

Rule 21.Additions to a Member's Account

Explanation

Additions to a Member's Account will normally represent Contributions, roll-overs or Earnings. Additions may also include an allocation made by the Trustee from a Reserve into a Member's Account.

Contributions may include Splittable Contributions that have been transferred from a Member's Spouse in accordance with the spouse contributions splitting rules in the Act - see Rule 27.

Rule

On the last day of each month or such other time as the Trustee might determine or on any earlier date as required by the Act the Trustee shall add to a Member's Account:

- (a) the amount of Contributions received by the Trustee for the benefit of the Member; and
- (b) at the discretion of the Trustee such part of the Earnings as the Trustee believes should be added to that Member's Account; and
- (c) the amount of any Splittable Contributions as the Trustee has agreed to add to that Member's Account; and
- (d) any amount to which a Member is entitled because of a Payment Split; and
- (e) such other amounts including allocations of Reserves as the Trustee might determine;

provided that any such addition to the Member's Account does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

Rule 22.Deductions from a Member's Account

Explanation

Deductions from a Member's Account will normally represent expenses directly attributable to the Member or that portion of the Fund's general expenses that the Trustee requires to be allocated to the Member's Account. Deductions may also include any losses which the Trustee believes should be attributed to that Member and any transfers such as transfers of Splittable Contributions taken by the Trustee from a Member's Account and transferred to another account.

Rule

On the last day of each month or such other time as the Trustee might determine or on any earlier date as required by the Act the Trustee shall deduct from a Member's Account:

- (a) that part of the expenses of the Fund that the Trustee believes should be deducted from that Member's Account; and
- (b) that part of any losses of the Fund that the Trustee believes should be deducted from that Member's Account; and
- (c) the amount of any payments of Benefits made to the Member or any other person from that Member's Account; and
- (d) the amount of any Taxes payable by the Trustee that the Trustee believes should be deducted from that Member's Account; and
- (e) the amount of any Excess Contributions Tax liability required to be deducted from that Member's Account in accordance with Rule 25; and
- (f) the amount of any Splittable Contributions that the Trustee has agreed to deduct from that Member's Account; and
- (g) any amount which is to required to be deducted from that Member's Account because of a Payment Split; and
- (h) any other amount which the Trustee believes should be deducted from that Member's Account, including any amount to be transferred to a Reserve or to

another Member's Account, provided that the amount of any such deduction would not cause the balance of the Member's Account to be less than that Member's Minimum Benefits unless allowed by the Act; and

provided that any such deduction does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

Appointment of Auditor and Specialists

Rule 23. The Trustee must appoint an Approved Auditor and may appoint a specialist

Explanation

The Trustee must each year appoint an Auditor to audit the Fund. The Auditor is required to produce an annual report.

The law relating to Self Managed Superannuation Funds is extremely complex; a failure to comply with the law might see the Fund severely penalised and might cause a Trustee to be fined and even imprisoned. As a consequence the Trustee might decide that it is prudent that a specialist be appointed to assist the Trustee in ensuring that the Fund remains a Self Managed Superannuation Fund and to assist the Trustee in the administration and management of the Fund.

Rule

- 23.1.** On establishment of the Fund and for every subsequent year of income the Trustee must appoint an Auditor to audit the Fund who must give to the Trustee a report in the form required by the Act.
- 23.2.** On establishment of the Fund and thereafter as the Trustee may determine the Trustee shall appoint such specialists as required by the Trustee to assist the Trustee in ensuring that the Fund remains a Complying Self Managed Superannuation Fund as well to assist the Trustee in the management and administration of the Fund.

Contributions, Roll-Overs and Transfers

Rule 24. Who can make Contributions

Explanation

The Trustee may accept Contributions from:

- (i) a Member;*
- (ii) a Member's employer;*
- (iii) a Member's Spouse;*
- (iv) a relative of a Member;*
- (v) an employer of the Spouse or relative of the Member;*
- (vi) the Regulator;*
- (vii) the Government, or*
- (viii) any other person or entity,*

provided the Contributions are made in accordance with the Act. From 1 July 2007 annual limits have been imposed to cap the amount of Contributions which can be made by or for the benefit of a Member. More information is provided about these limits in the Product Disclosure Statement supplied with these Rules.

Contributions may be made in cash or by an in specie transfer of assets. However care needs to be taken that the rules in the Act dealing with the acquisition of assets from Members are not contravened.

A Member must ensure that they provide the Trustee with their tax file number before any Contributions are made by them or on their behalf to the Fund.

Rule

A person may make Contributions to the Fund for the benefit of a Member provided the Fund will not, by reason of acceptance of those Contributions:

- (a) become a Non-Complying Self Managed Superannuation Fund, or
- (b) be in breach of the Act.

Rule 25. Excess Contributions

Explanation

Superannuation Contributions are subject to annual limits. Any Contributions received by the Fund that are in excess of a relevant limit will be subject to additional tax. This tax – an Excess Contributions Tax – is imposed on individuals (and not the Fund). Where an Excess Contributions Tax liability arises a Member will be able and in some cases must withdraw an amount equal to their tax liability from the Fund.

