



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 97

# Disclosing fees and costs in PDSs and periodic statements

November 2011

### **About this guide**

This guide is for product issuers of most superannuation and managed investment products issued to retail clients.

It provides guidance on how to disclose fees and costs in Product Disclosure Statements (PDSs) and periodic statements.

Note: Some information in this guide is also relevant to product issuers of investment life insurance products.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This guide was issued in November 2011 and is based on legislation and regulations as at the date of issue.

Previous versions:

- *Enhanced fee disclosure regulations: Questions and answers—An ASIC guide*, issued March 2006, updated June 2006 and May 2007, rebadged as Regulatory Guide 97 *Enhanced fee disclosure regulations: Questions and answers* (RG 97) on 5 July 2007

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## A Overview

### Key points

Product issuers for most superannuation and managed investment products must meet certain requirements for disclosing fees and costs in PDSs and periodic statements.

While product issuers for investment life insurance products need currently only meet the requirements for periodic statements, we encourage these issuers to meet the requirements for PDSs also: see RG 97.9–RG 97.10.

### Requirements for disclosing fees and costs

RG 97.1 Product issuers for most superannuation and managed investment products must meet certain requirements for disclosing fees and costs in PDSs and periodic statements under:

- (a) the ‘enhanced fee disclosure regulations’ in Sch 10 of the Corporations Regulations 2001 (Corporations Regulations) (see RG 97.3–RG 97.7); and
- (b) the ‘shorter PDS regime’ in Div 3A of Pt 7.9 of the *Corporations Act 2001* (Corporations Act) as modified by Subdivs 4.2–4.2C and Schs 10B, 10C, 10D and 10E of the Corporations Regulations (see RG 97.11–RG 97.14).

Note: The shorter PDS regime imposes a modified version of the enhanced fee disclosure regulations.

RG 97.2 This guide provides:

- (a) general guidance on disclosing fees and costs in PDSs for superannuation and managed investment product issuers under both the enhanced fee disclosure regulations and the shorter PDS regime, as applicable (see Section B);
- (b) specific guidance on disclosing fees and costs in PDSs for managed investment product issuers under the enhanced fee disclosure regulations (see Section C);
- (c) guidance on disclosure of fees and costs in periodic statements under the enhanced fee disclosure regulations (see Section D); and
- (d) guidance on calculating management costs and the indirect cost ratio (ICR) under both the enhanced fee disclosure regulations and the shorter PDS regime (see Section E).

## The enhanced fee disclosure regulations

RG 97.3 Under Sch 10 of the Corporations Regulations, a product issuer must meet certain requirements for disclosing fees and costs. These requirements are known as the ‘enhanced fee disclosure regulations’.

Note: The enhanced fee disclosure regulations were introduced by the Corporations Amendment Regulations 2005 (No. 1); see Sch 10 of the Corporations Regulations.

RG 97.4 The enhanced fee disclosure regulations apply to PDSs for:

- (a) superannuation products provided to consumers, other than those described in RG 97.8; and
- (b) managed investment products provided to consumers.

RG 97.5 The shorter PDS regime now applies to most superannuation products, as well as simple managed investment products. For these products, see RG 97.13 for when the enhanced fee disclosure regulations apply and when the shorter PDS regime applies.

RG 97.6 For financial products to which only the enhanced fee disclosure regulations apply, the PDS should include:

- (a) a standardised fees and costs template (see cls 201–202 of Sch 10);
- (b) an example of annual fees and costs for a balanced or similar fund (see cls 210–213 of Sch 10); and
- (c) a boxed consumer advisory warning (see cl 221 of Sch 10).

RG 97.7 A product issuer must also:

- (a) disclose certain transactions in periodic statements (see reg 7.9.60B(1)(d)); and
- (b) use a consistent methodology—the indirect cost ratio (ICR)—when calculating management costs that are not deducted directly from a member’s or product holder’s account (see Section E).

