ASIC
Australian Securities & Investments Commission

INFORMATION SHEET 197

Fee and cost disclosure requirements for superannuation trustees

This information sheet gives guidance to superannuation trustees and other persons in relation to the fee and cost disclosure requirements in Schs 10 and 10D to the Corporations Regulations 2001 (Corporations Regulations). It explains the information that superannuation trustees must disclose about fees and costs, including:

- what are the fee and cost disclosure requirements
- what definitions have been introduced or amended under Sch 10
- when the new disclosure requirements start
- the approach ASIC will take to the new requirements
- the PDS disclosure required for each MySuper product and Choice product
- the disclosure required for indirect costs
- how fee disclosure should be treated from a tax perspective
- how performance fees should be disclosed
- how advice fees should be disclosed.

What are the fee and cost disclosure requirements?

Changes to the fee and cost disclosure regime for both superannuation and managed investment schemes were introduced by the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012*. Detailed requirements about the content and presentation of the information in the product dashboard are set out in the Corporations Regulations, as amended by the Superannuation Legislation Amendment (MySuper Measures) Regulation 2013.

What are the new and amended definitions in Sch 10?

A number of key definitions have been introduced, or amended, under Sch 10 to the Corporations Regulations to reflect changes to fee and cost arrangements for superannuation trustees in the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

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

Key changes include the introduction of the 'investment fee' and 'advice fee', as well as changes to the 'indirect cost' concept.

The 'indirect cost' of a superannuation product is used as the basis of the amended definition of 'indirect cost ratio' for superannuation products. The indirect cost is any amount that a trustee of an entity knows, or reasonably should know, will reduce the return for a member that is not charged to that member as a fee.

A number of other existing definitions have been updated (e.g. 'switching fee' and 'exit fee') to improve disclosure practice and more closely align the disclosure requirements with those in the SIS Act.

When do the new disclosure requirements start?

Under the Superannuation Legislation Amendment (MySuper Measures) Regulation 2013, the fee and cost disclosure requirements were scheduled to start on 31 December 2013 for superannuation products, and on 1 July 2014 for managed investment products.

Under Class Order [CO 13/1534] *Deferral of Stronger Super amendments in relation to PDS and periodic statement disclosure*, ASIC delayed the start date for superannuation products until 1 July 2014. Any Product Disclosure Statement (PDS) given on or after 1 July 2014 must contain the new fee and cost disclosure for both superannuation and managed investment products.

What approach will ASIC take to the new disclosure requirements?

We had previously stated that we would take a facilitative approach to compliance with the Stronger Super reforms for the first 12 months from 1 July 2013 to 1 July 2014: see Media Release (13-026MR) *Stronger Super implementation* (14 February 2013). This facilitative approach has been extended until 1 July 2015, and will apply to the fee and cost disclosure requirements. We will adopt a measured approach during this period, where inadvertent breaches arise or systems changes are underway, provided that industry participants are making reasonable efforts to comply.

We intend to undertake further consultation on key aspects of fee and cost disclosure, including in relation to issues of double-counting and look-through arrangements in indirect costs, before undertaking a comprehensive update of our fee and cost disclosure guidance in Regulatory Guide 97 *Disclosing fees and costs in PDSs and periodic statements* (RG 97). The updated regulatory guide will also incorporate the material in this information sheet (where appropriate).

What PDS disclosure is required for each MySuper product and Choice product?

A superannuation trustee must include in the PDS a fees and costs table for each MySuper product and Choice product of the superannuation fund. This is the case for both:

- shorter PDSs prepared under Sch 10D to the Corporations Regulations (see cls 8(1) and 8(3) of Sch 10D), and
- long-form PDSs that meet the fee and cost disclosure requirements in Sch 10 to the Corporations Regulations (see cl 205 of Sch 10).

We expect that a superannuation trustee will disclose a separate fees and costs table for each MySuper product and Choice product. Usually, there will only be one MySuper product for a superannuation fund.

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Shorter PDSs

If the fund has a generic MySuper product, and a shorter PDS is prepared, the fees and costs table for the generic MySuper product must be set out in the body of the PDS: see cls 7(4) and 8(1) of Sch 10D to the Corporations Regulations. The superannuation trustee must disclose fees and costs tables for other MySuper products and all Choice products, but this information may be incorporated by reference: cl 7(8) of Sch 10D.

If the fund does not include a generic MySuper product, and has a Choice product that is a balanced investment option, the fees and costs table in the body of the PDS must be the fees and costs table for the balanced investment option under which most assets of the fund are invested: cls 7(5) and 8(1) of Sch 10D to the Corporations Regulations. A 'balanced investment option' is an investment option in which the ratio of investment in growth assets (e.g. shares or property) to investment in defensive assets (e.g. cash or bonds) is as close as practicable to 70:30: cl 101 of Sch 10, as incorporated by cl 7(5) of Sch 10D. The fees and costs tables for any non-generic MySuper product or other Choice product must also be included in the PDS, but may be incorporated by reference.

If the fund does not include a generic MySuper product, or a Choice product that is a balanced investment option, the fees and costs table in the body of the PDS must be the fees and costs table for the investment option under which most assets of the fund are invested: cl 7(6) of Sch 10D to the Corporations Regulations. The fees and costs tables for any non-generic MySuper product or other Choice product must also be included in the PDS, but may be incorporated by reference.