Rule

If a Member has an Excess Contributions Tax liability and if a Member has lodged with the Trustee a Release Request the Trustee shall within thirty days of receipt of that request pay to the Member or at the Member's request pay to the Australian Taxation Office that amount which is the lesser of:

- (a) any amount which the Member has by notice attached to the Release Request requested that the Trustee pays to the Member or to the Australian Taxation Office; or
- (b) the amount of Excess Contributions Tax stated on that Release; or
- (c) the total amount of that Member's Superannuation Interest in the Fund.

Rule 26. The Trustee may accept a transfer from another Superannuation Entity

Explanation

A Member may request the Trustee to accept a transfer of an amount from another Superannuation Entity.

The Trustee has absolute discretion as to whether to accept any such transfer or not. The Trustee can make an acceptance subject to conditions. Where the Trustee resolves to accept an in specie transfer of assets the Trustee must ensure that the transfer of the assets to the Fund does not breach the Act or the Rules of the Fund.

Rule

A Member or the Legal Personal Representative of the Member may request that the Trustee accept a transfer of an amount from another Superannuation Entity. The Trustee shall in its sole discretion determine whether or not to accept the whole or part of such amount and whether or not conditions should apply to the acceptance of that transfer. The Trustee cannot accept a transfer of an amount to the Fund if acceptance of that amount would cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

Rule 27. Allotments, Transfers and Rollovers of Benefits

Explanation

A Member may request the Trustee to allot, transfer or rollover all or part of their Member's Account to another Superannuation Entity or to another Member's Account. The Trustee may also at its discretion so allot, transfer or rollover all or part of a Member's Account.

Examples of where such transfers might be appropriate are:

- *upon receipt of a request from a Member to transfer an amount of Splittable Contributions from their Member's Account to their Spouse's Member's Account;*
- *where a Payment Split is required to be made for the purposes of Part VIIIB of the Family Law Act 1975; and*
- *where one Member separates from his or her Spouse who is also a Member.*

Rule

27.1. If a Member or the Legal Personal Representative of the Member:

- (a) requests the Trustee to allot, transfer or rollover all or part of their Member's Account to another Superannuation Entity or to another Member's Account, and
- (b) the Trustee is satisfied that any such allotment, transfer or rollover will not cause the Fund to be a Non-Complying Self Managed Superannuation Fund,

or if the Trustee is required by law or agreement made for the purposes of the *Family Law Act 1975* the Trustee shall within such period as required by the Act or other law, allot, transfer or rollover the whole or that part of the Member's Account to that other Superannuation Entity or to the other Member's Account.

27.2. The Trustee at its sole discretion unless prohibited by the Act may transfer the balance of a Member's Account to another Complying Superannuation Fund or to another Member's Account provided that in so doing the Fund does not become a Non-Complying Self Managed Superannuation Fund or breach the Minimum Benefit provisions.

27.3. The Trustee may effect the transfer or rollover in the manner and form of its choice including whether the transfer is by way of cash or assets or has conditions attached.

Investments

Rule 28. The Trustee must formulate a written investment strategy

Explanation

The Trustee must prepare and implement a written investment strategy. This is a requirement of the Act. The investment strategy:

- *must reflect the purpose and circumstances of the Fund and have particular regard to the membership profile, Benefit structure, tax position and liquidity requirements of the Fund;*
- *should set out the investment objectives of the Fund and detail how the Trustee will achieve those objectives.*

Breaches of the investment strategy requirement may result in the Trustee being fined or sued for loss or damages. In addition, the Fund could become a Non-Complying Superannuation Fund.

If the circumstances of the Fund changes (for example because of the receipt of an exceptional Contribution) the Trustee should reconsider and possibly revise its investment strategy.

Rule

- 28.1.** The Trustee must formulate and implement an investment strategy that considers the whole of the circumstances of the Fund including, but not limited to, the following:
- (a) the risk involved in making, holding and realising, and the likely return from the Fund's investments considering its objectives and its expected cash flow requirements;
 - (b) the composition of the Fund's (or part of the Fund's) investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
 - (c) the liquidity of the Fund's investments considering its expected cash flow requirements;
 - (d) the ability of the Fund to discharge its existing and prospective liabilities.
- 28.2.** The investment strategy must be documented in writing and signed by the Trustee.
- 28.3.** The investment strategy may consist of one strategy for the whole of the Fund or separate investment strategies for the various parts of the Fund.
- 28.4.** The Trustee must review the Fund's investment strategy annually and may amend that investment strategy after such review or at any other time the Trustee believes is appropriate. If the Trustee amends an investment strategy all Members affected by any such amendment shall be advised in writing of all details of the amendment.
- 28.5.** A Member may at any reasonable time request the Trustee to produce the Fund's investment strategy for inspection and the Trustee shall comply with this request by the Member.
- 28.6.** The Trustee must also set an investment strategy for one or more Reserves of the Fund. Any such investment strategy must be based upon the prudential management of assets of the Reserve or such other requirements as laid down in the Act.
- 28.7.** In setting the investment strategy the Trustee may act on the advice of an investment adviser provided the Trustee reasonably believes that the adviser is qualified and has the necessary skills to provide such advice.