### Excluded superannuation products

RG 97.8 The following superannuation products are excluded from the requirements under the enhanced fee disclosure regulations:

- (a) self-managed superannuation funds;
- (b) superannuation products that have no investment component (also known as ‘risk-only’ superannuation products);
- (c) annuities (except market linked annuities, including both investment linked and investment account annuities); and
- (d) life insurance policies offered through a superannuation fund.

## Life insurance products

- RG 97.9 A product issuer of investment life insurance products must disclose certain transactions in periodic statements, as for other product issuers: see reg 7.9.60B(1)(d).
- RG 97.10 However, as a matter of good practice, we encourage product issuers of investment life insurance policies (as commonly understood) to meet the requirements of the enhanced fee disclosure regulations for PDSs with any necessary adaptation.

## Shorter, simpler PDS disclosure for specified products

- RG 97.11 Issuers of margin loans, most superannuation products and simple managed investment schemes must comply with shorter, simpler PDS disclosure (shorter PDS regime): see Sch 10A, Pts 5A, 5B and 5C of the Corporations Regulations. The shorter PDS regime prescribes the content and length of the PDS for:
- (a) most superannuation products (an eight-page limit applies to an A4 PDS), other than those that are solely a defined benefit fund or solely a pension product;
  - (b) simple managed investment schemes (an eight-page limit applies to an A4 PDS); and
  - (c) standard margin lending facilities (a four-page limit applies to an A4 PDS).

Note 1: The shorter PDS regime is not the same as Short-Form PDSs, which were introduced by the Corporations Amendment Regulations 2005 (No. 5). Under the Short-Form PDS provisions, issuers who are required to provide a PDS have the option of giving retail clients a 'Short-Form PDS' (unless excluded) as long as a full PDS is available on request: see s1017H as inserted by Sch 10BA of the Corporations Regulations.

Note 2: Commencement dates for the shorter PDS regime are: 1 January 2011 for margin loans and 22 June 2012 for superannuation and simple managed investment schemes, with providers of superannuation and simple managed investment schemes permitted to opt into the shorter PDS regime from 22 June 2011. For more information, see Treasury Media Release No. 090, *Retail investors and financial service providers will find changing to new PDS easier*, 8 June 2011.

- RG 97.12 Relevantly, the shorter PDS regime has made changes to the enhanced fee disclosure requirements for both superannuation and simple managed investment schemes to facilitate the use of the shorter PDS format.
- RG 97.13 For superannuation and simple managed investment schemes, the eight-page PDS must contain abbreviated fees and costs information for at least one investment option offered in the fund (typically, the default option), in accordance with the shorter PDS regime requirements. Fees and costs information for remaining investment options must comply with the

enhanced fee disclosure requirements, but these fees and costs, along with any additional fees and costs information, may be contained in a separate document incorporated by reference into the PDS: cl 8 of Sch 10D and cl 8 of Sch 10E.

- RG 97.14 For margin loans, the four-page PDS must contain certain fees and costs information, including a description of the interest rate, how it is calculated and any non-minor fees payable. Any minor fees can be incorporated by reference: see cl 8 of Sch 10C.

## B Disclosing fees and costs in PDSs generally

### Key points

This section provides guidance on disclosing fees and costs in PDSs generally under the enhanced fee disclosure regulations and the shorter PDS regime. For specific guidance on disclosing fees and costs in PDSs for managed investment products under the enhanced fee disclosure regulations, see Section C.

### Multiple investment options

#### Enhanced fee disclosure regulations

- RG 97.15 The fees and costs template should contain information about all the multiple investment options unless doing so is likely to confuse or mislead consumers because of the volume of information presented.
- RG 97.16 If the volume of information about multiple investment options in the template is likely to confuse or mislead consumers, fees and costs information for multiple investment options may be cross-referenced from the fees and costs template to another part of the PDS.
- RG 97.17 If a product issuer is cross-referencing from the fees and costs template to another part of the PDS, as a minimum the template should include the fees and costs information for the balanced investment option and the default option (if relevant or applicable).

