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Dear Maan

Draft RG 97 and Proposed amendments to CO 14/1252

Thank you for the opportunity to provide our comments on the further draft of the Regulatory Guide and Class Order 14/1252 regarding *Disclosing Fees and Costs in PDs and periodic statements*.

The Property Council is the peak body for owners and investors in Australia's \$670 billion property investment industry. We represent, owners, fund managers, superannuation trusts developers and investors across all four quadrants of property investments: debt, equity, public and private.

We are supportive of ASIC's initiative to clarify and align the disclosure requirements in PDS and periodic statements across listed and unlisted superannuation and managed investment products. However, there are several issues of concern for the industry which relate specifically to inconsistencies and conflicts created by trying to treat listed and unlisted products the same way. In some cases, the guide creates measures that are inconsistent across listed and unlisted products – investors be unable to compare apples with apples under the guide. Other concerns relate to a lack of clarity on certain measures.

We agree, at a minimum, Class Order CO13/1200 should be retained to enable the variance between listed products to be recognised, for each of the ASX and AQUA markets. However the class order requires amendment to reflect the equivalent changes in the draft RG and CO 14/1252, and the issues raised in our separate submission dated 25 June 2015 (see attached).

We propose ideally, that listed managed investment schemes be specifically excluded from the RG 97 provisions as the disclosure requirements for such entities are dealt with under the ASX Listing Rules (main board) and AQUA Rules (Schedule 10A of the ASX Operating Rules). Their defined disclosure requirements are at least equivalent to the unlisted product disclosure regime.

Further, the compliance with and conformance to the ASX Rules is subject to full oversight and control of ASX Compliance. This would remove a regulatory oversight burden from ASIC if it relies on the primary regulatory body for achieving these disclosures and periodic reporting obligations.

While the majority of changes made to the Regulatory Guide and class order are positive, the clear areas of concern which need to be addressed are:

1. Inconsistent/incomplete guidance on Indirect Cost Ratio (ICR)

There is no current complete guidance on calculating an ICR for listed investments.

Confusingly however, 101a (a) of Class Order 14/1252 suggests that trustees should calculate ICR as anything

that *'will directly or indirectly reduce the return on a product or option'*.

This can be viewed as an instruction that a listed ICR should be calculated as fees over income, because this is how fees impact returns for listed entities.

Unfortunately, this contradicts the generally accepted ICR measure for unlisted vehicles - management cost over net assets. This inconsistency will lead to confusion in the market – the guide could promote unfair comparisons that will hurt investors.

Given the harm created by inconsistent measures of ICR, we recommend the ICR for listed products be scrapped because listed products are already subject to significant ASX disclosure and measures that enable investors to understand their fund.

At a minimum, listed REIT products are required to comply with both Listing Rules 3 (continuous disclosure) and 4 (periodic disclosure), the latter in particular requiring disclosure of full financial information which includes all costs, expenses, income and related accounting matters.

At the very least, the name for the listed ICR should be changed to Asset Cost Ratio (ACR), so there is an acknowledgement they are different. In the circumstances, however, there is little benefit of having the listed ratio given it cannot be reconciled with the unlisted ICR].

In addition, as noted in our submission on CO 13/1200, and the Kingwood Mallesons submission of June 2015, stapled property groups have inherently different structures, assets and activities which makes indirect cost comparisons meaningless to investors.

2. Re-work the Guide to reflect two different measures

Where ASIC maintains a separate listed product ICR but simply changes the name, this will need to be reflected throughout the regulatory guide which assumes the term "ICR" applies across listed and unlisted products in the same way.

At a bare minimum, there needs to be clear guidance on calculating ICRs for listed and unlisted vehicles.

3. Confusing and unclear treatment of Management Costs

There is no clear and definitive method for calculating the Management Costs to be included in the fees and costs template in a PDS. Industry is unclear for instance whether stamp duty or GST is included, but more broadly, industry is concerned that they will have to adjust their templates for annual investment statements without understanding whether the changes they make are correct. Inconsistent expert advice is being provided to the market because of this significant gap. **[CONFIRM CORRECT]**

Equally serious is that fact that the guidance and the law on calculation of the Management Cost figure in the *Example of annual fees and costs* table is conflicting.

Clause 218A(1) of Schedule 10 requires this figure to be calculated using the indirect cost ratio for the product. Subject to some exceptions, the ICR for a PDS is to be determined for the financial year before the PDS is issued [proposed new clause 104(2) of Schedule 10]. Draft RG97 repeats this position at RG000.24. However, elsewhere, draft RG97 states the fees and costs included in the worked example of annual fees and costs should be the typical ongoing costs that apply to the product [RG000.88 and RG000.151].

This suggests the ICR figure is to be calculated on a current basis, the same way ASIC consider the fees included in the fees and costs template should be [see RG000.86 *“unlike indirect costs.... fees payable to the responsible entity of a registered scheme must be shown on a current basis as what would apply for a person acquiring the financial product”*].

Furthermore, and regardless of the conflict, it is confusing and potentially misleading to require the fees disclosed in the template to be calculated and disclosed on a current basis and then those same fees to be used to calculate the ICR (which forms the basis of the Management Costs amount in the example) to be calculated on a different basis (i.e., based on amounts from the previous financial year).

Before property funds goes to the expense of changing annual investment templates, and to avoid the risk of inconsistent compliance industry recommends the guide:

- a) include worked examples of calculation of Management Costs for major asset classes including property and infrastructure;
- b) a clear statement of ASIC’s position on GST and stamp duty that is consistent with the MIT legislation;
- c) rework of Section E to provide more clarity on what should go into the statements.

4. Unnecessary compliance cost and burden to update PDS each year for changes in ICR

Requiring a PDS to be re-issued annually as implied under RG000.27 is an unreasonable and unnecessary compliance cost and burden for the product issuer/fund managers and will ultimately push returns lower for investors. With ASIC’s Regulatory Guide 198: Unlisted disclosing entities: Continuous disclosure obligations (RG198) and Regulatory Guide 46: Unlisted property schemes – Improving disclosure for retail investors (RG46) the continuous disclosure regime means that product issuers/fund managers and investors are currently experienced in reconciling updates on a fund’s Management Costs from information provided electronically (via a product issuer/fund manager’s website or the fund’s annual report/periodic statements).

Industry recommends:

- a) RG 000.27 be re-written and pejorative language such as ‘defective’ be removed. It is unnecessary and unhelpful as it implies the PDS in its entirety, is of no use. Although it reflects language from the Corporations Act 1016, it is not a useful term in a guide; and

- b) the Guide be amended to make it clear that a PDS does not need to be updated each year for ICR purposes but instead material changes to the ICR need only be changed under the usual PDS review cycle for continuous disclosure obligations set out in ASIC policy.

It is clear that each of these problems are easy to fix, however, they are necessary solutions to ensure that the guide operates in a practical and useful way for investors moving forward.

We are keen to meet and talk through our industry recommendations at your earliest convenience.

Please let us know when you would be available and in the meantime, if you have any queries, please do not hesitate to contact Belinda Ngo (02 9033 1929) or myself.

Warm Regards

A handwritten signature in black ink, appearing to read 'AM', with a horizontal line underneath.

Andrew Mihno
Executive Director – International & Capital Markets

