10 April 2019

TO: ALL RSE LICENSEES

Oversight of fees charged to members' superannuation accounts

The Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) are issuing this letter to reinforce the importance of superannuation trustees undertaking appropriate oversight of fees and other charges being deducted from members' superannuation accounts for payment to third parties such as financial advisers.

Cases of financial advice fees being charged without the provision of the relevant services have recently been the subject of inquiry by the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*. Separately, we have identified a range of industry practices in relation to trustee oversight, many of which fall below the standard we expect. A number of these matters are the subject of enforcement investigations or actions. This raises concerns about some trustees' risk governance, capabilities and culture, as well as their ability to appropriately manage conflicts of interest.

All trustees must have in place strong governance, risk management and oversight processes to ensure that only authorised and appropriate fees and other charges are deducted from members' superannuation accounts.

Accordingly, APRA and ASIC expect all trustees to be reviewing the robustness of their existing governance and assurance arrangements for fees charged to members' superannuation accounts, and to address any identified areas for improvement in a timely manner. We expect these reviews to be substantially completed by 30 June 2019.

Should such reviews uncover any significant issues or deficiencies in the risk management systems and processes of trustees, our strong expectation is that trustees give urgent consideration as to whether a reportable breach has occurred, and if so, whether it has been escalated in a manner that will ensure appropriate remediation takes place.

Issues to be considered in oversight practices

There is a range of issues in relation to the deduction of financial advice fees that trustees need to consider and address through appropriate oversight processes including the following:

1. *Are the deductions explicitly authorised by members? Are the deductions consistent with the authorisations and disclosures made to members?*

   Advice fees can be an initial or one-off fee or represent an ongoing regular deduction, or a combination of both. What constitutes appropriate assurance about member authorisation will differ according to the nature of the fee. In this respect, we note that financial advisers providing personal advice are subject to particular disclosure obligations to clients in relation to ongoing fee arrangements (see *[ASIC Regulatory Guide 245 Fee disclosure statements](#)*) and the obligation to seek client renewal of those arrangements every two years.

Trustees should consider all necessary steps to make sure that members are clearly aware of fees being deducted from their account. Best practice would be to obtain effective consumer authorisation to charge the fees on a regular basis. In addition, there should be ongoing disclosure of the fees containing the specifics of the adviser receiving the fee, rather than relying on historical disclosure. Making members clearly aware of the deductions is a step that assists in ensuring deductions are appropriate but in itself, does not, provide adequate assurance.

Oversight processes by trustees require understanding the circumstances and terms of the authorisation given, and disclosures made to members. Measures should be in place to confirm the services are being provided as agreed to by the member.

2. *Have services been provided?*

Services for which fees are being deducted may not be provided because of a range of factors such as, but not limited to:

- no adviser, such as when the adviser ceases practice or ceases to be entitled to provide financial advice;
- no access to advice services, such as when the member changes plans;
- no services provided despite an adviser being linked to a member's account;
- lost members; or
- death of a member.

Trustees may be aware of other circumstances where services are not being provided and they are expected to act on these as well.

There is a range of external data sources (e.g. Financial Advisers Register, the ATO Provision of Details service, which provides data regarding deceased people) and internal records (such as members changing plans) that would assist trustees in undertaking appropriate checks.

3. *Is the deduction consistent with the sole purpose test?*

The sole purpose test (*section 62 of the Superannuation Industry (Supervision) Act 1993*) means that only costs associated with advice that relates to the member's superannuation and insurance obtained through superannuation may be deducted from the member's superannuation account. Advice that relates to investments outside of superannuation, for instance, cannot be funded from superannuation account deductions.

There is a range of data points accessible to trustees that would suggest the deductions made may be inconsistent with the sole purpose test (for instance, the value or frequency of the deduction for the fee).

4. *Is the deduction in the best interests of members?*

To the extent that the trustee is actively involved in facilitating the provision of financial advice services to members (e.g. referral arrangements), whether the deduction is in the best interests of members is a question for which a trustee should have evidence. If members are not getting value via these arrangements, the erosion impact on account balances of advice fee deductions should be of significant concern to trustees and addressed in a timely manner.

Oversight practices

APRA and ASIC expect that trustee oversight and assurance in relation to financial advice fee deductions would include actions that are:

- preventative: such as ensuring appropriate authorisation processes for deductions are in place and promoting understanding by financial advisers and members;
- interrogative: such as having processes that regularly check that advice or other services are being provided; and
- remedial: such as ensuring that members are appropriately compensated where fees are charged inappropriately.

We emphasise that care needs to be taken to ensure that controls do not place undue reliance on assurances or attestations from financial advisers or other third parties given the potential personal conflict of interest that these parties might have in the continuation of fee payments.

We have seen several circumstances in which trustees have instituted arrangements that promote financial advisers acting as a de facto distribution mechanism for funds with an understanding that the financial advisor may negotiate fees of a significant value to be deducted from the member's account. This can create additional risks, which will increase expectations about the kind of oversight practices a trustee should be adopting.

APRA and ASIC expect that the accuracy and appropriateness of fees and other charges being deducted from members' accounts for payment to third parties would be periodically reviewed by an independent party who could provide such assurance.

Remediation mechanism

We are aware of circumstances in which trustees have determined it appropriate not to pursue financial advisers for compensation for their members or have indicated to financial advisers that they cannot accept such payments. This can result in remediation payments being made outside of the superannuation system. APRA and ASIC consider that this practice may represent a breach of the SIS legislation, in particular payment standard requirements. Trustees should expect the regulators to take enforcement action in the event breaches are uncovered.

In such cases, the trustee should look to recover fees paid to financial advisers and make whole members' accounts within the superannuation system using agreed remediation methodologies.

Further regulatory action

APRA and ASIC will follow-up with individual trustees as to the outcome of their reviews. These steps are in addition to follow-up work currently underway where significant oversight failures by trustees have already been identified. The outcomes of this work will be communicated to industry.

Oversight of the deduction of fees to third parties from member accounts is an important responsibility of superannuation trustees and must be given appropriate ongoing focus. APRA and ASIC will continue to engage with trustees in relation to the robustness of their policies and practices for management and oversight of such fees charged to members' superannuation accounts and reserve the right to exercise our powers in relation to any subsequent enforcement action required.

Yours sincerely,

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