



## MARCH 2014

### The March Investor Update

How did we get to March already? After the Christmas frivolities, etc., we are back to some kind of normal. It may now be time to pay some attention to our investment planning and maximise our returns in this current market. The financial press seems to me to be about 50/50 “*everything’s great – add more risk*”, and “*China is slowing, iron ore prices are falling, PE’s are historically high and we may have reached a top for a while.*” So which is it?

For your reading this month we have an update on the 2014-15 Superannuation caps, an article on bond terminology which is quite long, but is full of good information. We have a great member story, and a legal article about timing of super contributions. This article is also quite long and detailed, but the message is critically important.

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#### Superannuation Contribution Caps increase from 2014/15

Good news for investors following the announcement that the indexation of superannuation contribution caps will be indexed upwards effective from 1 July 2014. Both the concessional contribution and non-concessional contribution caps for those aged under 60 will increase (unfortunately for those 60 years of age or higher the concessional cap rate remains the same).

#### Upcoming Events

**2014 AIA Annual Investors Conference**  
**Outcome Oriented**  
**Investment Strategies**  
**for the individual investor**

**Sunday 3<sup>rd</sup> to Wednesday 6<sup>th</sup> August**  
**At the Marriott Resort, Gold Coast**



This year’s conference will be focused on investment **outcomes** for the individual investor.

[More details soon](#)

### Superannuation Contribution Caps increase from 2014/15 (continued)

**Concessional Contributions** – There are now two cap rates for concessional contributions, for those aged under 50 years of age, the annual cap increases from \$25,000 to \$30,000 (\$5,000 increase) and for those aged 50 years or above the cap increases to \$35,000 (currently the cap is \$35,000 for those over 60 years). Concessional Contributions cover the 9.25% SGC, any salary-sacrificed contributions and contributions you claim as a tax deduction. From 1 July 2014 your age at the end of the last financial year will determine your cap, eg: if you are 49 years of age or higher on 30 June 2014 your cap for the 2014/15 FY will be the higher cap of \$35,000.

**Non-Concessional Contributions** – The cap rate has increased from \$150,000 to \$180,000, an increase of \$30,000. For investors using the bring forward rule, the bring forward cap has increased from \$450,000 to \$540,000, an increase of \$90,000.

Note here that if you have previously used the bring forward rule prior to 2014/15, the old cap will still apply until your three year time period has expired.

Non-Concessional Contributions cover any after tax voluntary contributions you make to superannuation where no tax deduction is claimed.

#### Summary

Both concessional and non-concessional contribution caps are increasing effective 1 July 2014. If you are currently salary-sacrificing wages to superannuation, you should review the level of sacrifice from 1 July 2014 to ensure you maximise the higher caps. If you are looking at using the bring-forward rule to make a large after-tax contribution to superannuation you could consider delaying this until after 1 July 2014 to take advantage of the higher cap.

#### Concessional Contribution Caps

Financial Year	Under age 50	Age 50 to 59	Age 60+
<b>2014/15</b>	<b>\$30,000</b>	<b>\$35,000</b>	<b>\$35,000</b>
2013/14	\$25,000	\$25,000	\$35,000
2012/13	\$25,000	\$25,000	\$25,000

#### Non-Concessional Contribution Cap

Financial Year	Cap Rate
<b>2014/15</b>	<b>\$180,000</b>
2013/14	\$150,000
2012/13	\$150,000

### A simple guide to bond terms and returns

*Elizabeth Moran*

Understanding the terms and the return of fixed income securities or interest rate securities as they are frequently named can be confusing. This article provides a guide that should help you to understand some of the different features of the investments and how to interpret the returns quoted and includes a list of key definitions.

#### Westpac subordinated notes example

During July Westpac launched an ASX listed subordinated debt issue seeking to raise \$750m. At the time the deal was announced, Westpac indicative pricing of the subordinated notes was given at 230 to 245 basis points (bps) over the 90 day bank bill rate (BBSW). The coupon payable on the notes was without franking and cumulative and they have a 10 year non-call maturity structure. The notes can be redeemed after five years but only if early redemption is approved by APRA. The notes are also Basel III compliant which means they include a non-viability trigger and can be converted into ordinary shares.

Demand for the notes was good and the issue was over-subscribed. A total of \$850m of subordinated bonds were issued. Given the demand, the coupon was settled at 230bps over BBSW.

BBSW (and thus the total coupon payable) for floating rate notes is set on the first day of issue for the coming quarter. At the first coupon payment date and each quarter thereafter it will be recalculated for the coming quarter based on the fluctuating BBSW rate. So your interest income will depend on BBSW although the margin over BBSW (of 230bps) will not change for the life of the bond.