Rule 29. The Trustee must invest the assets of the Fund

Explanation

The Trustee must invest the assets of the Fund.

The Trustee must ensure all investment decisions are made in accordance with the investment strategy.

While all of the assets of the Fund might be in cash, the Trustee of the Fund must have determined in an investment strategy that the holding of cash is the appropriate investment for the Fund at this time.

Rule

The Trustee must invest the assets of the Fund in accordance with the Fund's investment strategy.

Rule 30. A Member can request the Trustee to invest their account separately or jointly

Explanation

The Trustee may adopt a "pooled investment strategy" or a "separate investment strategy" for the Fund. A Member may request the Trustee to adopt a separate investment strategy for that Member.

Rule

A Member or the Legal Personal Representative of the Member can request the Trustee to invest Contributions, transfers or rollovers made to the Fund for the benefit of that Member and income from the investment of those Contributions, transfers and rollovers separately from any other investments of the Fund. The Trustee need not accept that request.

Rule 31. Authorised investments

Explanation

These wide provisions are to ensure that there is no doubt as to a Trustee's ability to make various investments. The Trustee should not make investments if that would cause the Fund to fail the "sole purpose test" or become a Non-Complying Self Managed Superannuation Fund.

Rule

- 31.1.** Subject to the Act, these Rules and provided any investment does not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund the Trustee may invest the assets of the Fund as if it were the absolute and beneficial owner of those assets. In investing the assets of the Fund the Trustee shall exercise that diligence and prudence an ordinary prudent person would exercise in conducting his or her own affairs.
- 31.2.** Unless otherwise prohibited by the Rules, the Trustee may invest the assets of the Fund in any investment the Trustee believes appropriate. The investments may be both within and outside Australia. In particular, the Trustee shall have the power to apply or invest any moneys requiring to be invested under these Rules either alone or in partnership or co-ownership with any person or persons:
- (a) *Authorised investments:* in any one or more of the investments from time to time sanctioned by law in any State or Territory of Australia for the investment of trust moneys;
 - (b) *Real and personal property:* in the acquisition of real or personal property or any interest therein and without limiting the generality thereof of any patent, copyright, design, formula, secret process, concession, trademark and other like right or privilege in Australia or in any other country;
 - (c) *Shares:* in the acquisition of fully or partly paid shares including redeemable, preference or redeemable preference shares, stock debentures, debenture stock bonds, units, securities or obligations or any interest, with or without deferred, restricted, qualified or special rights relating thereto and whether or not there is or is not a liability in respect of any such shares, units, securities or interests, of or in any public proprietary or no liability company, association, firm, mutual fund or unit trust wherever incorporated or formed, whether carrying on business in Australia or in any other country, or in giving any guarantee or otherwise becoming a proprietor of a company limited by guarantee;
 - (d) *Option and rights:* in the acquisition of options, entitlements or rights to any of the securities mentioned in paragraph (c) of this sub-clause;
 - (e) *Deposit:* on fixed deposit or at call with any bank, savings bank, building society, company, corporation or firm wherever incorporated or situated and wherever carrying on business;

- (f) *Insurance*: in the acquisition of any policy of assurance or insurance of any kind whatsoever and wherever made;
- (g) *Loans*: in making loans to any person or company except to Members or a relative of a Member;
- (h) *Precious objects*: in the purchase of gold, silver, works of art, coins, stamps, furniture, ornaments, precious objects, jewellery and antiques;
- (i) *Commodity contracts*: in the acquisition of foreign currencies, hedging contracts, commodity contracts and also options or future contracts of any kind which are quoted on a recognised stock exchange;
- (j) *Permanent building society*: in the lodgement of moneys with a permanent building society wherever situated by taking up shares therein or depositing funds therewith;
- (k) *Deferred property*: in the acquisition of any reversionary or deferred property or rights of any description;
- (l) *Warrants*: in the acquisition of a warrant.

Rule 32. Trustee Powers

Explanation

This Rule is designed to give the Trustee sufficient powers to administer the Fund and manage the investments of the Fund.