Note: See 'Specific requirements—Clauses 201 to 208—Fees and costs template' in the Explanatory Statement to the Corporations Amendment Regulations 2005 (No. 1) (Explanatory Statement).

#### Shorter PDS regime

- RG 97.18 Fees and costs information for multiple investment options (other than the default option) should be provided in accordance with the enhanced fee disclosure regulations. This information may be incorporated by reference. However, for margin loans, superannuation products and simple managed investment schemes, the Corporations Regulations impose different requirements when incorporating by reference: see regs 7.9.11E, 7.9.11P and 7.9.11X.

## More than one balanced investment option

### Enhanced fee disclosure regulations

RG 97.19 The product issuer should include fees and costs information for the balanced investment option with the most funds invested. We think this is consistent with the spirit and substance of the enhanced fee disclosure regulations.

RG 97.20 An example of when this may apply is when a superannuation fund has multiple sub-plans with balanced investment options.

Note: In some cases, the option called a 'balanced investment option' may not contain the asset ratio set out in the regulations. A product issuer should use the option where the assets most closely meet the prescribed ratios. For the definition of 'balanced investment option', see cl 101 of Sch 10.

### Shorter PDS regime

RG 97.21 The product issuer should include fees and costs information for the default investment option: see cl 7 of Sch 10D and cl 7 of Sch 10E.

## Inclusion of additional voluntary information

### Enhanced fee disclosure regulations

RG 97.22 Generally, additional voluntary information should not be included in the fees and costs template or in the example of annual fees and costs. However, we acknowledge that in limited circumstances some tailoring of the fees and costs template and the example of annual fees and costs can occur.

Note: Some managed investment product issuers may need to adapt the example of fees and costs to take into account the nature of the scheme and its fee and cost arrangements: see RG 97.46–RG 97.51.

RG 97.23 Examples might be when:

- (a) gross fees do not accurately reflect the cost of a product to the consumer—in this case, a product issuer may also wish to include the net fees with a simple explanation;
- (b) a total figure for management costs is inserted—in this case, a product issuer may also choose to show how that cost is split; or
- (c) management costs do not affect a consumer's investment (e.g. in a pure defined benefit super fund)—in this case, a product issuer may wish to include a note explaining this.

Note: For a definition of 'pure defined benefit super fund', see 'Key terms'.

RG 97.24 When including additional information, a product issuer should bear in mind the requirement to show information in a clear, concise and effective manner: see s1013C(3) of the Corporations Act.

RG 97.25 In particular, a product issuer should be careful not to complicate disclosure by including large amounts of information. We will closely monitor any tailoring of these PDS requirements by product issuers to ensure that the ability of consumers to effectively compare products is not affected.

#### **Boxed consumer advisory warning**

RG 97.26 We do not consider there are any circumstances when additional voluntary information can be included in the boxed consumer advisory warning.

#### **Shorter PDS regime**

RG 97.27 Additional voluntary information should not be included in the shorter PDS fees and costs template, but may be incorporated by reference.

### **Omission of prescribed information**

RG 97.28 In general, we do not consider there are any circumstances when prescribed information can be omitted from the fees and costs template, the example of annual fees and costs, or the boxed consumer advisory warning.

Note: Some managed investment product issuers may need to adapt the example of fees and costs to take into account the nature of the scheme and its fee and cost arrangements: see RG 97.46–RG 97.51.

### **Updated fee and cost information in a supplementary PDS**

#### **Enhanced fee disclosure regulations**

RG 97.29 Updated fee and cost information can be provided in a supplementary PDS.

RG 97.30 However, if the correction or update concerns information in the fees and costs template (or in the example of annual fees and costs), a product issuer should include in the supplementary PDS a complete fees and costs template and, if necessary, a complete example of annual fees and costs reflecting the amended fees and costs.

RG 97.31 This helps consumers to understand the fees and costs of a product by not having to look in two places for information in the most up-to-date template.

**Shorter PDS regime**

- RG 97.32 Under the shorter PDS regime, a product issuer cannot provide updated fee and cost information in a supplementary PDS. Instead, a product issuer should provide any updated fee and cost information in an updated shorter PDS or as an update to material incorporated by reference, whichever is applicable.

**Meaning of ‘components’ in cl 204(6)****Enhanced fee disclosure regulations**

- RG 97.33 If the structure of an amount or cost prevents it from being presented as a single amount, it can be broken into components. The components must, however, show the amount or cost that will be paid by consumers.
- RG 97.34 Components that show how the amount or cost recovered by the product issuer will be applied by the issuer (e.g. custodian fees) are not useful to consumers in understanding the cost to them and, if included in the fees and costs template, may complicate disclosure.
- RG 97.35 A product issuer can include information on how amounts or costs recovered by the issuer will be applied by incorporating that information in the ‘additional explanation of fees and costs’ section of the PDS.

**Shorter PDS regime**

- RG 97.36 A product issuer can include information on how amounts or costs recovered by it will be applied by incorporating that information by reference.

**Calculation of management costs if fees or costs reduced or waived, or rebate offered****Enhanced fee disclosure regulations**

- RG 97.37 If it is reasonable to expect that the reduction or waiver will continue (i.e. effectively the fee or cost has been reduced), the calculation of management costs should reflect the reduction or waiver.
- RG 97.38 If the period of the reduction or waiver is known, the fees and costs template should include two entries—one for the ‘honeymoon’ or reduced period and one for when the honeymoon period or reduced period expires (or the maximum fee applicable in the constitution or trust deed for the fund).

RG 97.39 If a product issuer has instituted a flexible charging structure, the ‘additional explanation of fees and costs’ section of the PDS should disclose any maximum, the times and when it would apply, and any waiver and when it would not apply: see cl 209(1) of Sch 10. Similarly, if a product issuer offers a rebate, the ‘additional explanation of fees and costs’ section of the PDS should disclose how the rebate is calculated and when it applies.

Note: When an issuer of a managed investment scheme imposes differential fee arrangements for some members, it should consider Class Order [CO 03/217] *Differential fees*.

### Shorter PDS regime

RG 97.40 Details about any rebates or flexible charging structure can be incorporated by reference.

## Exclusion of contingent fees or costs from management costs

### Enhanced fee disclosure regulations

RG 97.41 We consider that contingent fees and costs are part of management costs and should generally not be excluded from the calculation of management costs. This is because management costs are intended to capture all relevant costs involved in managing the fund or scheme and deriving an investment return for product holders. These include amounts that are chargeable but which may not be charged in the particular circumstances of all product holders or of the fund or scheme. These amounts may be contingent.

RG 97.42 However, contingent fees or costs will not be management costs when they fall within an exclusion.

Note: For details of costs that are not management costs, see cl 102(2) of Sch 10.

RG 97.43 For example, if contingent costs are incidental fees, they can be excluded from the calculation of management costs. However, when the contingent fees or costs can materially impact the consumer’s decision about a product, they will not be incidental fees and should be included in the calculation of management costs.

Note: For the definition of ‘incidental fees’, see cl 101 of Sch 10.

RG 97.44 An issuer can provide an explanation of the contingent costs, and the circumstances in which they are likely to be charged, in the ‘additional explanation of fees and costs’ section of the PDS.

### Shorter PDS regime

RG 97.45 An explanation of contingent costs and the circumstances in which they are likely to be charged can be incorporated by reference.

## C PDSs for managed investment products

### Key points

This section provides specific guidance on disclosing fees and costs in PDSs for managed investment products (other than simple managed investment products) under the enhanced fee disclosure regulations. For guidance about disclosing fees and costs in PDSs generally, see Section B.

### Complying with the example of annual fees and costs

RG 97.46 The enhanced fee disclosure regulations require PDSs for managed investment products to provide consumers with a prescribed worked example of the application of fees and costs in relation to the product during a single year's holding of the product: see Div 5 of Pt 2 of Sch 10.