The subordinated notes (WBCHB) started trading in August. They had a first issue or par value of \$100, and if you hold the notes until maturity, this is the amount you expect to be returned to you.

Once they start to trade, the price of the bonds will move up and down and this will impact the returns investors will achieve if they purchase the bonds in the secondary market. There are two main returns quoted for bonds: “yield to maturity” (YTM) and “running yield”. Yield to maturity includes the capital gain or loss on the bond price plus the interest until maturity. So, if you buy the bond at the issue price of \$100, and hold until to maturity, the YTM will be the same as the

The return that's most relevant to you will depend on your investment strategy. If you buy with the intention of not trading and holding to maturity then the YTM is the figure that will matter to you. If you're more interested in income alone and might sell prior to maturity then running yield will be your focus. Depending on market conditions and various other factors, YTM can be higher than running yield and vice versa.

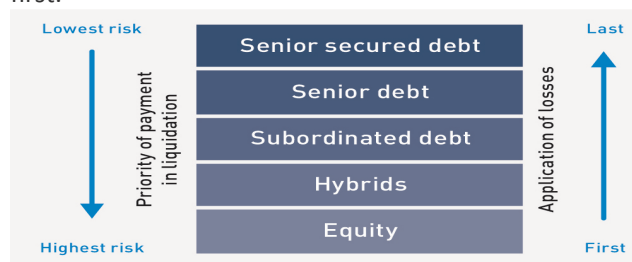
Because floating rates note coupons fluctuate over time with the BBSW, brokers use forward expectations of BBSW to calculate estimated returns over the life of the bond. Fixed rate bond coupons on the other hand do not fluctuate.

The basis point is commonly used for calculating changes in interest rates, equity indices and the yield of a fixed income security. The relationship between percentage changes and basis points can be summarised as follows:

$1.00\% = 100 \text{ basis points}$   
 $0.01\% = 1 \text{ basis point}$

Is the rate of interest paid on a fixed income investment or bond. Coupons can be paid annually, semi-annually or quarterly or as agreed in the terms of the security. The coupon rate can be fixed or floating for the term of the security. If it is a floating rate then it is likely that it will be linked to a benchmark such as the 90 day bank bill rate. The coupon rate is set by the issuer based on a number of factors including prevailing market interest rates and its credit rating. Fixed rate bonds in Australia predominantly pay a semi-annual coupon whereas floating rate bonds predominantly pay a quarterly coupon. Indexed linked bonds usually pay quarterly coupons.

A bond or loan that ranks below senior debt, loans and creditors. In the event of a wind-up (insolvency) of an issuer, subordinated debt is not paid until all senior secured, senior debt and unsecured creditors are paid first.



covenants or election by the issuer not to call or redeem a certain security. Older style subordinated debt and hybrid securities often had a step up if the issuer did not to call, however new Basel III compliant securities do not have a step up provision.

### Non-viability trigger

Is a new, untested structural feature of subordinated debt and hybrid securities implemented to meet Basel III/ APRA regulations to provide loss absorbing capital for the financial institution when it is considered non-viable or requires public funds or support to survive. The point of non-viability is unknown and at the discretion of APRA. Once deemed the securities convert to ordinary shares. This could result in up to a 100% loss of capital.

### Perpetual security

A security with regular periodic payments for an infinite number of periods with no maturity date.

### Premium

A bond's value in the secondary market can be greater than its face value. The bond is then deemed to be selling at a premium. This will occur if the coupon is higher than the yield of a fixed income security.

### Purchase price

Purchase price is the amount that a bondholder pays to purchase a bond. Price can be quoted on a 'clean' basis meaning that this is the capital price of the bond, or it can be quoted on a 'dirty' basis meaning that it includes both the capital price plus the accrued interest.

### Return

The amount earned on an investment or made on a transaction (realised or unrealised) relative to the amount of money invested. Generally assessed as yield to maturity.