Rule

- 32.1.** In the administration of the Fund and in the exercise of the powers, authorities and discretions conferred by the Deed, by the Rules or by law the Trustee shall in addition to those powers conferred on the Trustee by the Act have the following additional powers:
- (a) *To deal with assets*: to sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, or otherwise deal with or dispose of or transfer any item or asset comprising the whole or part of the Fund;
 - (b) *Real property*: to acquire, dispose of, exchange, strata title, subdivide, mortgage, sub-mortgage, lease, sub-lease, grant, release or vary any right or easement or otherwise deal with any interest in real property;
 - (c) *Personal property*: to acquire, dispose of, exchange, hire, lease, mortgage or otherwise deal with any interest in personal property;
 - (d) *Lease*: to rent premises from any person, acquire the interest of any lessee in any lease, purchase, hire, take on lease, grant leases, sub-leases, tenancies or rights of any nature to any interest in real estate, motor vehicles, computer hardware and software, fixtures and fittings, furniture, utensils, plant and equipment and other personal property of any description;
 - (e) *To let*: to lease and let property owned by the Fund or held by the Trustee pursuant to the provisions of these Rules upon terms and conditions as the Trustee may decide, to accept surrenders from, and to make arrangements with a lessee or tenant as the Trustee may consider appropriate;
 - (f) *Engage specialists*: to employ or engage agents or professionals in the execution of the trusts and powers and instead of acting personally from time to time to employ or engage and pay out of the trust fund such managers, agents, self managed superannuation fund advisers, solicitors, barristers, auditors, accountants, brokers, surveyors or other persons, to transact any business or to do any act required to be done in connection with the administration of the trusts declared in the Deed, and to act upon the opinion or advice of any such person without being responsible for any loss or damage occasioned by acting in accordance therewith;

- (g) *To lend:* subject to these Rules and the Act to lend and advance moneys;
- (h) *Bank accounts:* to open in the name of the Fund or in the name of any person or corporation as nominee of the Trustee, or in the joint names of the Trustee and another, any cheque, savings or other bank account with any bank or financial institution wherever situated, as the Trustee decides, with full power to operate or close any such account;
- (i) *Management expenses:* to pay out of the assets, Reserves or the income of the Fund all costs charges and expenses incidental to the management of the Fund or to the exercise of any power, authority or discretion contained in the Rules or the Deed;
- (j) *Pay general expenses:* to pay insurance premiums, rates, taxes, rents, and outgoings in connection with any real or personal property of the Fund from the assets, Reserves or the income of the Fund and to manage such property and effect repairs as the Trustee may consider necessary or advisable;
- (k) *Corporate securities:* with respect to any company in which the Trustee holds shares, stocks, debentures, options, convertible notes or is otherwise interested or concerned ("securities") to exercise the following powers in addition to powers conferred by law:
 - (i) to pay calls on securities or to permit securities to be forfeited and sold;
 - (ii) to purchase securities and to take up securities of a new issue;
 - (iii) to attend meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustee;
 - (iv) to sell securities at such price and upon such terms with or without security as the Trustee decides;
 - (v) to agree to any arrangement relating to the sale, transfer or exchange of any securities, or modifying any rights, privileges or interests in relation to the securities, to agree to any scheme or arrangement for the increase or reduction of the value or amounts of any shares or stock or of the capital of any company in which any securities form the whole or any part of the Fund, or by which any such securities are substituted or given in exchange, either wholly or partly for other securities, whether in the same company or not, for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to the securities and generally to manage and deal with any securities as if the Trustee owned them beneficially; and
 - (vi) to agree in respect of a winding up with the liquidator of a company or any member of such company or any other person, in all things as the Trustee shall decide, for the division or partition in kind or specie of the assets or property of whatsoever nature of the company and to accept any of the assets and property in payment or satisfaction of any interest of the Trustee in the company with power to pay any moneys by way of equality of division or partition;
- (l) *Unit trust interests:* to acquire units or sub-units of any fixed or flexible unit trust either by way of application, purchase or by way of settlement by the Trustee in the establishment of such unit trust and to exercise all rights including voting rights and perform all obligations as a holder of any units in such trust and to accept all distributions by the trustee of such unit trust;
- (m) *Franchises:* to acquire by means of purchase or otherwise and to sell, dispose, relinquish or otherwise deal in franchises, franchise agreements, licences or things of like nature;
- (n) *Subdivision of property:* to partition or agree to the partition of or to subdivide or agree to the subdivision of property of any kind which, or any interest in which, may for the time being be subject to these trusts and to pay moneys by way of equality or partition;

