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MAKE TOMORROW, TODAY

Ms. Heidi Richards
General Manager, Policy Development
Australia Prudential Regulation Authority
GPO Box 9836
SYDNEY NSW 2001

17 February 2017

Dear Ms. Richards,

Subject: Draft Prudential Practice Guide SPG 227 Successor Fund Transfers and Wind-ups (Draft SPG 227)

Thank you for inviting submissions in response to the Draft SPG 227. We welcome the opportunity to lodge a submission.

With consolidation in the superannuation industry expected to continue with an increasing focus on strategy, business plans and sustainability, updated guidance on successor fund transfers is timely and we welcome the responsiveness APRA has shown in engaging with industry on this.

Our submission covers a number of key areas:

- the complexities and realities associated with successor fund transfers across the industry;
- the scope of the equivalency assessment;
- the scope and methodology for undertaking the best interests assessment;
- MySuper considerations; and
- the complexities associated with the Operational Risk Financial Requirements (ORFR).

Our submission builds on these areas in the Annexure to this letter.

Who is Mercer?

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Mercer Australia provides customised administration, technology and total benefits outsourcing solutions to a large number of employer clients and superannuation funds. We have over $150 billion in funds under administration locally and provide services to over 2.4 million super members and 15,000 private clients. Our own master trust in Australia, the Mercer Super Trust, has around 230 participating employers, 213,000 members and more than $20 billion in assets under management.

Please contact Michele Levine on (02) 8864 6790 or michele.levine@mercer.com if you would like to discuss this submission.

Yours sincerely,

Michelle Mott
Chief Risk and Compliance Officer

Annexure

1. Complexities and realities associated with successor fund transfers across the industry

The Draft SPG 227 provides that the guidance applies to a successor fund transfer (SFT) of all or part of a Registrable Superannuation Entity (RSE). However, much of the guidance appears to be directed and more relevant to straightforward SFTs that involve the transfer of all the assets and members of one RSE to another RSE (i.e. an SFT of Fund A to Fund B). In doing so, the guidance does not readily cater for SFTs that involve a transfer of all or part of an RSE to a master trust or transfers of sub funds between master trusts and the complexities associated with these transfers. This could be addressed by providing additional illustrative examples or hypothetical scenarios.

In addition, paragraph 16 recognises that an SFT may occur for a number of different reasons. However, some of the guidance in Draft SPG 227 does not readily cater for the different impetus for SFTs and the impact this may have on the SFT process.

For example, paragraph 12 outlines APRA's expectations that an RSE licensee would have a documented due diligence and risk assessment process for assessing alternative RSEs that may potentially receive the transferred members. In circumstances where an SFT is initiated by an employer-sponsor ceasing to participate in one fund and changing its default fund to another fund, it does not seem appropriate or worthwhile for the transferring trustee to undertake that level of due diligence where the receiving fund has already been selected by the employer-sponsor. In these situations, it may be more appropriate to place greater emphasis on the "equivalency assessment" and a consideration of the features as part of the "best interests' assessment".

The guidance in paragraph 11 is also inapt (for the transferring fund) in circumstances where an SFT is initiated by an employer-sponsor ceasing participation in one fund and changing its default fund to another fund.

2. Scope of the equivalency assessment

Mercer welcomes APRA's guidance on what constitutes a "legal right" and "feature" for the purposes of the equivalent rights assessment. Mercer also agrees with the "bundle of rights" basis approach, which is tempered with any special consideration of significant rights, material changes to individual rights and specific group characteristics.

3. Scope of the best interests assessment

Paragraphs 18 and 19 seem to suggest the possibility of satisfying the "best interests" test by segmenting the membership into groups and effecting transfers to different recipient RSEs if the proposed SFT produces different equivalency outcomes for the different groups of members.

While it is critical that the “best interests” test be met, the risk with this approach is that it sets the bar too high to implement SFTs that promote industry consolidation, scale benefits and good member outcomes (as a whole) in a cost effective manner.

In addition, a more practical approach may be to uiltise a combination of transferring some groups of members by consent and others by way of a SFT based on the outcomes of the best interests’ assessment.

Our concerns in this area are heightened by the draft guidance in paragraph 12, which may be interpreted as requiring a transferring trustee to consider the universe of possible recipient RSEs and justify the chosen recipient RSEs as part of the due diligence process. In this regard, it is important that this guidance is not applied too literally or narrowly at the expense of effective SFT practice.

4. MySuper considerations

The guidance in paragraphs 28 to 31 on MySuper to MySuper transfers is instructive. However, the requirement to consider the different features of a MySuper product should not be limited to satisfaction of the obligation to promote the financial interests of MySuper members. An assessment of these features would also be relevant to the overall “best interests” assessment of the chosen RSE as indicated in paragraph 29 and should also be considered on a “bundled” basis.

5. Complexities associated with the Operational Risk Financial Requirement (ORFR)

The guidance on ORFR in paragraphs 38 to 44 seems to be directed and more relevant to straightforward SFTs that involve the transfer of all the assets and members of one RSE to another RSE, where both RSEs hold ORFR as an Operational Risk Reserve (ORR).

In doing so, the guidance does not readily cater for SFTs that involve a transfer of all or part of an RSE to a master trust or transfers of sub funds between master trusts and the complexities and issues associated with these transfers and negotiating ORFR outcomes in the best interests of members.

While the examples provided in paragraph 38 are helpful, there are a range of other scenarios or permutations that have not been specifically covered. Given the broad range of possibilities, it may be best to keep the guidance high level and not directed to any particular scenario given APRA’s acknowledgement that the transferring trustee and receiving trustee are best placed to consider and determine the most appropriate course of action. Instructions on how tender processes and tender consultants might treat matters relating to ORFR would be a useful pathway worthy of additional consideration by APRA.

In addition, the guidance in paragraph 40 and example in paragraph 43 suggest that the trustee of the transferring fund needs to consider the interests of the existing members of the receiving RSE when considering matters around the transfer of any ORFR resources. This seems to be pushing the boundaries of whose interests a transferring trustee needs to take into account beyond what is required.