### Running yield

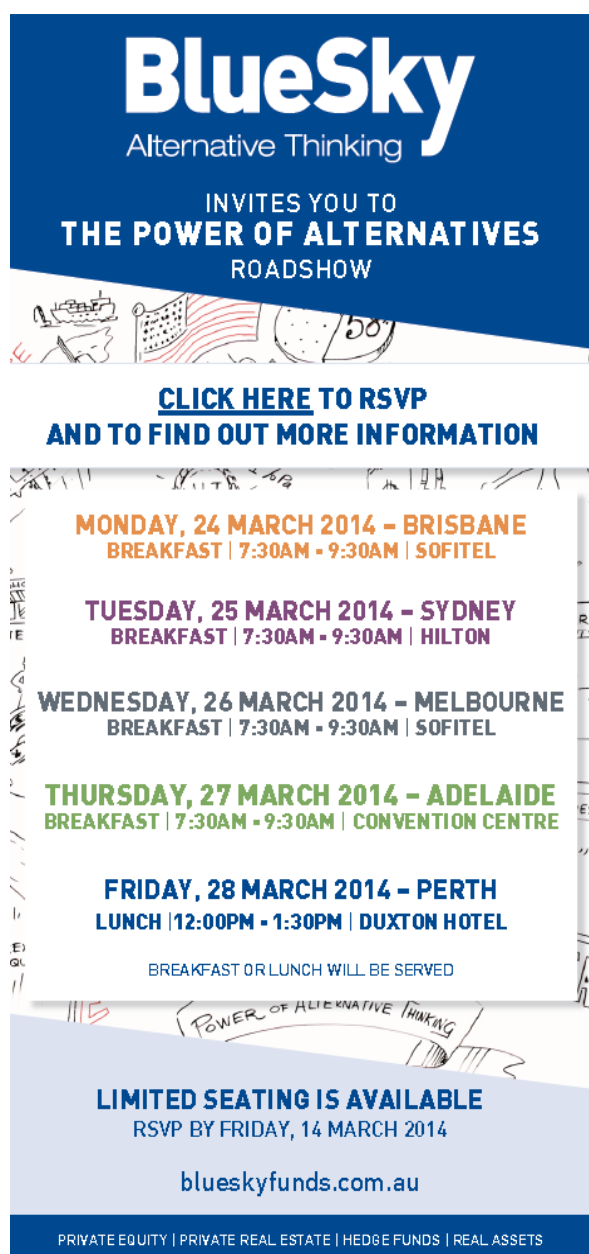
Running yield uses the current price of a bond instead of its face value and represents the return an investor would expect if he or she purchased a bond and held it for a year. It is calculated by dividing the coupon by the market price.

$$\text{Running yield} = \left( \frac{\text{annual dollar interest paid}}{\text{market price}} \right) * 100\%$$

### Yield to maturity

The return an investor will receive if they buy a bond and hold the bond to maturity. It is the annualised return based on all coupon payments plus the face value

or the market price if it was purchased on a secondary market. Yield to maturity thus includes any gain or loss if the security was purchased at a discount (below face value) or premium (above face value). It refers to the interest or dividends received from a security and is usually expressed annually or semi-annually as a percentage based on the investment's cost, its current market value or its face value. Bond yields may be quoted either as an absolute rate or as a margin to the interest rate swap rate for the same maturity. It is a useful indicator of value because it allows for direct comparison between different types of securities with various maturities and credit risk. Note that the calculation makes the assumption that all coupon payments can be reinvested at the yield to maturity rate. Also, the yield and coupon are different.



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BREAKFAST | 7:30AM - 9:30AM | SOFITEL

**TUESDAY, 25 MARCH 2014 – SYDNEY**  
BREAKFAST | 7:30AM - 9:30AM | HILTON

**WEDNESDAY, 26 MARCH 2014 – MELBOURNE**  
BREAKFAST | 7:30AM - 9:30AM | SOFITEL

**THURSDAY, 27 MARCH 2014 – ADELAIDE**  
BREAKFAST | 7:30AM - 9:30AM | CONVENTION CENTRE

**FRIDAY, 28 MARCH 2014 – PERTH**  
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BREAKFAST OR LUNCH WILL BE SERVED

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### **My Journey in Share Trading – the Search for Knowledge**

**David Morris, AIA Member**

During the GFC my superannuation was disappearing south. Being self employed, there wasn't a large amount and I was very concerned as my retirement was on the horizon. The lesson I learnt was don't rely on the so-called experts, for generally their main interests are themselves. So I went searching for answers and knowledge.

I noticed a positive newspaper article about the Australian Investors Association (AIA) and went to a couple of their meetings. These were attended by new comers as well as experienced operators and investors in property and shares, and those with self managed superannuation funds. All were very open with their knowledge.

In 2010, I joined the AIA, and so my information journey started with attending monthly meetings where I was exposed to highly credentialed speakers to whom I would not normally have access. My interest and fascination with the stock market began to grow. My appetite for knowledge also grew, and to my wife's surprise I started to read books, when I hadn't read one for years!

My best decision was to purchase a set of AIA DVDs called The Sharemarket Investment Course. This consists of six sessions in an easy to understand format, covering a wide range of information, plus questions after each session to test the memory. A huge advantage is that one can work to one's own pace.