- (o) *Maintain property:* to maintain and preserve in good condition any real or personal property of the Fund or otherwise held by the Trustee according to the Rules and to pay or defray those costs;
- (p) *Power to set aside:* to set aside out of the income or capital of the Fund from time to time such money as may in the opinion of the Trustee be sufficient to meet any debt or obligation due or accruing;
- (q) *Future contracts and options:* to engage brokers and commission agents and vary and determine the terms of any such engagement and either directly or through any broker or agent in any market in any part of the world buy sell, open, close-out or otherwise deal in futures contracts of all kinds, to enter into, vary, exercise, abandon or sell any put or call option or rights, or to place bids, make offers, hedge and effect orders including buying, selling, straddle, switch and stop-loss order, to tender and take delivery of commodities and currencies which are the subject of any futures contract or option, and otherwise to do and perform all things so as to operate on, utilise or deal with the facilities of any stock or futures exchange provided the Trustee maintains a risk management strategy;
- (r) *Trustee's power to deal with itself:* notwithstanding any rule or law or equity to the contrary:
 - (i) to acquire as property of the Fund real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the Trustee PROVIDED THAT any property so acquired is acquired for a consideration being not greater than the current Market Value of the property and upon which such acquisition the beneficial interest in and to the property shall be held by the Trustee according to the Rules;
 - (ii) to dispose of any beneficial interest in property of the Fund to itself;
 - (iii) to lease to the Fund any real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the Trustee;
 - (iv) to lease any property of the Fund to itself;
- (s) *Policies:* to effect or acquire policies of life assurance of any kind on the life of any Member or in respect of sickness, disability or accident to any Member, to pay premiums transfer, surrender, change the situs of and deal with these policies in any manner whatsoever, whether or not these policies are individual policies on the life of one person or a group policy on the lives of two or more persons, to purchase or enter into insurance or investment bonds whether or not the bonds are linked to a policy over the life of any person;
- (t) *Agency and licences:* to apply for, purchase and hold any permit, agency or licence which may be desirable or required to enable or facilitate the carrying on of any business which the Trustee is empowered to engage in and to surrender, relinquish, sell, vary or assign the same;
- (u) *Choses-in-action:* to acquire choses-in-action including debts and obligations of all kinds for value or by way of gift or at a discount or at a premium and to assign, release, vary, relinquish or otherwise deal with the choses-in-action in any way whatsoever on such terms and conditions as the Trustee may see fit;
- (v) *Receive gifts or distributions:* to receive property by gift inter vivos or by distribution under a will or under the provisions of any other trust or otherwise from any person as an addition to the trust fund, whether subject to liabilities or not and to hold these gifts according to the Rules and to administer such additions under these provisions;
- (w) *Legal proceedings:* to institute, join in and defend proceedings at law or by way of mediation or arbitration and to proceed to the final end and determination of, or to compromise the same and to compromise and settle any such dispute or

proceedings for such consideration and upon the terms and conditions as the Trustee may decide;

- (x) *Intellectual property*: to apply for, purchase or otherwise acquire and to sell patents, patent rights, copyrights, trade marks, designs, formulas, licenses, concessions, know-how and the like, conferring any exclusive or non-exclusive or limited right to use of any other intellectual property rights and to use, exercise, develop or grant licenses in respect of or otherwise turn to account the property rights or information so acquired;
- (y) *Release of powers*: by irrevocable deed to renounce and release any power conferred on the Trustee under the Rules in respect of the whole or any part of the Trustee or the income or any part thereof. Upon such renunciation and release any power or powers shall be deemed to be at an end and no longer exercisable by the Trustee to the extent of the renunciation and release;
- (z) *Incidental powers*: to do all such other things as may be incidental to the exercise of the powers, rights, discretions and authorities hereby conferred on the Trustee.

32.2. These powers shall be in addition to any other powers, authorities and discretions vested in the Trustee by another provision of the Deed, the Rules or by law.

32.3. These powers shall not be limited by, or be construed so as to be limited by any other powers, authorities and discretions otherwise provided by the Deed, the Rules or by law.

32.4. In exercising these powers the Trustee must ensure at all times that the Fund remains a Complying Self Managed Superannuation Fund.

32.5. A Trustee who is a natural person may be a director of any company in which any moneys forming part of the Fund are from time to time invested and may receive the remuneration attached to such office without being liable to account for it unless that appointment would cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

32.6. Subject to the terms of these rules the Trustee may exercise or concur in exercising all powers and discretions given under this Deed or by law notwithstanding that it or any person being a director or shareholder of the Trustee has or may have a direct or indirect interest in the result of exercising such powers or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

Rule 33. The assets of the Fund are to be held in the Trustee's name

Explanation

The SIS Act as well as the Rules require that all the assets of the Fund be in the Trustee's name and be held separately from any assets held by the Trustee personally, a Member, or by an employer of a Member. No Member has any entitlement to a specific asset of the Fund.

Rule

All the assets of the Fund must be held in the Trustee's name and must be held separately from any assets held by the Trustee personally, a Member, by an employer of a Member or any other person unless otherwise allowed by the SIS Act.

Rule 34. Trustee may receive gifts or distributions

Explanation

The Trustee of the Fund may receive gifts or distributions (additional to investment income derived from any investments made by the Fund) from:

- (i) any company;*
- (ii) any trust including a family trust, testamentary trust or the legal estate of a deceased person;*
- (iii) any partnership, business, commercial or investment enterprise;*
- (iv) any government or statutory body.*

so long as the acceptance of any such gift or distribution does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

Gifts or distributions received by the Fund can be in cash or property. Distributions would normally be from a trust - note that there can be adverse tax consequences if the Fund receives a distribution from a private trust.