RG 97.47 If the nature of the product and its fees and costs arrangement supports disclosure in the prescribed format, that format must be used and prescribed information cannot be omitted. An example of such a product is an investment-type product.

Note: For guidance about omitting prescribed information, see RG 97.28.

RG 97.48 In other cases, we think that it would be good practice for the product issuer to adopt a format that provides consumers with a clear example or examples of the application of the fees and costs arrangements of the product.

RG 97.49 Any adapted format for the example of annual fees and costs should bear in mind the objectives of the enhanced fee disclosure regulations and continue to reflect the central features of the prescribed format, including:

- (a) the placement of the example of annual fees and costs in the 'fees' section of the PDS;
- (b) making the minimum necessary adaptations to the required preamble to the worked example;
- (c) that the fees and costs should be the typical ongoing costs that apply to the product as required to be disclosed in the worked example;
- (d) if contributions are clearly not relevant, the adapted disclosure need not refer to contributions as would otherwise be required in the worked example;
- (e) that management costs are calculated in accordance with the definition in the enhanced fee disclosure regulations; and

- (f) that the adapted format note any establishment and withdrawal fees that may apply consistent with the prescribed content and format for the worked example.

RG 97.50 We also expect that in adapting the disclosure, product issuers will provide a clear, concise and effective description of the annual application of fees and costs for the product and make such disclosures as necessary to ensure it is not misleading or deceptive.

RG 97.51 For example, the fee and cost structure for a certain managed investment product may mean that in a typical ongoing year there are no fees and costs applied, but other fees and costs are applied at or towards the end of the product holding (e.g. harvest fees for agricultural schemes). In this case, we would expect the adapted disclosure of the annual application of fees and costs to clearly refer to these so that the description of the cost-free typical ongoing year refers to these later fees and costs.

## Disclosing fees and costs for a stapled security

RG 97.52 When a joint disclosure document is used for a stapled security, we think it is good practice for all fees and costs information for both the managed investment and equity components of a stapled security to appear in a single fees and costs section.

Note: A typical stapled security involves the stapling of an interest in a managed investment scheme to a share of a company. Stapled securities may be issued through separate disclosure documents or through a combined PDS/prospectus document.

RG 97.53 In any case, disclosure of fees and costs information relating to the managed investment component of the stapled security must comply with the enhanced fee disclosure regulations.

RG 97.54 We also think that it is open to a product issuer of a joint disclosure document to apply the enhanced fee disclosure content and presentation requirements to the equity component of the stapled security. This may mean providing consolidated fees and costs information for both the managed investment and equity components of the stapled security in the fees and costs template, and then breaking down this information in the 'additional explanation of fees and costs' section of the joint PDS/prospectus.

RG 97.55 Consolidating all fees and costs information for both the managed investment and equity components of the stapled security in the fees and costs section of the combined PDS/prospectus (whether or not using a consolidated fees and costs template) will reduce the risk of misleading or deceptive disclosure.

## Disclosing transaction-specific fees for a contributory mortgage

RG 97.56 A product issuer of contributory mortgage schemes may wish to split fee disclosure information by placing general fee information in a PDS and transaction-specific fee information in a supplementary PDS. However, if a product issuer of contributory mortgage schemes splits fee information, we think it is good practice for all fee information required by the enhanced fee disclosure regulations to be set out together in the supplementary PDS.

RG 97.57 This might mean some repetition of general fee information in the supplementary PDS. However, this helps consumers to understand the fees and costs of a product by not having to look in two places for that information.

Note: This guidance is consistent with our interpretation of the enhanced fee disclosure regulations for disclosure of updated fee information: see RG 97.29–RG 97.31.

RG 97.58 This guidance is also relevant for issuers of contributory mortgage schemes who use a two-part PDS.

## Disclosing start-up and initial one-off fees or costs

RG 97.59 Generally, start-up and initial one-off fees or costs should be included in management costs in the fees and costs template. This is because management costs are intended to capture all relevant costs involved in managing the fund or scheme and deriving an investment return.

