

**Senate Standing Committee on Economics**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Supplementary Budget Estimates

17 October – 18 October 2012

**Question: SBT 18**

**Topic: Superannuation Fund Advice Fees**

**Hansard Page: pg 86, Thursday 18 October 2012**

**Senator CORMANN asked:**

**Senator CORMANN:** Regarding the interplay between FoFA and MySuper, there appears to be an inconsistency between the MySuper legislation and ASIC's draft regulatory guide. The MySuper tranche 3 bill, which is currently before the parliament, permits a trustee to charge superannuation fund members for advice services either collectively via the administration fee or directly via an advice fee, yet ASIC's regulatory guide appears to treat these payments to an advice provider as conflicted remuneration. Is that a correct reading on my part? If so, will the legislation be amended or will ASIC be required to amend their guide?

**Mr Rollings:** I am not aware of that conflict, so it is something we would have to take on notice.

**Senator CORMANN:** Would you take it on notice and provide some advice.

**Mr Rollings:** Certainly.

**Answer:**

ASIC published a draft regulatory guide on the conflicted remuneration provisions of the Future of Financial Advice (FOFA) reforms for consultation on 28 September 2012. In that guide, ASIC indicates that, on its reading of the law, asset-based product fees might be caught by the definition of conflicted remuneration in section 963A of the *Corporations Act 2001* where the product issuer is providing financial advice:

A possible consequence of the conflicted remuneration provisions is that they may prevent product issuers—such as trustees of superannuation funds, responsible entities, and platform operators—from giving financial product advice to retail clients to increase or maintain their investment or other interest in the issuer's products. This is because this may result in an increase in, or the maintenance of, management or other fees payable out of the fund. These fees might reasonably be expected to influence the advice. Do you see this as a concern or unintended consequence? (page 25).

ASIC is in the process of reviewing submissions on its draft regulatory guidance and Treasury is currently working with ASIC to determine whether this interpretation of the law is correct. If necessary, Treasury will provide the Minister for Financial Services and Superannuation with further advice on this matter.