Rule

- 34.1.** The Trustee can accept a distribution or a gift made to the Fund provided the Fund will not by reason of acceptance of that distribution or gift become a Non-Complying Self Managed Superannuation Fund or the Trustee otherwise resolves that the Trustee should not accept that distribution or gift.
- 34.2.** The Trustee may allocate any such distribution or gift at its discretion to the Earnings, a Reserve, a Member's Account or apply it for any such purpose as the Trustee determines including the payment of a pension to a Member, their Legal Personal Representative or to a Dependant in the event of the Member's death.

Rule 35. The Trustee must not borrow

Explanation

Normally the Trustee will not be allowed to borrow nor mortgage or charge the assets of the Fund. A borrowing includes an overdraft or a margin account. An acquisition of an instalment warrant unless specially allowed by the Act might be a borrowing.

For example a contract for difference ('CFD') is not prohibited unless the Trustee has deposited assets of the Fund with the CFD provider as security in relation to the Fund's obligations to pay margins. These are prohibitions imposed by the Act. The Rules reflect those prohibitions.

This Rule may prevent the Trustee from acquiring a particular investment. The Trustee should first obtain advice from a specialist or the Auditor before making an investment that may breach this Rule.

Rule

Except as otherwise provided by the Act the Trustee must not:

- (a) borrow money;
- (b) maintain an existing borrowing of money;
- (c) recognise, or anyway encourage or sanction, a charge over, or in relation to a Member's Benefits; or
- (d) give a charge over, or in relation to, an asset of the Fund.

Determination of and allocation of the Earnings

Rule 36. The Trustee must determine and allocate the Earnings of the Fund

Explanation

The Trustee must determine the Earnings of the Fund each Financial Year.

Rule

- 36.1.** The amount of the Fund's Earnings for all or part of a Financial Year is to be determined by the Trustee and may include income received and accrued, realised and unrealised gains and any other such amounts as the Trustee believes should form part of the Fund's Earnings.
- 36.2.** The Trustee has sole discretion as to where to allocate or as to how to apply Earnings including allocating Earnings to an Accumulation Account, a Pension Account, or a Reserve and using Earnings to pay a Benefit or expense of the Fund or any tax imposed upon the Fund.

Reserves

Rule 37. The Trustee may establish a Reserve

Explanation

The Trustee may create a Reserve. Normally a Reserve would be created to meet an expected liability of the Fund. A Member does not have any entitlement to amounts credited to a Reserve.

As examples the Trustee might establish a Reserve to which the following amounts may be added:

- *Earnings before being allocated to Members.*
- *An amount (generally on the advice of an actuary) so as to ensure that the Trustee has sufficient funds to pay a Pension.*
- *Amounts to be held in reserve for unexpected contingencies.*
- *Self-insurance amounts (whether for the Members generally or just for only one or more of the Members).*
- *Further the Trustee might establish a Reserve from which tax deductible amounts may be paid to the Legal Personal Representative or Dependant of a Member in the event of the Member's death.*
- *The Trustee should determine at the time of establishment of a Reserve:*
 - *What amounts are to be added to or deducted from the Reserve,*
 - *The investment strategy to be adopted for that Reserve, and*
 - *The proposed application of that Reserve.*

Rule

- 37.1.** The Trustee may from time to time establish such Reserves and add, deduct and allocate amounts to those Reserves as it considers appropriate (except that it may not establish a Reserve or add or deduct any amount to or from a Reserve

if that would result in the Fund becoming a Non-Complying Self Managed Superannuation Fund).

- 37.2.** The Trustee must formulate and implement a separate investment strategy for any Reserve. The investment strategy must be consistent with the Fund's investment strategy and with the Trustee's ability to discharge liabilities wherever actual or contingent, as and when they fall due.
- 37.3.** No Member nor or any other person shall have any entitlement to any amount in a Reserve.

Taxation

Rule 38. Payment of Tax and allocation to Members' Accounts

Explanation

The general rule is that a Complying Superannuation Fund will be assessed to Tax on:

- (i) Contributions made to the Fund on behalf of a Member (except non-deductible Contributions made by a Member); plus*
- (ii) Capital gains after deduction of same year and carried forward capital losses; plus*
- (iii) Earnings derived by the Fund on investment of Contributions; less*
- (iv) Deductible expenses incurred by the Fund (which might include insurance expenses); less*
- (v) Carried forward losses.*

Tax (except on some capital gains) is levied at a rate of 15% on the net income of a Complying Superannuation Fund (although "non arm's length income" is taxed at a rate of 45%).

Tax on capital gains on assets held by the Fund for more than a year (and which have been acquired after 19 September 1985) will be subject to a 10% tax.

Carried forward losses do not include capital losses. Capital losses incurred as the consequence of the disposal of an asset acquired after 19 September 1985 whilst not deductible against ordinary income may be offset against capital gains (or carried forward for offset against future capital gains). Given the possible long lead time between the incurrence of a capital loss and possible utilisation of that loss the Trustee should ensure that adequate records are kept recording and evidencing the incurrence of that loss.