Note: Start-up and initial one-off fees and costs can only be excluded from management costs if they fall within one of the exclusions in cl 102(2) of Sch 10.

RG 97.60 For example, some agricultural schemes have a ‘start-up’ cost that is often tax deductible. Typically, this cost bundles some or all of the management costs for the scheme up-front. We take the view that such costs are management costs.

RG 97.61 Start-up and initial one-off fees or costs are not typically ongoing fees and therefore do not have to be reflected in the annual example of fees and costs. However, to avoid the possibility that a consumer may misunderstand the cost structure of the product, we think it is good practice for issuers to explain these start-up and initial one-off fees and costs. For example, a product issuer can provide any one or more of:

- (a) a description of these initial and start-up fees or costs in a note under the annual example of fees and costs;
- (b) a further example after the prescribed annual example of fees and costs;
- (c) a further example in the fees and costs template; or
- (d) a description and further example in the ‘additional explanation of fees and costs’ section of the PDS.

## D Periodic statements

### Key points

This section provides guidance on disclosing fees and costs in periodic statements under the enhanced fee disclosure regulations.

### Requirements that apply to pure defined benefit super funds

#### Reporting contribution transactions

RG 97.62 A product issuer of pure defined benefit super funds should, as a minimum, report transactions that are:

- (a) a receipt of a member's contributions; and
- (b) a receipt of benefits rolled over or transferred into the fund in respect of a member.

Note 1: See regs 7.9.20(1)(a) and 7.9.20(1)(b) of the Corporations Regulations.

Note 2: For the purposes of this guide, a 'pure defined benefit super fund' is a fund where the members are entitled to benefits defined solely by reference to the factors in paragraphs (a) and (b) of the definition of 'defined benefit member' in reg 1.03(1) of the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations).

RG 97.63 We do not expect issuers of pure defined benefit super funds to report bulk and generalised employer contributions that are calculated to maintain the general solvency of the fund and that do not specifically relate to individual members.

#### Reporting other transactions

RG 97.64 A product issuer of pure defined benefit super funds should, as a minimum, report transactions in respect of a particular member.

RG 97.65 However, if they choose, a product issuer can note in the brief description of the transaction that a transaction does not impact on the member's final benefit.

RG 97.66 We do not expect product issuers of pure defined benefit super funds to report transactions that are made at the fund level that do not relate to a particular member. A product issuer may, however, choose to include a brief description explaining the transaction.

Note: Any such description should take into account the matters raised in RG 97.22–RG 97.25.

### Disclosing 'zero' costs or fees

- RG 97.67 We acknowledge that in a pure defined benefit super fund, the management costs of the fund may ultimately be borne by employers and not impact on consumers' defined benefit entitlements.
- RG 97.68 If there are no management costs or other fees and costs that affect the consumer's investment, the 'other management costs' and 'total fees you paid' items can be shown as zero.
- RG 97.69 A product issuer may also choose to include a brief note as to how the management costs of the fund are financed.

Note: See 'Clause 301—Other management costs' and 'Clause 302—Total fees you paid' in the Explanatory Statement. See also our comments on management costs disclosure in PDSs for defined benefit super funds at RG 97.23.

### Inclusion of GST, stamp duty or income tax

- RG 97.70 A product issuer should include GST, stamp duty or income tax (after deductions) in the amount of a transaction if these are incurred at the time of the transaction.
- RG 97.71 If GST, stamp duty or income tax are not an inherent part of the transaction to which they relate, they should be reported as separate transactions.
- RG 97.72 An example is a transaction that is the receipt of a superannuation contribution for a member. The receipt of the contribution does not, of itself, involve income tax at the time it is received. Reduction of the member's account balance to reflect income tax payable by the trustee in relation to the contribution is another transaction, which may occur after the fund has received its income tax assessment.
- RG 97.73 In this case, there are two transactions that must be reported separately:
- (a) the receipt of the contribution; and
  - (b) any reduction of benefits for the fund's income tax.

