Parliamentary Joint Committee on Corporations and Financial Services

Australian Securities and Investments Commission

Answers to Questions on Notice

Question No: QoN 002-01
Topic: Early super release calculations – ASIC action
Senator: Paterson

At a hearing of the COIVD-19 Senate select committee on 28 April, the following exchanged occurred with Treasury:

Senator Paterson: And moving on to other matters, I'm also interested in the early access to super policy and in particular some advice which has been given to super fund members about the impact of accessing their funds at this stage. You may or may not be familiar with a media release issued by Industry Super Australia on the 24th of March. It's entitled Accessing Super Should Be a Last Resort. And in that media release, they attached some analysis performed by ISA about what the effect of withdrawing superannuation would be on their balance at retirement. It has a table, it has a number of different ages and assumptions about how much super they take out. Just to highlight one example, they say if you're aged 30 and you take $20,000 out, the difference at retirement will be you'll have $97,214 fewer. Now I compared the figures offered by ISA in their advice to the Money Smart website operated by ASIC. And there's a fairly significant discrepancy in the results that it gives. So if you enter the exact same scenario into the Money Smart website: age 30, withdraw $20,000, ASIC advises that you would only would have $43,032 less at retirement. So half of what ISA was forecasting. Ms. Wilkinson as a as a starting point, are you familiar with ISA's analysis?

Ms. Wilkinson: So I am broadly aware of ISAs analysis. But Mr Jeremenko who has joined the table, I think has looked at it in more detail than I have.

Senator Paterson: Okay, well, we'll go to him. Thank you.

Robert Jeremenko: Thank you. So, Robert Jeremenko, Division Head Retirement Income Policy. I've certainly seen the headline takeouts from that ISA analysis. You're correct, Senator, that the numbers used are very different from the ASIC Money Smart calculator numbers for the same scenarios. And the major reason for that is the use of nominal figures rather than real. So those figures that ISA quote, do not take into account, well do not use today's dollars effectively. And that is inconsistent with what ASIC has told super funds, what ASIC has told anyone who is making public statements about the effect on retirement balances of various withdrawals from super. So it makes sort of intuitive sense to me that you use today's dollars when you're trying to estimate which is what the ASIC Money Smart calculator does. We are trying to estimate what effect a withdrawal will have at some point in the future. So as you say, the figure for the $20,000 withdrawal for a 30 year old is $43,000 at age 67, not something significantly larger.

Senator Paterson: Thank you for that answer. Mr Jeremenko, I mean, from an economics point of view, what is the advantages of using nominal figures? Why would you use a nominal figure instead of a real figure?

Robert Jeremenko: Well, certainly in that example, the nominal figure gives a larger a larger hit to retirement balances. Now, those who are using that are the only ones that can answer why they are doing that. But what I can point to is that not only as I've mentioned already, the guidance that ASIC has put out in the public domain and has been out there since before the COVID situation, but also the Actuaries Institute, the you know, the general and well-respected methodology for predicting the time value of money is to take into account, you know, an inflation adjustment. So a CPI adjustment and a, you know, rising cost of community living standards adjustment. And to do that, using real numbers as in today's dollars is the is an appropriate way to give an indication of the time value of money.

Senator Paterson: Mr. Jeremenko, it's probably not your role to speculate what ISAs motives might have been in seeking to dramatically inflate the impact of taking money out of your super fund. Perhaps I will pursue that further with ASIC at a later opportunity.

Question

a. What action, if any, has ASIC taken to address this issue?

Answer:

a. On 20 April 2020 ASIC wrote to Industry Super Australia Pty Ltd (**ISA**) asking questions about the modelling underlying their estimates of the impact of early release of superannuation on retirement balances.

ASIC expressed concern that the ISA modelling did not follow all of the principles that ASIC articulated in a frequently asked question published on ASIC's website on 16 April 2020: *How should trustees communicate the potential long-term impacts of the COVID-19 early release of superannuation scheme on retirement balances?*. Contrary to the ASIC principles, the ISA modelling did not use the same assumptions as the generic calculator on the ISA website. (The ASIC principles are intended to assist trustees by describing how they might minimise their risk of providing misleading disclosure. It is important to note that they do not have the force of law and estimates are not misleading merely because they do not comply with the ASIC principles.)

On 4 May ISA responded to ASIC's letter stating that it had reviewed its early release modelling and website calculators and that, as a result of that review, it would make changes to the assumptions used in its early release modelling and website calculators.

ASIC is reviewing ISA's changes and will then consider its next steps.

ASIC notes that contrary to the original evidence provided to the COVID-19 Senate Select Committee by Mr Jeremenko, the ISA estimates are in real, rather than nominal dollars and this is not the focus of ASIC's engagement with ISA on this matter.

Question:

b. If no action has been taken, why not?

Answer:

b. Not applicable, see response to previous question.

Question:

c. If action has been taken and it has not been publicised, why not?

Answer:

c. While ASIC has a strong policy of transparency and we are committed to communicating publicly about our regulatory activities, it is not ASIC's usual practice to publicise action which involves making preliminary inquiries of individual entities.

When a matter is still in the preliminary stages, ASIC must balance the public interest benefits of transparency about our action against the rights of individuals subject to our inquiries. We also need to consider a range of matters (not all of which would be relevant in this case) before making a public statement about our regulatory actions. These factors include:

- legislative restrictions – for example, section 127 of the *Australian Securities and Investments Commission Act 2001* prevents disclosure of certain material, such as information provided to ASIC in confidence;
- the need to safeguard confidential or sensitive information (such as confidential information that may affect the price or the market for a financial product);
- the potential to jeopardise investigations through the untimely release of information;
- privacy legislation and guidelines;
- ensuring a person's right to a fair trial is not prejudiced;
- the risk of defamation or other legal proceedings against complainants, ASIC officers or other entities;
- compliance with court orders not to disclose information in certain circumstances; and
- the need to use our resources efficiently – ASIC must allocate resources across a wide range of priorities and responsibilities.

In light of this, our normal practice is only to make a public statement about a specific regulatory action at the following times:

- in criminal proceedings – no earlier than at the time of the first court appearance by the accused;
- in civil proceedings – when the originating documents have been filed and served;
- in administrative proceedings – when the decision has been made and any relevant requirement for the decision to be gazetted and/or to update a register has been met;
- when we refer a case to the Takeovers Panel; and
- when we secure some other form of significant regulatory outcome, such as, payment of remediation to consumers or a court enforceable undertaking.