

6 October 2022

The Director, Members Outcomes and Governance Branch  
Retirement Advice and Investment Division  
Treasury  
Langton Cres  
PARKES ACT 2600

Via email: [superannuation@treasury.gov.au](mailto:superannuation@treasury.gov.au)

Dear Sir/Madam

## **Superannuation Performance Test Treatment of Faith-based Products – Regulations**

CPA Australia and Chartered Accountants ANZ represent over 300,000 professional accountants globally. Our members work in diverse roles across public practice, commerce, industry, government and academia throughout Australia and internationally.

The exposure draft *Superannuation Industry (Supervision) Amendment (Annual performance assessments—Faith-based products) Regulations 2022* (the “draft regulations”) is proposed to be made under Schedule 5 of the *Treasury Laws Amendment (2022 Measures No. 3) Bill 2022* (the “Bill”), presently before Parliament. Schedule 5 of the Bill amends the *Superannuation Industry (Supervision) Act 1993* to allow for the Australian Prudential Regulation Authority (APRA) to receive applications from Responsible Superannuation Entity (RSE) licensees to vary the operation of the annual performance test for faith-based products.

The draft regulations include amendments to the *Superannuation Industry (Supervision) Regulations 1994* that support the implementation of a supplementary performance test by specifying:

- When APRA must conduct the supplementary performance test
- How APRA may determine and apply alternative indices for the purposes of conducting the supplementary performance test
- Additional information that must be included in an application for faith-based status.

Chartered Accountants ANZ and CPA Australia noted in [our submission to Treasury](#) in response to their proposed exposure draft legislation, that the Government intends to proceed with this policy as it was an Australian Labor Party commitment during the recent Federal election campaign. However, we also pointed out that the issue of ill-fitting indices being used to benchmark superannuation fund products as part of the performance test is likely to form a key

issue in the review of the *Your Future, Your Super* (YFYS) reforms<sup>1</sup>, now underway. As such, we recommended that this measure not proceed until after the review has been completed.

Additionally, we noted that the problem of inappropriate benchmarking is not limited to faith-based products. As such, the ability to apply for access to the supplementary performance test must also be made available for non-faith-based superannuation fund products for which indices chosen by APRA are inappropriate, such as products unique to a particular industry or profession, or products designed for investors with ethical or sustainable preferences.

In our submission, we noted that there were several key items which we felt were missing from the exposure draft legislation, such as:

1. A definition of 'faith-based product' which is not circular
2. Details regarding how APRA should address any overly narrow investment strategies, and which may encourage investment decisions which conflict with the sole purpose test
3. Guidelines for APRA in approving proposed indices to be used for benchmarking investment performance or determining (as proposed in subsection 60P(3) of the exposure draft legislation, subsection 60Q(3) of the Bill) alternative indices to be used in the event that APRA determines that the proposed index is not appropriate.

A further point we noted was that APRA's decisions would not be reviewable, meaning that if APRA made a mistake, the affected trustees would not be able to appeal this decision. Regrettably, this inability to seek redress applies despite the lack of details provided in the Bill to assist trustees with making, or APRA with assessing, applications.

The draft regulations contain several of the deficiencies we identify above. They are:

1. The definition of 'faith-based product' is not addressed in the regulations
2. Scrutiny of overly narrow investment strategies is similarly not addressed in the regulations

However, we note that regulation 19AB.18A proposes methods by which APRA may assess proposed indices, or determine alternative indices, for use in the supplementary performance test. Although we believe that the proposed regulation 19AB.18A to be useful in assessing proposed indices, we are mindful that the draft regulations have been created to support a measure which may pre-empt the findings of the YFYS review. Consequently, we recommend that this be deferred pending the findings of that review.

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<sup>1</sup> Treasury, The, 2022. *Review of Your Future, Your Super Measures* | *Treasury.gov.au*. [online] Canberra: Commonwealth of Australia. Available at: <https://tinyurl.com/537a655w> [Accessed 4 October 2022].

For further information in relation to our submission, please contact Richard Webb, Policy Advisor Financial Planning and Superannuation at CPA Australia at [richard.webb@cpaaustralia.com.au](mailto:richard.webb@cpaaustralia.com.au) or Tony Negline, Superannuation Leader at Chartered Accountants ANZ at [Tony.Negline@charteredaccountantsanz.com](mailto:Tony.Negline@charteredaccountantsanz.com).

Yours sincerely

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