***I consider this AIA course to be of great value both in dollars and knowledge. I cannot speak highly enough about it.***

In 2011, I enrolled in a 16 hour Computers, Charting and the Stock Market course at Canning College. It was run by experienced people who actually trade in the market. I also purchased a software program. This course was of huge value, enabling me to simplify and fine-tune both previous and new knowledge. It also reinforced important points like the need to have a management

plan – “not having a management plan is planning to fail”. A great point!

Late in 2011, I started share trading with a small amount of my own money. Yes, I made mistakes but quickly learnt and fine-tuned my management plan. One surprising thing is how I personally have changed over the years. While I always considered myself a very disciplined person, I was reminded a number of times, via lost money, to stick to my management plan. I strongly suggest using “pretend money” to test your management plan first.

### **Turning Knowledge into Success**

I entered the Western Australia AIA Trader's \$100k competition (using pretend money) in 2012. I decided to wear my trader's hat because of the unsettled environment in the market. I also used roughly 70% technical and 30% fundamental analysis in selecting stocks. I split my portfolio into ten lots of \$10,000 holdings, consisting of eight or nine trades, and one or two speculative sections. I employed strict risk management along with tight profit control during this time. I traded 53 times with a 70% success rate. I won the competition with a 24.61% capital gain.

Again in 2013, I entered the competition and decided to wear my trader's hat. I used the same portfolio break-up and methods used in 2012. I traded 64 times with a 70% success rate. I was again successful in winning, by a close margin, with a 23.99% capital gain.

It should be noted that I found these years very trying due to an unsettled stock market environment, however, on the positive side that unsettled environment provided a tremendous opportunity to fine-tune my management plan and learn quickly. At one of our AIA meetings one of the speakers made a relevant point “One has control over how much money one can lose”. How true. All you have to have is one bad year and it dramatically affects the overall performance of your portfolio. What a great point.

I am now into my third year of share trading and always looking for ideas and opinions, and I review my management plan twice per year. At times I now purchase stock as an investor, although I am still active as a trader. I also look at Exchange Traded Funds to get further variety and greater exposure. I feel that in 2014, I have to develop a better understanding of gaining higher profits before selling stock.

I can't over-emphasize the importance of the AIA's Sharemarket Investment Course DVD and the Canning

College course, plus the number of books that I have read, in helping me develop and continue to develop.



### Did the ATO get it right? *Liwszyc v Commissioner of Taxation* tells all!

By Daniel Butler ([dbutler@dbalawyers.com.au](mailto:dbutler@dbalawyers.com.au)) and Bryce Figot ([bfigot@dbalawyers.com.au](mailto:bfigot@dbalawyers.com.au)) both directors at DBA Lawyers

In taxation ruling TR 2010/1 the ATO considers what is a contribution to a superannuation fund and when a contribution is made. A recent court case, *Liwszyc v Commissioner of Taxation* [2014] FCA 112, answers the question of whether the ATO actually got it right in [TR 2010/1](#). [Liwszyc v Commissioner of Taxation](#) also contains tips that advisers must be aware of.

### The facts of *Liwszyc* — *what a difference a day can make!*

(The following are highly simplified facts — for the full facts, see *Liwszyc v Commissioner of Taxation* [2014] FCA 112.)

Mr Liwszyc was the sole director of Southern Fluids Technologies Pty Ltd ('SFT').

On 30 June 2009 the bookkeeper of SFT made two superannuation contributions in respect of Mr Liwszyc. The payments were made via BPay. However, the superannuation fund (AMP Superannuation Trust) did not show the contributions as having been received until 1 July 2009.

Naturally, this meant the contributions were recognised in the 2010 financial year instead of the 2009 financial year. This was despite Mr Liwszyc's evidence that the payments were clearly marked that as being for the 2009 financial year.

This meant that Mr Liwszyc had excess concessional contributions and thus excess concessional contributions tax!

(Note that the introduction of division 291 of the *Income Tax Assessment Act 1997* (Cth) ('ITAA 1997') means that these facts would no longer give rise to excess concessional

contributions tax, however, they could still have negative tax implications.)

Mr Liwszyc wrote to the ATO requesting that the contributions received on 1 July 2009 be allocated to the previous financial year under s 292-465 of the ITAA 1997. The Commissioner declined to disregard or allocate the contributions and the excess concessional contributions tax bill stood.

Mr Liwszyc appealed the treatment of the contributions to the Federal Court.

In considering the case, McKerracher J provided a detailed consideration of what is a contribution and when it is made. He also considered certain aspects of TR 2010/1 in detail.

