29/05/2015

By email: maan.beydoun@asic.gov.au

cc: ged.fitzpatrick@asic.gov.au

Mr Maan Beydoun
Senior Specialist
Investment Managers and Superannuation
Australian Securities and Investments Commission

Dear Maan,

Proposed amendments to Class Order 14/1252 and update to Regulatory Guide 97 *Disclosing fees and costs in PDSs and periodic statements*

Thank you for the opportunity to provide comments on the proposed amendments to the above class order. Thank you also for allowing an extension of time so that we could more properly consider this matter.

AustralianSuper has obtained legal advice to confirm our concerns with the proposed amendments to Class Order 14/1252 and consequential updating of RG 97. We attach that legal advice which confirms our concerns, for your information. We have consulted Industry Super Australia on this matter and support their submission in this regard as well.

We are disappointed that after nearly three years of dealing with ASIC on the problem of non-disclosure of underlying fees in superannuation, the proposed amendments to the class order now turn this matter full circle, so that if implemented, they will achieve the opposite effect – it will now be easier for trustees to hide underlying fees from their members. A true comparison between the fees and charges payable between super funds is not possible under the amended CO 14/1252.

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The proposed amendments to the Class Order compound the problem of fee disclosure which AustralianSuper originally raised with ASIC, and further, they now provide trustees with a Regulator-sanctioned method of hiding those same fees. This will result in a fee disclosure environment that is worse than that currently suffered by consumers and signals a clear failure by ASIC to effectively deal with this problem and acquit its role as a consumer protection regulator in financial services. There is no other conclusion that can be drawn from this at this point in time.

Consistent fee disclosure across the superannuation industry is important in promoting both consumer understanding as well as promoting greater competition and efficiency within the superannuation industry.

AustralianSuper has commended ASIC's past work on fee disclosure in our submissions to the Financial Systems Inquiry, and fully support the disclosure of fees and costs of underlying assets. We see this as key in ensuring that a fully competitive superannuation industry flourishes in Australia to the benefit of its end users. We understand that ASIC's willingness to consider this issue and amend fee disclosure in superannuation was because ASIC has identified the same problem in the superannuation industry and is equipped to deal with this issue.

The proposed amendments to CO 14/1252 confirm a policy decision, rather than a legal decision made by ASIC to treat certain entities differently for fee disclosure purposes, by having regard to the 'means' by which the benefit of other investments is obtained.

We question the utility of this test being applied for the purposes of disclosure of fees to superannuation fund members. It assumes that super fund members choose an investment option because of an underlying investment only, and when they do so, they don't need fee information of the underlying fund because they have access to it elsewhere.

This test is irrelevant when considering MySuper investment options which are default investment options which members may not choose at all.

Further, MySuper investment options are compulsorily diversified investments under the law. This means that in any event, members will be faced with more than one underlying investment which they will have to separately access, locate it's fees, and add them to fees shown in the superannuation PDS. This is an unreasonable burden on consumers of compulsory financial products and is clearly not in the public interest.

The relevance of using this test for application in relation to chosen investment options in superannuation is equally questionable. The Stronger Super reforms impose new and higher investment strategy obligations in respect of superannuation funds as a whole, and on investment options within those funds. These higher obligations apply to chosen investment options as well as default investment options.

Those strategy obligations deal with having regard to diversification at the investment option level as well as the fund level. This brings into question why you would choose to apply such a discretionary fee disclosure test where there are diversified investment options, that would actually exclude fee disclosure based in part on those investments residing in an 'investment fund' that *may* meet the 'interposed entity' test depending on the conduct of the superannuation trustee.

This is not to mention the overarching concern that ASIC has made a policy decision to exclude platforms from effective fee disclosure as they are automatically excluded from the definition of 'interposed entity'. This again is at odds with the policy objectives for which ASIC commenced its project on superannuation funds gaming fee disclosure. We question why some vehicles that receive compulsory

superannuation contributions and receive all the same superannuation tax concessions will be exempt from effective fee disclosure, and others will not.

We seek an urgent meeting with ASIC on this issue to discuss these matters further. We do want a better understanding of the following matters:

- Whether ASIC has tested consumer comprehension on this issue, in order to base a policy decision on consumer understanding of where to find fees when choosing investment options within superannuation.
- Whether ASIC has consulted the Consumer Advisory Panel for their view on the issue of how consumers navigate and add fees between investment vehicles and superannuation PDSs.
- Whether ASIC has considered the application of this test for superannuation in a post Stronger Super reform environment having regard to the issues described above.
- Whether ASIC has considered the application of any alternative tests, such as one which would exclude fee disclosure for an underlying investment where the entity can demonstrate that they are an operating entity for a specific investment, rather than an investment vehicle.

Please do not hesitate to contact me on 03 8648 3847 – I look forward to meeting to discuss this matter further.

Yours sincerely

Louise du Pre-Alba