The allowance of any imputation credits received on franked dividends derived by the Fund will reduce the effective rate of Tax payable by the Fund.

Where a Trustee holds assets for the purposes of paying a Pension or Pensions the Trustee will not be subject to Tax on any income or gains derived from the investment of assets used to fund payment of those Pensions.

Tax payable by the Fund need not be deducted from the Member's Account of any particular Member - it might be paid from a Reserve or deducted from Earnings.

Rule

- 38.1.** The Trustee must pay all Tax properly assessed to the Trustee.
- 38.2.** The Trustee may in its discretion deduct from a Member's Account Tax paid or payable by the Trustee:
- (a) as a consequence of the receipt by the Trustee of a Contribution for the benefit of a Member,
 - (b) payable on any income added to a Member's Account, and
 - (c) any Tax which the Trustee reasonably believes may be payable as a consequence of a payment to a Member.
- 38.3.** The Trustee may in its discretion deduct from any account, including a Reserve, Tax paid or payable by the Trustee provided any such deduction will not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

- 38.4.** If the Trustee receives a refund of Tax the Trustee may add that refund to such Members' Accounts or to such Reserve as it determines provided that addition will not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

Insurance

Rule 39. The Trustee may establish an insurance plan

Explanation

The Trustee may establish an insurance plan. The insurance plan may provide, amongst other things, lump sum or annuity cover payable in the event of a Member's death or disablement. The insurances that may be acquired by the Trustee include sickness and accident, trauma, permanent disability and life insurance.

Rule

The Trustee may establish an insurance plan for the benefit of the Fund so as to enable the Fund to make payments (including the payment of Benefits on death or disability) to a Member, a Member's Dependant or the Legal Personal Representative of a Member in the event of a Member's death, disablement, illness or as otherwise allowed by the Act.

Rule 40. The Trustee may self insure

Explanation

The insurance plan may also require the Trustee to self-insure the Fund (so as to enable the Trustee to pay a Benefit to a Member or to a Member's Legal Personal Representative). In the event that the Trustee seeks to self-insure the Trustee should:

- (i) engage an actuary to provide such advice to the Fund;*
- (ii) determine the scope of the Fund's self insurance needs;*
- (iii) establish a self insurance Reserve;*
- (iv) set a separate investment strategy for the self insurance Reserve.*

An amount paid from a Reserve established for the purpose of self insurance might be tax deductible.

Rule

The Trustee can elect to self insure and may establish a Reserve:

- (a) to which such amounts as the Trustee might require shall be added for the purpose of self insurance;
- (b) from which the Trustee may pay amounts required to be paid as a consequence of the Trustee self insuring against an event; and
- (c) from which amounts no longer required for the purpose of self insurance may be transferred to such other Reserve or to such Member's Account as the Trustee may determine.

Rule 41. The Trustee has discretion as to the application of any insurance proceeds

Rule

- 41.1.** Subject to the Act the Trustee has absolute discretion as to the application of any insurance proceeds received by the Fund and may allocate the proceeds to any Member's Account or to Reserves of the Fund.
- 41.2.** No Member nor their Legal Personal Representative nor any other person has any interest in any insurance proceeds that might be received by the Fund.

Annual Accounts

Rule 42. The Trustee must prepare annual accounts

Rule

- 42.1.** The Trustee must keep such accounting records as are required by the Act.
- 42.2.** Such accounting records are to be kept in such form and supported by such documentation as to enable those accounting records to be properly audited.
- 42.3.** The Trustee must as soon as practical after the end of each Financial Year:
- (a) prepare a statement of financial position recording the assets and liabilities of the Fund as at the end of that preceding Financial Year;
 - (b) prepare an operating statement recording the profit derived or loss incurred by the Fund for that preceding Financial Year (or part year if the Fund was not in existence for a full year);
 - (c) arrange for these statements and the accounting records of the Fund to be audited by an Approved Auditor;
 - (d) arrange for all tax returns and other statements required to be lodged pursuant to the Act by the Fund to be lodged as and when required; and
 - (e) prepare any Member and other statements and reports as required by the Act.
- 42.4.** The Trustee must retain the accounts and statements prepared in accordance with Rule 42.3 for a period of 5 years after the end of the Financial Year to which they relate.

Fund Compliance

Rule 43. The Trustee must maintain the Fund's complying status

Explanation

The Trustee must ensure that at all times the Fund is a Complying Self Managed Superannuation Fund. This means that it must at all times comply with the provisions of the SIS Act and its regulations and the Rules of this Fund.

In certain cases the Trustee may become aware that it has taken an action that may result in the Fund losing its status as a Non-Complying Self Managed Superannuation Fund. In these circumstances the Trustee must prepare a Compliance Plan that results in the Fund returning to or ensuring its Complying Self Managed Superannuation Fund status.

The action required under the Compliance Plan may result from advice from the Fund's Auditor, an adviser to the Fund, or the Regulator.

