



FINANCIAL
SERVICES
COUNCIL

FSC submissions
ASIC Consultation Paper 308 - *Review of RG 97
Disclosing fees and costs in PDSs and periodic
statements*

2 April 2019



About the Financial Services Council

The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in Australia's largest industry sector, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing almost \$3 trillion on behalf of more than 14.8 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange, and is the fourth largest pool of managed funds in the world.

Background

Regulatory Guide 97 *Disclosing fees and costs in PDSs and periodic statements* ('**RG 97**') provides guidance on the fees and costs disclosure regime for Product Disclosure Statements ('**PDSs**') and periodic statements.

In July 2018, ASIC released Report 581 *Review of ASIC Regulatory Guide 97: Disclosing fees and costs in PDSs and periodic statements* ('**REP 581**'). This report was prepared by an external expert, Mr Darren McShane, and included a range of recommendations and observations for ASIC to consider.

On 8 January 2019, ASIC released Consultation Paper 308 - *Review of Regulatory Guide 97: Disclosing fees and costs in PDSs and periodic statements* ('**CP 308**'). CP 308 sets out ASIC's response to the recommendations in REP 581, including its proposed changes to RG 97 and Class Order [CO 14/1252], as well as technical modifications to Schedule 10 of the Corporations Regulation. ASIC has sought industry feedback on these proposed changes.

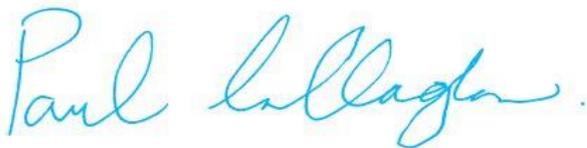
FSC submission to ASIC

We thank ASIC for providing FSC the opportunity to comment on the draft updated RG 97 ('**draft updated RG 97**') and proposed amendments to Schedule 10 to the Corporation Regulations ('**draft amendments to Sch 10**'). This document includes FSC's responses to key issues identified by its members in considering CP 308. Accordingly, this document and the submissions contained in it, do not address all of the questions raised in CP 308. For convenience, we have structured our comments with reference to the recommendations and

observations set out in CP 308. Where no response has been included, this should not be taken as either agreement or disagreement with the position set out in CP 308.

We would welcome the opportunity to discuss further any queries ASIC may have in connection with FSC's submissions.

Dated: 2 April 2019



Paul Callaghan

General Counsel

Recommendations ASIC proposes to adopt that require amendment to Sch 10

B1 Changing the superannuation product 'Fees and costs template'

Proposal: Recommendations 6, 8 and 11 in REP 581

ASIC Question: *B1Q1* Do you agree with our approach? If not, please explain why.

1. FSC has received a range of views from its members on the approach taken to the fees and costs templates. In some feedback, the view has been expressed that further work should be done to bring the superannuation and managed funds templates more closely in line. However, we appreciate that, at this stage, there may well be practical and technical limitations which inhibit the ability of ASIC to move to a closer alignment of the superannuation and managed fund templates.
2. By way of indication as to the balance of views, a number of our members were in general support of the proposed changes to the 'Fees and costs template' as outlined in the paper, including the separate disclosure of 'Ongoing annual fees and costs' and 'Member activity related fees and costs'.
3. However, we have some concerns relating to the disclosure of a single amount for 'Investment fees and costs' and the disclosure of a single amount for 'Administration fees and costs' - These concerns arise where a single fee or cost consists of a variable and fixed component. For example, administration fees and costs may consist of a percentage of assets based fee generally deducted daily from unit price; and a dollar fee per month which is generally deducted directly from a member's account (although we note that draft RG97.370 permits separate disclosure in this instance).
4. Prescribed text in the "Annual example of fees and cost" should also be changed to reflect this scenario for every \$50,000 you will be charged administration fees and costs of \$x plus \$y. regardless of your balance.
5. The recent passage of the Protecting Your Super Package legislation in conjunction with CP 308 creates uncertainty in relation to the implementation of proposal B1. We believe this proposal will need to be reassessed and the FSC welcomes the opportunity to provide further feedback on any amended proposal. The Corporate Collective Investment Vehicle (**CCIV**) regime is also likely to require amendments to

Part 7.9 of the Corporations Act and we anticipate that consequential amendments may well be required to RG 97 and Sch 10.

ASIC Question: *B1Q2* Although indirect costs will be combined with investment fees into a single line item in the 'Fees and costs template' (to be renamed 'Fees and costs summary'), should issuers be able to include an additional breakdown of the figure into two separate components in the 'Fees and costs summary' or in another place (such as on the issuer's website)? If yes, how would this help consumers make investment decisions and compare products? Should the same breakdown be permitted in respect of administration fees and indirect costs?

6. Completion of the 'How and when paid' column in the 'Fees and cost summary' may be problematic if a single figure is disclosed without further breakdown.
7. Investment fees and costs may consist of:
 - a. a fee paid to the trustee which is deducted daily from the assets of the investment option and reflect in the unit price (fixed)
 - b. A performance fee paid to the trustee or underlying investment manager, which is deducted from the assets of the investment option and reflected in the unit price when certain conditions are met (variable)
 - c. Indirect costs, which are deducted from the underlying assets of the investment option as and when they are incurred (variable)
8. A further breakdown of 'investment fees and costs' should be permitted in the 'Fees and costs detail' section or in material incorporated by reference. Distinguishing between fixed fees and variable indirect cost incurred by the underlying investment is important for members' understanding of the volatility of any single estimated amount.
9. This approach is being proposed for performance fees included in 'Investment fees and costs', which are similarly not fixed and certain. This approach should be extended to the disclosure of indirect costs.

ASIC Question: *B1Q3* What system and process changes would be needed to implement these proposals?

10. No material system and process changes are expected, although noting that issuer disclosure (i.e. the **PDSs**) will clearly need to be updated to reflect the new requirements.

ASIC Question: *B1Q4* What are the additional costs associated with implementing these proposals? Please provide details of one-off and/or annual costs as applicable.

A PDS roll will be required, however significant additional expenses could be avoided if there is a sufficient lead time allowed for compliance so as to not require 'out-of-cycle' PDS rolls.

ASIC Question: *B1Q5* What would be a reasonable timeframe for issuers to implement these proposals, in light of the other changes proposed in this paper?

11. Issuers should be provided with a reasonable transition timeline which aligns with scheduled PDS rolls and the generally applicable financial year end. There are a number of possible transition timelines, which could apply here and we suggest that ASIC consider how early opt-in may be incorporated to facilitate transition. In our view, issuers should be permitted to operate under existing RG 97 requirements at least until, 1 December 2021. This would allow sufficient flexibility and time for the financial year end data gathering and then PDS production. In this regard members have pointed out that it is likely most providers will roll between 1 October and 31 November. This assumes that the updated RG 97 and associated revised Sch 10 are finalised by 30 September 2019.

Additionally, members have pointed out that system changes could potentially take up to two years to fully implement and PDS rolls are not necessarily required in each year. Members have also pointed out that while the PDS changes are not overly onerous, subsequent changes required to periodic statements will be the area requiring this timeframe for change as it involves IT system changes.

B2 Changing the managed investment products 'Fees and costs template'

Proposal: Recommendation 9 and 10 in REP 581

ASIC Question: *B2Q1 Do you agree with our approach? If not, please explain why.*

12. FSC has received a wide range of views from its members on the approach taken to the fees and costs templates. In some feedback, the view has been expressed that further work should be done to bring the superannuation and managed funds templates more closely into line. However, we appreciate that, at this stage, there may well be practical and technical limitations which inhibit the ability of ASIC to move to a closer alignment of the superannuation and managed fund templates.
13. By way of indication as to the balance of views, a number of our members were in general support of the proposed changes to the 'Fees and costs template' as outlined in the paper, including the separate disclosure of 'Ongoing annual fees and costs' and 'Member activity related fees and costs...'. At this juncture, we do note that there should be some flexibility allowed in relation to the descriptor "member". For example, in product documentation it is possible that an issuer could refer either to investor or members.
14. However, we have some concerns relating to the disclosure of a single amount for 'Management fees and costs'. There may be transparency benefits (equivalent to those described above for superannuation products) for responsible entities to be able to disclose a breakdown of fees, for example showing the management fees as distinct from performance fees and indirect costs. As an example, members believe that the ability to clearly distinguish a "management fee" (paid regardless of performance) from a performance fee (generally only paid where there has been outperformance) is important given the very different nature of the fees. For funds with a similar strategy, a fund with ongoing total management fees and costs of 1.00% comprising of a 0.90% management fee and a performance fee component of 0.10% is a different proposition to a competitor fund with the same ongoing total management fees and costs of 1.00% but a management fee of 0.30% and a performance fee component of 0.70%. While draft RG97.370 permits separate disclosure of components, it does not appear to provide flexibility in all cases and we therefore request that ASIC considers clarifying the position in updated draft RG 97.
15. There is a further and related issue here. The co-mingling of fees and costs into a single Management Fees and Costs amount may lead to potential confusion for

members/investors at the time when year on year costs increase (or reduce) and these changes need to be communicated. This change may trigger a requirement to issue a SEN if the amounts were rolled into one and the costs increased by a non-material amount year on year.

Feedback on proposed Managed Investment product ‘Fees and costs template’

ASIC proposed definition	FSC suggested definition
<p><i>Transaction costs (net)</i> The costs incurred by the product when buying or selling assets</p>	<p><i>Transaction costs (net)</i> The costs incurred by the product when trading to fulfil the investment strategy</p>
<p><i>Buy-sell spread</i> An amount – deducted from your investment representing costs incurred in transactions by the product.</p>	<p><i>Buy-sell spread</i> An amount deducted from your investment representing an estimate of costs incurred as a result of you applying for or withdrawing from the product</p>
<p><i>Footnote 1</i> 1. [If relevant insert a footnote Management fees and costs includes an amount of x.xx% for performance fees. The calculation basis for this amount is set out under “Fees and Costs Details”.]</p>	<p><i>Footnote 1</i> 1. Based on the product’s ongoing Fees, plus the variable Costs incurred for the last financial year up to 30 June 20XX [or a forward estimate of costs for new products]. We estimate the Management Fees and Costs will [be X.XX% each year OR range between X.XX – X.XX% each year]. See the ‘Fees and Costs Details’ section for more details.</p>

B3 Including 'Cost of product information'

Proposal: Recommendations 13 and 14 in REP 581

ASIC question: *B3Q1 Do you agree with our approach? If not, please explain why.*

16. We have received feedback from certain members indicating that they agree in principle and certainly considered in isolation, disclosing the cost of product for each choice investment option would assist to some extent in the comparability of investment options. However, each investor's experience would differ depending on account level fees and account balances. In the result, we do question whether cost of product information ultimately would be of benefit or assistance to consumers. Moreover, from an issuer's perspective, our members believe that obtaining cost of product information for inclusion in disclosure documents in a timely and clear and effective manner on an ongoing basis would be challenging. In effect, we do wonder whether the cost of product obligation becomes counter-productive.
17. Thus, there is a view that the proposed approach for 'Cost of Product' disclosure does not add value for investors in products which contain a large number of options with similar fees. This is especially the case for platform products with in excess of 300 investment options, where members often invest in a diversified portfolio of more than 10 investment options. In this circumstance, the cost of product for each individual option may be both meaningless and potentially misleading for these members. However, it is noted that ASIC have not adopted recommendation 18 at this time that requires platform products to disclose cost of product figures for accessible MIS.
18. Although cost of product information may be added as a table within a PDS, this would make the PDS unduly complex and conflict with the requirement for clear, concise and effective disclosure.
19. If the cost of product proposal were to proceed notwithstanding the reservations we have expressed as to its efficacy, then we suggest that the format of the disclosure should not be prescribed. The additional information can be presented as an additional column in existing investment option fee and cost disclosure tables which are either incorporated by reference or disclosed in the 'Fees and costs details' section of the PDS.

20. Further and if the proposal were adopted, we note that the 'Example of annual fees and costs' for a managed investment product does not use the term 'Cost of product' but rather 'Cost of [name of investment option]'. It is believed these terms should be aligned to 'Cost of product' throughout disclosure materials.
21. This requirement also should be permitted to be incorporated by reference in long form PDSs, or alternatively we submit that ASIC should issue relief to ensure this requirement does not cause an issuer to breach its responsibility for clear, concise and effective disclosure.

ASIC Question: *B3Q3* Do you believe that incorporating a \$5,000 contribution on the last day of the year in the 'Example of annual fees and costs' and in the 'Cost of product information' for superannuation products will help consumers make investment decisions and compare products, given that: (a) contributions are not taken into account when calculating fees and costs for disclosure (see cl 218(1) and (3) of Sch 10); and (b) contribution fees are not permitted to be charged in relation to MySuper products under s29V of the Superannuation Industry (Supervision) Act 1993 (SIS Act)?

22. The inclusion of \$5,000 on the last day of the year in the examples is unnecessarily complex and should be removed in respect of both superannuation and managed investment products for consistency.
23. The proposed change is unlikely to alter the outcome of the fee example as contribution fees are not permitted for MySuper products. Additional disclaimers and disclosure for products which utilise a combined Super & Pension PDS for the \$5,000 contribution is not possible for pension products, making the prescribed example even less relevant for pension members.
24. We do not believe that incorporating a \$5,000 contribution on the last day of the year will have any impact on consumer decision-making for the reasons outlined. We believe any applicable contribution fee should be included as a footnote in keeping with disclosure of buy/sell spreads and (as applicable) exit fees. For similar reasons, as we have said, all in the context of managed investment products, the additional contribution of \$5,000 on the assumed basis adds no value and is unlikely to be relevant to a consumer's decision-making process.

B4 Simplifying periodic statements

Proposal: Recommendation 16 in REP 581

ASIC Question: *B4Q1 Do you agree with our approach? If not, please explain why*

25. We agree with ASIC's proposal of simplifying the periodic statement fee and cost disclosure. However, we note that some providers have already built in functionality to cater for a more granular disclosure to match the PDS fee template, e.g. investment fees, administration fees, buy/sell spread, which is permissible under the current Regulations.
26. We believe providers ought to be able to provide more granular disclosure of 'Fees and costs deducted from your investment' to match the revised PDS 'Fees and costs summary', however this should not be mandated. This optionality should be reflected in the revised Schedule 10.
27. For clarity, we also suggest the following amended prescribed wording in Sch 10 cl 301(1) for 'Fees and costs deducted from your investment' as follows:

'This approximate amount has been deducted from your investment and covers amounts that have reduced the return on your investment and that are not directly deducted from your account.'

ASIC Question: *B4Q2 What system and process changes would be needed to implement this proposal?*

28. These proposals will involve IT system changes in the product administration and statements system to calculate the necessary totals and reformat the presentation. These changes would be more extensive and expensive for issuers who currently show optional breakdown, if this breakdown is not permitted in the future.

ASIC Question: *B4Q3 What are the additional costs associated with implementing this proposal? Please provide details of one-off and/or annual costs as applicable.*

29. Costs associated with this proposed change to periodic statements are predominantly one-off in nature and would include the costs of making system changes, testing, and costs associated with implementation.

30. In addition, some providers maintain multiple systems for managing their products. In these cases a level of duplication of testing across multiple systems is required. This increases the overall costs of implementing this proposal.
31. Members operating multiple product administration systems estimate the costs of change to be in the range of approximately \$1 to \$6 million.

ASIC Question: *B4Q4* What would be a reasonable timeframe for issuers to implement this proposal, in light of the other changes proposed in this paper?

32. Given the changes to all disclosure documents and IT systems noted above, our members require two years from the date on which ASIC finalises the updated RG 97 and revised Sch 10 as a reasonable timeframe for issuers to implement these proposals. We refer to our comments in response to ASIC Question B1Q3. As a result in order to accommodate the potential variables involved, we would suggest a two-year transitional period from the date of finalisation of the relevant guidance and instruments.

ASIC Question: *B4Q5* We have not inserted a provision in the draft amended Sch 10 or provided guidance to explain how to calculate the approximate amount to be disclosed in 'Fees and costs deducted from your investment' and 'Total fees and costs you paid'. Do you believe a provision and/or guidance is necessary? Would a formula-based approach be necessary? We have included instructions in cl 301(2)(b) of Sch 10 about how to calculate the amount deducted from the investment. We have also included guidance in draft updated RG 97 (at RG 97.132 and RG 97.240 at Attachment 1 to this paper) that the amount to be inserted is the fees and costs for the product or option that are attributed to the particular member.

33. Most of our members estimate these amounts to be the average balance by investment option for each month, multiplied by the appropriate fee and costs % p.a. rate, pro-rated for the period being reported.
34. Average balances may be based on opening balances adjusted for any cash flows, simply average monthly balances or other reasonable methods.
35. It is not practical to estimate these amounts precisely as this would require daily calculations for each investment option for each member.

36. We do not believe a prescriptive formula based approach is necessary and that the current drafting of Sch 10 and RG 97 is sufficient.

ASIC Question: *B4Q6* Given that periodic statements provide fees and costs information about what a member has been charged over a past period, and given the proposed amendments to the periodic statement requirements, would it be necessary for an issuer to make reasonable estimates of amounts to be included in periodic statements? Would this be more likely for periodic statements given after the member has exited the product?

37. As mentioned in our response to B4Q5, it is not practical to estimate these amounts precisely and hence any amount should be viewed as a reasonable estimate. Further, any costs included in 'Fees and costs deducted from your investment' are estimated based on a number of factors e.g. OTC costs, counterparty spreads.

ASIC Question: *B4Q7* We have retained the guidance that appears in the current version of RG 97 (at RG 97.234) that amounts of transactions shown in the transaction list in periodic statements should include GST less reduced input tax credits: see draft updated RG 97 at RG 97.124 and RG 97.232 at Attachment 1 to this paper. Regulation 7.9.60B(3) requires that amounts of transactions must include GST (if applicable) but does not make reference to whether reduced input tax credits should be included or excluded. Should reduced input tax credits be excluded from transaction amounts? Please explain why or why not.

38. We believe any fees and costs should be shown including GST less any reduced input tax credits if applicable.

ASIC Question: *B4Q8* We have retained the guidance that appears in the current version of RG 97 (at RG 97.234) that if GST or stamp duty is not disclosed as part of the amount in a transaction, they should be reported as separate transactions: see draft updated RG 97 at RG 97.125 and RG 97.233 at Attachment 1 to this paper. Should GST or stamp duty be permitted to be disclosed separately from the transactions they relate to? Please explain why or why not.

39. Please refer to our response to B4Q7.

ASIC Question: *B4Q9* We have retained the guidance that appears in the current version of RG 97 (at RG 97.237) that if the payment of a fee or cost results in the superannuation entity or registered scheme becoming entitled to a tax deduction, and the benefit is passed on to a member, the periodic statement must show two transactions—being one for the full amount charged and one for the tax benefit that was passed on to the member: see draft updated RG 97 at RG 97.126 and RG 97.234 at Attachment 1 to this paper. Should this guidance be retained? Please explain why or why not.

40. We believe any direct fees should reflect the amount after the benefit of any tax deduction as long as this is clearly explained in the notes to the statement.
41. To change the disclosure to show a separate entry for the tax deduction would (in the view of one member who provided feedback) involve significant IT costs. On balance, if these proposed changes require significant systems work and costs for little or no member benefit then our preference would be for the change not to be made.
42. Therefore, we do not support the retention of this guidance in RG 97.

ASIC Question: *B4Q10* We have retained the guidance that appears in the current version of RG 97 (at RG 97.235–RG 97.236) that where a transaction creates an income tax liability or a tax deduction is given to the member, the issuer should show this transaction separately and include an explanation of the basis for the transaction and its relationship with other transactions: see draft updated RG 97 at RG 97.127 and RG 97.235 at Attachment 1 to this paper. Should this guidance be retained? Please explain why or why not.

43. Refer to our response to B4Q9.

ASIC Question: *B4Q11* Should cl 301(5) and 301(6) of Sch 10 be retained? Please explain why or why not.

44. We believe ‘Fees and costs deducted from your investment’ should reflect the amount after the benefit of any tax deduction provided this is clearly explained in the notes to the statement.
45. To change the disclosure to show a separate entry for the tax deduction would (in the view of one member who provided feedback) involve significant IT costs. On balance, if these proposed changes require significant systems work and costs for little or no member benefit then our preference would be for the change not to be made.

46. Therefore, we do not support the retention of cl 301(5) and 301(6) of Sch 10.

ASIC Question: *B4Q12* Should 'Total fees and costs you paid' in cl 302(1) of Sch 10 be presented gross of any tax benefit passed on to the member: see RG 97 at RG 97.237? Please explain why or why not?

47. Refer to our response to B4Q11.

Changing the treatment of transactional and operational costs

B5 Transaction costs (net) as a separate line item in the 'Fees and costs template' and in the 'Example of annual fees and costs'

ASIC Question: *B5Q1* Do you agree with our approach? If not, please explain why.

48. Some of our fund manager members have expressed the view that the inclusion of transaction costs in the fees and costs summary template is confusing at best, and misleading at worst. Those members have a preference for continuing the current treatment for managed investment products whereby issuers can disclose gross and net transaction costs in the Additional explanation of fees and costs section and thereby incorporate that information by reference. As an example, the net transaction costs can vary significantly year on year. For example, if during a financial year a managed fund had large applications and redemptions on the same day which are offset such that trading is not required on that day, this could result in a large recovery through the buy sell spread. If the amounts are large enough, this could result in a net transaction cost for the year of zero (or negative). Showing "zero" in the table is likely to be misleading (even with a footnote explaining this may change).
49. These fund manager members consider that no investor can invest without incurring transaction costs – neither as individuals nor as institutions. Transaction costs are generally not characterised as an extra cost that comes with offering a fund or product. The product issuer does not collect the transaction costs. This is in contrast to fees which are collected by the product issuer, or fund expenses which are paid to fund service providers.
50. We have received feedback from superannuation fund FSC members that the alignment of Super and MIS is paramount and that the treatment of transaction costs for managed investment products must be aligned to superannuation products to avoid

member confusion and to avoid platform superannuation providers having to seek additional information from fund managers to calculate 'super equivalent' costs as required by RG 97.257.

51. These superannuation fund members note that explicit transaction costs are currently disclosed in the fees and costs template for superannuation products and believe it unlikely that this decision will be reversed. Therefore, these members support the inclusion of transaction costs in the fees and costs summary for managed investment products for the reasons outlined above.

AISC Question: B5Q2 What system and process changes would be needed to implement these proposals?

52. No material system and process changes are expected, although noting that issuer disclosure (i.e. the PDSs) will need to be updated to reflect the new requirements.

ASIC Question: B5Q3 What are the additional costs associated with implementing these proposals? Please provide details of one-off and/or annual costs as applicable.

53. A PDS roll will be required, however significant additional expenses could be avoided if there is a sufficient lead time allowed for compliance so as to not require 'out-of-cycle' PDS rolls.

ASIC Question: B5Q4 What would be a reasonable timeframe for issuers to implement these proposals, in light of the other changes proposed in this paper?

54. We refer to our comments above on timeframes (B1Q5).

B6 Removing property operating costs, borrowing costs and implicit transaction costs

ASIC Question: B6Q1 Do you agree with our approach? If not, please explain why. If you think that some of these costs should be disclosed, where do you think is the best place for disclosure?

55. FSC members agree with the removal of property operating costs due to confusion at the industry level as to how these costs were to be calculated. The inclusion of ongoing operating costs has created inequities between listed and unlisted property funds.

56. At the basic level, operating costs implies costs of an ongoing nature, rather than a transaction cost, which implies either an acquisition or disposal.
57. We also agree with the removal of borrowing costs and implicit transaction costs. At this stage, we do not believe any of these costs should be disclosed in the same way as management costs and explicit transaction costs.

B7 Inclusion of counterparty spreads

Proposal: Recommendation 24 in REP 581 ASIC Question: *B7Q1* Do you agree with our approach? If not, please explain why.

58. We do not agree with ASIC's approach. We support the exclusion of counterparty spreads on the basis that:
 - a. the complexity and impracticality of including counterparty spreads outweighs the limited consumer benefit granted;
 - b. counterparty spreads do not share the characteristics of "Category 1" items identified on page 120 of REP 581 and so should not be disclosed in the headline tools;
 - c. inclusion of counterparty spreads will require data collection processes and infrastructure that increase the costs of compliance;
 - d. the calculation methodology for counterparty spreads is unclear and industry practice is likely to vary, leading to less meaningful disclosure and difficulty in monitoring and supervising compliance;
 - e. the calculation methodologies for counterparty spreads are prone to the points of difference itemised in REP 581 at page 131 of REP 581
 - f. the difficulty in considering counterparty spreads is likely to translate to ambiguous legislation and lead to increased confusion, differing industry practices and poor consumer outcomes;
 - g. only a portion of counterparty spreads are analogous to explicit costs such as brokerage and therefore disclosure of the entire counterparty spread on the same basis as explicit costs is misleading;

- h. the portion of counterparty spreads that is analogous to explicit costs is not readily and relatively objectively ascertainable, and
 - i. our members do not share ASIC's concerns that inappropriate trading practices may be adopted to avoid cost disclosure. Issuers are subject to statutory and fiduciary obligations including with respect to best execution which promotes investor protection by ensuring market participants do not place their own interests ahead of those of their clients. Best execution obligation facilitate market efficiency by creating a regulatory imperative for market participants to direct client orders to the market that offers the best outcome.
59. However, should ASIC include counterparty spreads in fees and costs disclosure, we submit that the term "counterparty spreads" should be accurately and narrowly defined to preserve the distinction drawn in REP 581 between counterparty spreads (i.e. spreads on products traded on a regulated market which could be disclosed) and market spreads (i.e. spreads on products traded on a quote-driven market).
60. We believe there is a risk that a broad definition of the term "counterparty spread" may lead to the re-introduction of market spreads and other implicit transaction costs into the fees and costs disclosure in a manner that is inconsistent with the intention set out in REP 581 and the rationale set out in CP 308. This is a particularly complex area and we have set out our reasoning below. This reasoning impacts our response to the following questions in relation to counterparty spreads.

