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Legal hurdle raised for ANZ super sale to IOOF

Joanna Mather

Law firm Slater & Gordon has urged regulators to intervene in preparations for the sale of ANZ's superannuation business to IOOF because members could be exposed to additional fees.

The firm has questioned whether a "successor fund transfer" due to begin on Friday is lawful, as well as whether it prioritises the interests of members over those of ANZ's super trustee, OnePath Custodians.

An ANZ spokesman rejected the allegation, saying OnePath had a rigorous process in place to safeguard the interests of members and keep regulators updated.

ANZ needs to conduct a successor fund transfer so it can separate its pensions and investments business from its life and consumer credit insurance business, OnePath Life, in preparation for the sale of both.

Zurich Insurance has agreed to buy OnePath Life for $2.85 billion.

ANZ's plan was to sell the rest of the wealth business to IOOF, although the deal is under a cloud after the Australian Prudential Regulation Authority launched legal action against key IOOF executives.

In a letter to OnePath chairman Victoria Weekes this week, Slater & Gordon suggests the transfer of members and assets from MasterFund to something called the Retirement Portfolio Service (RPS) may be unlawful. A successor fund transfer must confer on members "equivalent rights to the rights that the member had under the original fund in respect of the benefits".

Under the previous trust deed, OnePath could not charge most members "fees and remuneration". But the RPS deed confers on OnePath the right to charge fees of up to 5 per cent a year.

As such, members of the MasterFund will be exposed to potentially higher fees, possibly when they are moved to IOOF, Slater & Gordon claims.

"We think it's the job of the regulators to do something," senior associate Nathan Rapoport said. "The trustee is transferring members to a new fund after giving itself a new right to charge fees in that new fund, which it couldn't do in the old fund. We think there are real questions to be asked about that, and we think the members deserve answers.

Slater & Gordon has already launched one class action sparked by evidence heard at the banking royal commission and anticipates more.

An ANZ spokesman said members' interests were taken very seriously.

"We reject the suggestion that the successor funds transfer will have a negative impact on members' equivalent rights as they will not see any real difference in the way the fund is managed as a result of this change," he said.

"Since February, ANZ has formally notified approximately 900,000 superannuation fund members about the proposed change with a significant event notice.

"This provided members with at least 30 days' notice to review the proposed change and make alternative arrangements if they wanted to."

The MasterFund trust deed does not allow the trustee to charge fees or remuneration to most members, the letter says. But the RFS trust deed gives the trustee the "right to be paid any fees … up to 5 per cent of the net assets … in any one financial year".

"We are also concerned that the successor fund transfer is not in the best interests of members … [and] that in amending the trust deed for the Retirement Portfolio Service to give itself the ability to charge fees ... in anticipation of the successor fund transfer taking place, OnePath Custodians may have failed to give priority to the interests of members of the MasterFund over its own interests."