

2 March 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 Mr Beydoun,

Re: Draft ASIC Regulatory Guide 97: Disclosing fees and costs in PDSs and periodic statements

AustralianSuper welcomes the opportunity to provide feedback to the draft ASIC regulatory guide: Disclosing fees and costs in PDSs and periodic statements.

How AustralianSuper discloses fees and costs.

AustralianSuper is one of Australia's largest super funds and is run only to benefit members. We don't pay commissions to anyone to recommend us, nor do we pay dividends to shareholders. We have over 2.1 million members and manage over \$85 billion of members' assets. Our sole focus is to provide the best possible retirement outcomes for members and we have a keen interest in ensuring that disclosure of fees and costs to members is uniform across the superannuation industry.

AustralianSuper has always sought to provide members with full fee disclosure and have provided disclosure of fees including performance fees, and fees imposed by interposing entities that we invest in.

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 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 have considered the draft Regulatory Guide and provide detailed comments attached. We are generally supportive of the submission made by CBUS in response to this consultation but provide further consideration of key issues of importance AustralianSuper.

By way of summary the key issues in our submission are as follows:

- **Reasonable estimate of costs which are not known** – This is the key factor upon which the success of these changes will depend. Third party verification and consistency of treatment of ‘reasonable estimates’ by both ASIC and APRA will be key determinants of whether these requirements effect consistent and comparable fee and cost disclosure in superannuation.
- **Treatment of superannuation and managed investment products** – the Stronger Super reforms have ensured a higher level of fee and cost disclosure for superannuation funds compared to managed investment schemes. We contend that it is now timely that reform is considered so that consumers of managed investment schemes can now receive the same level of transparent fee and cost disclosure.
- **Consistent treatment of listed and unlisted products** - The increased scrutiny of the underlying fees and costs of unlisted products under these reforms now makes the disclosure treatment of listed products appear incongruous. We contend that fee and cost disclosure for superannuation products should not differentiate between listed and unlisted products, and that the ability to reference to extraneous material for some underlying products should not reduce fee and cost disclosure in PDSs and periodic statements.
- **Commencement of changes to PDSs and periodic statements** - We suggest that the changes apply upon next update of the PDS after 1 January 2016. Periodic statement changes should then apply at the end of the reporting period that follows the updated PDS.
- **Insurance** – We suggest that this be dealt with by separate guidance given the additional complexities and challenges inherent in insurance disclosure.

Please do not hesitate to contact Louise du Pre-Alba on 03 8648 3847 if you wish to discuss this further. We are happy to provide further information on request.

Yours sincerely



Louise du Pre-Alba
Head of Policy

ASIC RG 97 (DRAFT) FEES AND COSTS DISCLOSURE

ASIC feedback questions are in bold below. Only questions of specific relevance to AustralianSuper have been included.

B1Q1 Do you consider the guidance provided on the interposed vehicles to be sufficient to properly explain when a body, trust, partnership or other structure would be an interposed vehicle?

No, for the following reasons:

- The term 'predominantly' does not assist interpretation as it is too broad a term for consistent application in an area where precision is required. Reference to legislation attempting to cover a similar field may assist.
- There is insufficient policy guidance as to why there is a different treatment of listed and unlisted vehicles as interposed vehicles. The guidance ensures that unitisation of some vehicles, and the operation of IDPS arrangements, are methods to avoid disclosure of costs, to the detriment of consumers. To exclude these two items will create a significant asymmetry when capturing costs of what superannuation funds invest in. This asymmetry is not ameliorated by information about such product information being available elsewhere, as it simply does not aid comparison for a compulsory financial product.
- **Asset Values** (the denominator in the calculation) – It would be helpful for the guidance to include some comment stipulating that the FUM values are based on the average across the whole year, preferably with data point frequency of at least monthly.
- **Shared Cost Allocations** – for costs that are not sector specific or option specific Issuers need to have a consistent overhead allocation methodology that is equitable to members and fairly applied. An Activity Based Costing approach is preferred.
- **Indirect Costs** – It would be helpful if the guidance could confirm whether the entire costs of running Special Purpose Vehicles (ex-tax) are to be included.
- **Period for ICR calculation** – It would be helpful if the guidance could confirm whether websites and PDSs are to contain the ICR for the preceding financial year, and not an estimate for the current year
- **Contingent Costs 97.87** – The guidance should include clarification of what contingent and incidental fees are intended to cover.