Fees and costs template

For shorter PDSs and long-form PDSs, the fees and costs tables for each MySuper product and Choice product must consist of the elements set out below. Each element, except for 'other fees and costs', is defined in s29V of the SIS Act (see cls 101 and 209A of Sch 10 to the Corporations Regulations and cl 8(6A) of Sch 10D):

- investment fee
- administration fee
- buy–sell spread
- switching fee
- exit fee
- advice fees relating to all members investing in a particular MySuper product or investment option
- other fees and costs
- indirect cost ratio.

The amounts of these fee categories will need to be apportioned to each MySuper product or Choice product to enable the relevant amounts for each fee or cost category to be set out in the fees and costs tables.

If a superannuation trustee prepares a long-form PDS, the fees and costs tables for each MySuper product and Choice product have to be set out in the PDS: see cls 201 and 205 of Sch 10 to the Corporations Regulations for the template fees and costs table for superannuation products.

What disclosure is required for indirect costs?

Indirect costs are any amount that the trustee knows, or reasonably ought to know, will directly or indirectly reduce the return on investment of a member, where this amount is not charged to the member as a fee: see cl 101 of Sch 10 to the Corporations Regulations.

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Returns on investment may be income, capital gain or a combination of both. Costs that reduce these returns will be:

- costs that are deducted from the return before it is received in the common fund which includes the member's investment (e.g. brokerage on a share sale or a property management fee based on the gross rent collected)
- costs that are deducted from the common fund which includes the member's investment itself (e.g. a trustee's operating costs or a management fee paid to an external fund manager).

We expect that fees charged to members will include:

- fees that are deducted directly from the member's account (e.g. an administration fee in the form of a flat weekly fee)
- fees, such as an investment fee, that are charged by the trustee through a reduction in a unit price (e.g. a percentage-based fee).

How should fee disclosure be treated from a tax perspective?

A trustee must disclose fee and cost information in its PDS in accordance with Schs 10 and 10D to the Corporations Regulations. Clause 204(7) of Sch 10 requires that a cost or amount paid or payable must include, if applicable, GST (less any reduced inputs tax credits) and stamp duty.

A trustee must also disclose fees gross of income tax. The fee the trustee discloses must not be reduced by any income tax deduction the trustee may be able to claim against costs. For example, if the gross fee is $100 (ignoring GST for illustrative purposes only), the amount the trustee must disclose is $100, rather than $85 (assuming the fund's income tax of 15%). Any benefit of an income tax deduction relating to a fee should be received by the member through the deduction of a lower fee than is disclosed, or as lower tax on contributions or income.

How should performance fees be disclosed?

The Superannuation Legislation Amendment (MySuper Measures) Regulation 2013 has introduced a number of changes to key definitions, which affect performance fee disclosure.

The definitions of 'performance' and 'performance fee' have changed to take into account the different types of products on offer (e.g. a managed investment product, a superannuation product, a MySuper product or an investment option).

Trustees should also be aware that the new definition of 'investment fee' for superannuation products now incorporates performance fees.

The changes to cl 209 of Sch 10 to the Corporations Regulations – for performance fees under the heading, 'Additional explanation of fees and costs' – now require trustees to provide a statement about how performance fees affect administration fees and investment fees for a superannuation product. Before the introduction of these amendments, trustees were required to make a statement that performance fees were included in the template as 'management costs'.

The method of calculating the fee and the amount of the fee – or an estimated amount if the amount is unknown – has not changed.

ASIC recognises that there is inconsistency and a lack of clarity in the industry about how future performance fees should be determined and disclosed. One common practice is for funds to show the previous year's performance fees as a reflection of what will occur in the current year.

Our view is that this practice may be misleading because it implies that past performance fees may be repeated. We maintain the guidance currently provided in RG 97.79, which

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requires that the assessment of future performance fees is based on reasonable assumptions consistent with Regulatory Guide 170 *Prospective financial information* (RG 170).

Our expectation is that trustees will not simply reflect past performance fees for future years, but will make assumption-based estimates of future performance fees, which allow for meaningful comparison between superannuation funds.

How should advice fees be disclosed?

The fees and costs template for superannuation products in cl 201 of Sch 10 to the Corporations Regulations requires the inclusion of 'advice fees' relating to all members investing in a particular MySuper product or investment option.

Intra-fund advice is often incorporated into the administration fee. The definition of 'advice fee' given in s29V(8) of the SIS Act contemplates the possibility that a fee for intra-fund advice can be charged as another form of fee, such as an administration or investment fee.

A fee for intra-fund advice that has the characteristics described in s29V(8)(a) of the SIS Act, and is charged as an administration fee (see s29V8(b)), will not be an advice fee and will need to be disclosed as an administration fee in the template.

If the intra-fund advice fee has the characteristics in s29V(8)(a), and is not otherwise charged as a fee under s29V(8)(b), the intra-fund advice will be an advice fee and will need to be disclosed as such in the template.

Where can I get more information?

- Go to the Australian Government's Stronger Super website at www.strongersuper.treasury.gov.au
- Contact ASIC on 1300 300 630 or by email at StrongerSuperReforms@asic.gov.au

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law on that topic, and it is not a substitute for professional advice.

You should also note that, because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases, your particular circumstances need to be taken into account when determining how the law applies to you.

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