Rule

Where the Trustee becomes aware or is notified by the Auditor, an adviser to the Fund or the Regulator that the Fund may lose its status as a Complying Self Managed Superannuation Fund the Trustee must:

- (a) liaise with the Auditor, adviser or Regulator to determine a Compliance Plan to ensure the Fund's status as a Complying Self Managed Superannuation Fund is maintained;
- (b) notify Members of any action required under the Compliance Plan; and
- (c) take such action as is required under the Compliance Plan within a reasonable time frame and before the lodgement of the Fund's next regulatory return.

Fund Insolvency

Rule 44. The Trustee must develop a Solvency Plan

Explanation

The Trustee must be able to pay Benefits and expenses as and when it is required to do so.
If the Trustee believes that the Fund may become insolvent then the Trustee must prepare a Solvency Plan which if followed would ensure that the Fund remains solvent.
The Solvency Plan may be written by the Trustee, the Fund's actuary, the Auditor, an advisor to the Fund or the Regulator.

Rule

Where the Trustee becomes aware or is notified by the Auditor or the Fund's actuary that the Fund is or may become insolvent, the Trustee must:

- (a) meet with the actuary or Auditor to determine a Solvency Plan to ensure the Fund's solvency including but not limited to reducing any Members' Accounts or Members' Benefits;
- (b) notify Members of any action required under the Solvency Plan; and
- (c) take such action as is required under the Solvency Plan prior to the lodgement of the Fund's next regulatory return.

Part Three: Payment of Benefits by the Trustee

Benefits Payable to a Member

Rule 45. Benefits payable to a Member

Explanation

Upon becoming entitled to receive a Benefit from the Fund a Member may choose to receive that Benefit by way of a lump sum or an income stream or as a combination of both. In some instances the Member may be required to receive a Benefit as a lump sum and in other instances, as an income stream.

A Member may choose to receive a Lump Sum Benefit as an in specie transfer of assets.

If a Benefit is paid to a Member aged 60 and over that payment will generally be 'tax free' to the Member.

Rule

A Member or a Dependant of a Member or the Legal Personal Representative of a Member or any other person may be entitled to receive one or more of:

- (a) a Lump Sum Benefit,
- (b) a Pension,
- (c) a Temporary Incapacity Benefit,
- (d) a Permanent Incapacity Benefit, or
- (e) such other Benefit as the Trustee might determine,

provided that any such Benefit would not result in the Fund breaching the Minimum Benefit provisions, the Fund becoming a Non-Complying Self Managed Superannuation Fund or would be in breach of the Act or these Rules.

Rule 46. When must Benefits be paid to a Member

Explanation

This Self Managed Superannuation Fund has been established to provide Benefits to the Members or to their Dependants. This Rule ensures that Benefits are paid in accordance with the Core and Ancillary Purposes of the Fund.

Rule

A Benefit must be paid to a Member or to a Dependant of a Member or to the Legal Personal Representative of a Member or to some other person if that Benefit is so required to be paid by the Rules or the Act.

Rule 47. Payment of a Lump Sum Benefit

Explanation

Normally Lump Sum Benefits can only be paid to a Member on retirement of the Member (provided the Benefit is not a Preserved Benefit), the Member is permanently disabled, or if the Member turns 65 years of age. The Trustee may also be able to make payments to a Member on compassionate grounds or if that Member is suffering severe financial hardship.

Rule

- 47.1.** Provided the Fund remains a Complying Self Managed Superannuation Fund and subject to the Rules, a Member or the Legal Personal Representative of the Member can at any time request and the Trustee may at its discretion pay a Lump Sum Benefit to the Member.
- 47.2.** Subject to Rule 47.3 the Trustee may only pay a Lump Sum Benefit to a Member that does not exceed the balance of that Member's Accumulation Account.
- 47.3.** The Trustee may determine that the whole or any part of a Reserve can be paid to the Member in addition to the payment of that amount made pursuant to Rule 47.2.

Rule 48. Payment of a Pension Benefit

Explanation

The Rules allow the Trustee to pay a Pension provided payment of the Pension is authorised by the Act. This means that the Pension must meet certain standards that are set out in the SIS Regulations and the Rules of the Fund must reflect these standards. This includes Pensions that may have commenced in a Fund before 1 July 2007 such as 'allocated', 'market linked' and 'defined benefit' Pensions.

The Fund may pay a Pension to a Member who has reached their Preservation Age even though that Member continues to work. This is known as a 'transition to retirement' pension.

The Trustee must set out the terms and conditions of a Pension in writing and notify these to the Member commencing the pension. These terms and conditions then form part of the Fund's Rules.

From 1 July 2007 members of a self managed superannuation fund may be paid a simple account based Pension – a Simple Pension. From 20 September 2007 the other pension types will not generally be available to a Member of a Self Managed Superannuation Fund. These Rules allow the payment of a Simple Pension with any or all of the balance of a Member's Account in the Fund. The terms and conditions for this Simple Pension must include the following in light of Simpler Super rules: