Chant West

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Dear Maan

SUBMISSION ON DRAFT REGULATORY GUIDE 97

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The purpose of this submission is to provide feedback on the draft 'Regulatory Guide 97 - Disclosing fees and costs in PDSs and periodic statements' released on 28 July 2015.

It is pleasing to see that the current draft provides more clarity on a number of issues, but we believe further attention needs to be given to the following.

1. Current disclosure requirements for indirect costs do not require trustees to split out indirect costs relating to administration and those relating to investments. Such a split is imperative for members to understand what they are paying for administration and what they are paying for investments (two very different services). This change could be achieved simply by splitting out 'administration indirect cost ratio' and 'investment indirect cost ratio' as items (h) and (i) in RG 000.143. Separating these two costs would be consistent with APRA's Reporting Standards (eg. SRS 702.0) and would also greatly assist members for whom the vague concept of an indirect cost is meaningless as it begs the question – 'what is this cost for?'

2. The proposed introduction of 'indirect fees' alongside 'indirect costs' in periodic statements (RG 000.169-170) will lead to further confusion for members. It would be much simpler to include such indirect fees in 'investments fees', which is how they must be shown in Product Disclosure Statements.

3. The new Regulatory Guide (eg. RG 000.124(b)) and Class Order (Clause 4 (j) (b)) seem to require the inclusion of most investment costs in investment fees, with the exception of the costs of interposed vehicles (base and performance fees) which remain as indirect costs. However this distinction between what should be in investment fees and what should be in indirect costs should be made much more explicit.

4. Likewise, in RG 000.83 a clear distinction has been made between performance fees deducted in interposed vehicles (included in indirect costs and based on last financial year) and performance fees deducted from other managers (included in investment fees and disclosed on a current basis). This means that some interposed vehicle performance fees are based on last year's actual fees but other performance fees are based on what is expected in the current period. It appears this has been done to ensure all indirect costs (administration and investment) require disclosure of fees for the last year. But the result is that some performance fees use last year's actual fee and others are based on the expected fees in the current year. This is not ideal. If ASIC generally prefers the disclosure of performance fees based on an estimate for the current period, it could specifically require the performance fees for interposed vehicles to be based on the current basis, but allow the use of last year's fees where this is not available.

5. Further clarity has been provided on estimating indirect costs (RG 000.60-63) and there is recognition that it is 'good practice' for a fund to disclose procedures for estimating these costs. But rather than being voluntary, this disclosure should be mandatory so that members can determine whether the estimates provided by their fund are reasonable.

6. RG 000.124(b) specifies that fees include investment fees that are charged as a reduction in unit price, but since many not-for-profit funds use crediting rates rather than unit prices, the words ‘or crediting rate’ should be added after ‘unit price’ in this sub-clause.

Finally, while RG 000.126 and Example 14 go some way to address the issue of disclosing fees gross of income tax, we believe it would be helpful if RG 000.126 required that all fees are shown on a gross of income tax basis and then to include a clear definition of ‘gross of income tax’. We suggest the following definition for ‘gross of income tax’, which incorporates much of the content of example 14 but is framed in terms of a definition rather than just as an example:

> “A fee or cost that is gross of income tax is a fee or cost before adjustment for the income tax deduction the trustee may be able to claim against expenses that relate to the member. For example,
>
> (a) if a gross of income tax fee of $100 is charged to the member’s account and the tax on contributions is reduced by $15, the amount the trustee must disclose is $100, rather than $85 which is the net cost to the member after allowing for the tax deduction (assuming the fund’s income tax of 15%), or
>
> (b) if a net of income tax fee of $85 is charged to the member’s account and tax on contributions is not adjusted for the tax deduction in respect of the expenses relating to this fee, a gross of income tax fee of $100 must be reported.
>
> Any benefit of an income tax deduction relating to a fee or cost can be passed on to the member through the deduction of a lower fee or cost than is disclosed or as lower tax on contributions or income.”

This definition should also be included in Schedule 10 so that the various disclosure requirements are consistent.

If you would like to discuss these issues further please call me on (02) 9361 1400.

Yours sincerely.

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