### Grouping transactions on an annual basis

- RG 97.74 The Explanatory Statement makes it clear that each type of grouping should be considered on its merits. A product issuer will therefore need to make its own assessment of whether annual grouping will achieve clear disclosure of the relevant fee.

Note: See 'Item 7—Regulation 7.9.60B—Disclosure of transactions in periodic statements—Specific requirements' in the Explanatory Statement and the example in reg 7.9.60B(5) of the Corporations Regulations.

- RG 97.75      Grouping should not obscure the true frequency or amount of a recurring fee. Using a sub-total would help meet this objective (e.g. weekly administration fee of \$1 for 52 weeks (total \$52)).
- RG 97.76      In some cases, annual grouping may not be appropriate. An example is when there is a fee increase during the reporting period (e.g. weekly administration fee until 31 December 2010 of \$1 for 26 weeks (total \$26) and weekly administration fee until 30 June 2011 of \$1.50 for 26 weeks (total \$39)).

## E Indirect cost ratio (ICR)

### Key points

This section provides guidance on disclosure of management costs and the calculation of the indirect cost ratio (ICR).

### Disclosing management costs and ICR

RG 97.77 Management costs information needs to take into account at least the costs of direct investments and the costs of investments in an entity that may itself make further investments (an interposed entity). Management costs information about the investments made by an interposed entity (and other entities in a chain of such entities) should be included in the assessment of management costs to the extent these are known to the product issuer.

RG 97.78 By way of background, we note that:

- (a) a product issuer will be aware of all management costs information for direct investments made by it;
- (b) when a product issuer makes investments in an interposed entity, the product issuer will also be aware of all management costs information relating to the investment in the interposed entity; and
- (c) a product issuer may also be aware of management costs information relating to those further investments made by an interposed entity.

### Including performance fees in management costs and ICR

#### Enhanced fee disclosure regulations

RG 97.79 A product issuer will be able to satisfy the performance fees requirement by basing the assessment of performance fees on reasonable assumptions consistent with Regulatory Guide 170 *Prospective financial information* (RG 170). For example, if appropriate, performance fees could be estimated by reference to the previous 12 months performance.

RG 97.80 As required by the enhanced fee disclosure regulations, the amount of performance fees, the method of calculating those fees, and a statement that the management costs includes performance fees should be included in the 'additional explanation of fees and costs' section of the PDS.

## Shorter PDS regime

RG 97.81 This information can be incorporated by reference.

## Currency of management costs used to calculate ICR

### Enhanced fee disclosure regulations

RG 97.82 The product issuer should use the most current management costs information available for determining the ICR at the time that the PDS is issued. Typically, this will be management costs information for the last financial year ended before the issue of the PDS.

Note: If management costs information for the last financial year is not available, information for a different financial period can be used provided that it is reasonably current and that its use is not misleading to consumers. For example, a product issuer may determine that a period of less than 12 months may be appropriate.

RG 97.83 However, when current or prospective fee information is available, which differs from that applying over the financial year before the PDS is to be issued, this most recent fee information should be used to calculate the management costs and ICR. This may also be required to ensure the PDS is not misleading.

Note: See 'Clause 104—Indirect cost ratio (ICR)' in the Explanatory Statement.

RG 97.84 In any case, a product issuer should prepare updated management costs information if it knows it would be misleading to continue to rely upon management costs information in the PDS from a previous financial period (whether the most recently ended financial year or a later financial period).

RG 97.85 This updated information can be included in a supplementary PDS, or, if it is not materially adverse, it can be made available in a way allowed under Class Order [CO 03/237] *Updated information in product disclosure statements*.

### Shorter PDS regime

RG 97.86 Depending on whether the update relates to the default option or another investment option, updated information can be included in either an updated shorter PDS or as an update to material incorporated by reference (whichever is applicable).

Note: For margin loans, superannuation products and simple managed investment schemes, the Corporations Regulations impose different requirements when incorporating by reference: see regs 7.9.11E, 7.9.11P and 7.9.11X.

## Key terms

Term	Meaning in this document
ASIC	Australian Securities and Investments Commission
boxed consumer advisory warning	The Consumer Advisory Warning set out in Div 7, Pt 2 of Sch 10 of the Corporations Regulations
cl 221 (for example)	A clause of the enhanced fee disclosure regulations (in this example, numbered 221), unless otherwise specified
[CO 03/217] (for example)	An ASIC class order (in this example, numbered 03/217)
consumer	A retail client
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
enhanced fee disclosure regulations	Sch 10 of the Corporations Regulations, as inserted by the Corporations Amendment Regulations 2005 (No. 1)
example of annual costs and fees	An example as specified in Div 5, Pt 2 of Sch 10 of the Corporations Regulations
Explanatory Statement	Explanatory Statement to the Corporations Amendment Regulations 2005 (No. 1)
fees and costs template	The fees and costs template set out in Divs 1 and 2, Pt 2 of Sch 10 of the Corporations Regulations
incorporated by reference	Information available in a document other than the PDS but incorporated by reference into the PDS in accordance with regs 7.9.11E, 7.9.11P and 7.9.11X
indirect cost ratio (ICR)	The methodology for calculating management costs that are not deducted directly from a member's or product holder's account
Product Disclosure Statement (PDS)	A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act  Note: See s761A for the exact definition.
pure defined benefit super fund	For the purposes of this guide, a fund where the members are entitled to benefits defined solely by reference to the factors in paragraphs (a) and (b) of the definition of 'defined benefit member' in reg 1.03(1) of the SIS Regulations
reg 7.9.60B(1)(d) (for example)	A regulation of the Corporations Regulations (in this example, numbered reg 7.9.60B(1)(d)), unless otherwise specified

Term	Meaning in this document
retail client	A client defined as such under s761G and Ch 7, Pt 7.1, Div 2 of the Corporations Regulations
RG 170 (for example)	An ASIC regulatory guide (in this example, numbered 170)
s1013C(3) (for example)	A section of the Corporations Act (in this example, numbered 1013C(3))
Sch 10	A schedule of the Corporations Regulations (in this example, numbered 10)
shorter PDS	A PDS that is required to comply with the shorter PDS regime
shorter PDS fees and costs template	The fees and costs template for certain superannuation and simple managed investment scheme products, as set out in Schs 10D and 10E of the Corporations Regulations
shorter PDS regime	The requirements set out in Div 3A of Pt 7.9 of the Corporations Act as modified by Subdivs 4.2–4.2C and Schs 10B, 10C, 10D and 10E of the Corporations Regulations, which prescribe the content and length of the PDS for first home saver accounts, margin loans, superannuation products and simple managed investment schemes
SIS Regulations	Superannuation Industry (Supervision) Regulations 1994

## Related information

### Headnotes

costs, enhanced fee disclosure regulations, fees, ICR, indirect cost ratio, life insurance products, managed investment products, PDS, periodic statements, Product Disclosure Statements, shorter PDS regime, superannuation products

### Class orders

[CO 03/217] *Differential fees*

[CO 03/237] *Updated information in product disclosure statements*

### Regulatory guide

RG 170 *Prospective financial information*

### Legislation

Corporations Act, s1013C(3) and 1017H

Corporations Amendment Regulations 2005 (No. 1)

Corporations Regulations, regs 7.9.11E, 7.9.11P and 7.9.11X, 7.9.20(1)(a), 7.9.20(1)(b), 7.9.60B(1)(d) and 7.9.60B(5); Sch 10, Divs 1, 2, 5 and 7 of Pt 2, cls 101, 102(2), 201–202, 204(6), 209(1), 210–213 and 221, Sch 10A, Sch10B, Sch 10BA, Sch 10C cl 8, Sch 10D cls 7 and 8, Sch 10E cls 7 and 8

SIS Regulations, reg 1.03(1)

### Media and information releases

MR 04-192 *ASIC releases revised fee disclosure model*

IR 05-19 *ASIC provides answers on some fees and costs questions*

IR 05-54 *Further answers on some fees and costs questions*