In TR 2010/1, although the ATO did not have much case law directly on point, the ATO adopted the view that:

... a contribution is anything of value that increases the capital of a superannuation fund provided by a person whose purpose is to benefit one or more particular members of the fund or all of the members in general.

McKerracher J did not expressly consider whether this definition of 'contribution' is accurate. However, he did agree with the ATO that:

... 'contribution' should be given a construction which would promote the purpose or object underlying Pt 3-30 [of the ITAA 1997]. Part 3-30 is a scheme attracting tax consequences to, amongst other things, the making of contributions to superannuation providers, this being, in turn, intended to promote the object of enabling taxpayers to provide for their retirement, in turn, attracting obvious public policy benefits.

McKerracher J analysed when a contribution is made. He quoted from TR 2010/1 that:

An amount set aside but not actually paid is not a contribution. It is well established that the making of a journal entry in the books of an entity does not alone establish a payment. However, an actual payment, albeit to reimburse the superannuation provider for an expense incurred in operating the fund, may constitute a contribution.

A contribution of funds as cash or an electronic funds transfer, is made when the amount is received by the superannuation provider or credited to the relevant account.

He found that 'a contribution does not become a contribution at all until the point of time at which it is actually received.'

Accordingly, he found that:

... in the case of a contribution of funds by way of an electronic funds transfer, the contribution will be made when the amount is received by the superannuation provider or credited to augment the

relevant account. In contrast to this, Mr Liwszyc argues that a contribution made by electronic funds transfer, in this case BPay, occurs as soon as the contributor has done everything necessary to effect a payment.

This was good news for the ATO, as it was completely consistent with TR 2010/1. However, it was bad news for Mr Liwszyc.



### Were these special circumstances?

McKerracher J also considered whether there were special circumstances that were sufficient to allow the ATO to disregard or reallocate the contributions. Mr Liwszyc submitted that the circumstances were special. However, McKerracher J disagreed, instead holding that: simple errors of this nature do not constitute special circumstances: see *Tran and Commissioner of Taxation* [2012] AATA 123 (at [15]). An innocent mistake or ignorance of the law does not in itself constitute a 'special circumstance' nor do simple errors, albeit innocent errors or other mistakes which are made in good faith. Equally, the fact that an error was made by another person does not in itself constitute 'special circumstances'.

### Lessons for advisers

*Liwszyc v Commissioner of Taxation* confirms the ATO position in TR 2010/1 regarding the timing of electronic payment, such as BPay. Contributions are not necessarily made when a contribution leaves the contributor's account. Rather, they are made when the superannuation fund trustee receives the money.

As McKerracher J noted:

'In an electronic age it may seem surprising that funds are not transmitted/received in "real time" or near to it'

Accordingly, electronic payments close to or on 30 June run an extremely high risk of being made in the next financial year.

So, what should an adviser do in respect of a client who calls them on 30 June saying that they want to make a contribution on that day?

There is a possibility that might work, although it is somewhat untested.

McKerracher J's reasoning that electronic payments occur when received relied upon the contractual terms of Australia's electronic payment systems.

However, TR 2010/1 notes that a contribution (albeit under the heading of 'in specie') can be made not just by creating a 'contractual right [but also by creating another] legal or equitable right in the superannuation provider that did not previously exist'.

Accordingly, the following might be able to 'save the day'. A contributor finds him or herself on 30 June without having made their contribution yet. They declare that the money is now being held on a bare trust for the superannuation fund. They immediately alert the superannuation fund to this. As soon as possible, the contributor perfects the title and transfers the money to the superannuation fund.

I stress though that this is novel and untested.

### Other decisions where timing via an intermediary account was relevant

This is not the first excess contributions tax decision where a contribution being delayed before being received by the superannuation fund trustee was relevant. The following provide interesting reading and resulted in similar unsuccessful outcomes for the taxpayer:

[\*Paget and Commissioner of Taxation\* \[2012\] AATA 334](#)  
[\*Chantrell and Commissioner of Taxation\* \[2012\] AATA 179](#)  
[\*Rawson and Commissioner of Taxation\* \[2012\] AATA 322](#)  
[\*Colless and Commissioner of Taxation\* \[2012\] AATA 441](#)  
[\*Verschuier and Commissioner of Taxation\* \[2013\] AATA 12](#)

### Conclusion

The far better lesson from *Liwszyc v Commissioner of Taxation* is that the parts of TR 2010/1 quoted in the judgment is an accurate reflection of the law. Thus, contributors, even if paying electronically or via another intermediary such as a bank, should make sure their contributions are received by the fund trustee well before 30 June.

\* \* \*

This article is for general information only and should not be relied upon without first seeking advice from an appropriately qualified professional.

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