- **Disposal Costs** – The guidance should clarify whether changes to accrued disposal costs should be included in the calculation for disposal costs.
- **Currency** – The guidance could include some description on how to approach currency conversion rates given how volatile the AUD can be. If the exchange rate on the date the expense was incurred is unknown, then the average rate for the quarter the expense was incurred could be used.
- **Asset Allocation** – Issuers should choose data points of at least monthly and take the average across the year to avoid the effect that changing asset allocation can have over different periods. Cherry picking between different periods can move the final disclosed figure for ICR purposes, noting however that this mainly impacts options undergoing significant asset allocation changes.

B1Q2 Are there additional examples that you consider should be included in RG 97 which would assist in clarifying or explaining the interposed vehicle definition and its approach?

It would be helpful if the guidance included an example as to how to treat management fee rebates within private equity funds (and other similar vehicles) whereby the Manager offsets expenses paid to them by underlying portfolio companies by rebating management fees. We contend that all payments to Managers should be disclosed in the ICR, including payments to related parties for services (ie the gross management fees are disclosed) and we think this is the intent of 97.44.

Please also provide further guidance and an example of how to treat the typical transaction costs (RG 97.23) incurred on listed (eg shares) and unlisted (eg property) investments. We note the Netherlands model of disclosing transaction costs separately to investment costs. For example, showing MER + transaction costs = ICR. The reasoning behind this distinction is because transaction costs are a mixture of assets (eg due diligence costs that get incorporated into the cost base of an asset) and expenses, whereas the MER is based on expenses only.

Further, some examples or flow diagrams relevant to RG 97.26 and 97.29 would be helpful.

B1Q3 the application of interposed vehicles and indirect cost varies between superannuation and managed investment products. Do you consider the proposed RG sufficiently explains these differences?

The guidance explains this but we are concerned about the differences in treatment. The Stronger Super reforms have ensured that higher level of fee and cost disclosure for superannuation funds compared to managed investment schemes. We contend that it is now timely that reform is considered so that consumers of managed investment schemes can now receive the same level of transparent fee and cost disclosure.

B1Q4 Do you consider the guidance provided on the requirement to reasonably estimate indirect costs would assist you in complying with this requirement?

We strongly contend that more guidance is required on the term reasonable estimates when applied to practical circumstances that trustees will face. With this in mind attached is a document which set out in table format the cost to include in the ICR. Highlighted in red are types of costs where we expect the 'reasonable estimates' test might typically be applied. We contend that this information could be the basis for further guidance around the use of reasonable estimates in determining the costs to include in the ICR

Further, a robust assurance process is needed to set consistent standards across the industry. Such a standard could require that a Fund's calculation policy, processes and the calculation itself be reviewed by their external auditor/internal auditor.

An alternative assurance process would be for ASIC to require each issuer to have an approved ICR calculation policy that is posted on their website.

B1Q5 Do you agree that it would be a matter of good practice for trustees and responsible entities to document their procedures for making reasonable estimates as a means of enhancing consistency?

Yes. In the absence of an industry standard on this it would be helpful if ASIC required fund to document and then make available their ICR calculation policy.

B1Q6 Do you consider the guidance and examples sufficient to understand the appropriate treatment of buy/sell spreads of OTC derivatives for superannuation and managed investment products?

This is an area where the different treatment of Managed Investment Schemes and Superannuation require a further level of inquiry for superannuation funds which is not necessary. This can be avoided if Managed Investment schemes were subject to the same disclosure obligation.

B1Q9 Do you consider this guidance to be appropriate?

No see below.

B1Q10 Are there scenarios that you consider it would be appropriate to give further guidance on?

Further guidance on the recognition of 'carry' (performance fees in unlisted) is required. If the net asset value (ie the value that flows through to the member's account balance) of the investment includes carry then it should be booked as performance fees during that period. If the movement in carry cannot be determined or is unavailable then we contend that performance fees should be booked when the cash payment is made.

Further guidance is also required clarifying that negative cost items such as performance fee refunds, a reduction in 'carry', movements back to the fund from Operational Risk Reserves or other negative costs should be treated as 'negatives' (ie, they reduce the ICR) for the period they impact a member's account.

Finally, it would be preferable if performance fees captured for the ICR were limited to what was paid in performance fees in the previous financial year only. It is cumbersome and potentially misleading to include future forecast issues in the consideration of performance fees when they form part of a backward looking ICR.

B1Q11 Do you consider this guidance to be appropriate?

No. Please see below.

B1Q12 Are there scenarios that you consider it would be appropriate to give further guidance on?

We suggest that insurance be dealt with in a separate consultation and guidance as other issues arise.