachers’ Retirement System (NYSTRS) in the US; the Government Pension Investment Fund (GPIF) in Japan; Stichting Pensionenfonds ABP (parent entity of APG Asset Management) and PGGM in the Netherlands; and the Universities Superannuation Scheme in the UK.

disclosure of commercially sensitive information, and the disclosure of unlisted asset valuations in particular.

**Of the public submissions received by Treasury in relation to portfolio holdings disclosure, more than 80 per cent expressed concerns, and none proposed that the Government mandate more granular disclosures of unlisted asset holdings.**

## Recommendations

Modest and common sense changes to the regulations can protect members' best financial interests without meaningfully detracting from the information available to them. As set out in our previous submission, and consistent with feedback from across the industry, we support the recommendations that Industry Super Australia and the Australian Institute of Superannuation Trustees have put forward.


**Where the regulations require disclosure at the underlying asset level, funds should be able to:**

- 1. separately identify the name of each unlisted infrastructure asset but provide only an aggregated value for the group of assets, or**
- 2. disclose the valuation of each unlisted asset as a range instead of a single dollar value.<sup>6</sup>**

Further, we are not aware of any research about what super fund members are looking for in disclosures from their funds, and what type of information and format they would find most useful and easy to navigate. **We would suggest the Government undertake comprehensive and quality research in consultation with APRA and super funds before proceeding with portfolio holdings disclosure rules.** This research should also take into account the experience and learnings of funds which have already developed voluntary portfolio holdings disclosure frameworks.

We would be happy to discuss further.

Yours sincerely



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<sup>6</sup> AustralianSuper has an existing framework for reporting asset valuations in ranges. The Government could also consider prescribing overlapping ranges (e.g. \$0-50m, \$20-100m, \$50-200m etc.), as mutually exclusive ranges (e.g. \$0-50m, \$50-100m etc.) may cap the potential exit values of assets with a valuation near the top of the range.