ASIC Question: *B7Q2 Do you have any suggestions on how the concept of counterparty spreads could be defined in cl 101 of Sch 10? Please provide details.*

61. A counterparty spread is the bid-ask spread that is imposed by a counterparty or market maker when trading as principal in a product traded on a regulated market (being an order-driven exchange market, rather than a quote-driven OTC market).
62. When trading on exchange, a broker may act as agent to facilitate a trade between counterparties and charge brokerage or commission (an explicit transaction cost to the trading party). However, a broker may act as principal when trading exchange-traded products, in a market making or counterparty capacity. In this case, the market maker or counterparty will typically impose a bid-ask spread on the trade rather than (or in addition to) brokerage or commission. We consider that the term "counterparty spread"

essentially refers to the bid-ask spread imposed when a broker is trading in an exchange-traded product in a principal capacity.

63. Subject to the above threshold concerns with counterparty spreads (identified above) we propose the following definitions for ASIC's consideration:
- a. Counterparty spread means the difference between the bid price and the asking price for an Exchange-Traded Product acquired from, or disposed of to, a person making a market (within the meaning of section 766D of the Act) in relation to that Exchange-Traded Product.
 - b. Exchange-Traded Product means a financial product of a kind that is able to be traded (within the meaning of section 761A of the Act) on a Part 7.2A Market or a Regulated Foreign Market.
 - c. Part 7.2A Market means a financial market the operator of which is licensed under subsection 795B(1) of the Act, but does not include a financial market operated by an operator specified in regulation 10.15.02 or any other financial market that ASIC does not have the function of supervising under section 798F of the Act.
 - d. Regulated Foreign Market means a financial market in a foreign jurisdiction determined by ASIC to be a Regulated Foreign Market for the purposes of subclause 103(1), where, in the opinion of ASIC, the operation of the financial market in the foreign jurisdiction is subject to requirements and supervision that are sufficiently equivalent, in relation to market integrity and market transparency, to the requirements and supervision to which a Part 7.2A Market is subject in this jurisdiction.
64. We submit that only a portion of counterparty spreads are analogous to explicit costs, such as brokerage and therefore disclosure of the entire counterparty spread on the same basis as explicit costs is misleading. Further, the above definition does not address the points of difference in calculation methodologies itemised on page 131 of REP 581.
65. We would support the ability for issuers to disclose the lesser of the counterparty spread and the equivalent hypothetical brokerage cost that would have applied if the product was traded through the Part 7.2A Market or Regulated Foreign Market.

ASIC Question: *B7Q3* REP 581 (at page 133) notes that counterparty spreads are readily and relatively objectively ascertainable. Do you agree? Please provide details.

66. The bid-ask spread imposed by a market maker or counterparty when trading an exchange-traded product as principal is generally readily and relatively objectively ascertainable. However, the calculation methodology is currently unclear and it is likely that industry practice will vary.
67. However, there are some circumstances in which bid-ask spreads are not readily ascertainable, including due to low liquidity and lack of market maker supply or demand. In these circumstances, bid-ask spreads can be distorted and otherwise unreliable.
68. In addition, the portion of the bid-ask spread that is analogous to explicit costs such as brokerage is not readily and relatively objectively ascertainable.
69. For example, a portion of the bid-ask spread represents the adverse selection spread component that compensates counterparties and market makers for trading losses. We submit that this portion is not analogous to an explicit cost.
70. In addition, we note that the points of difference in calculation methodologies which are itemised on page 131 of REP 581 generally also apply to counterparty spreads, and so industry practice may vary should the methodology not be prescribed.
71. For the avoidance of doubt, we submit that market spreads, being spreads on products traded in quote-driven markets, are not readily and relatively objectively ascertainable. We therefore support the policy direction of REP 581 and CP 308 that market spreads should not be disclosed.

ASIC Question: *B7Q4* What types of financial products and markets do you think the concept of counterparty spreads would apply to? Would it be applicable to Australian markets or only to overseas markets? Please provide details.

72. We submit that counterparty spreads would apply to financial products traded on Australian or overseas exchange markets.
73. We submit that counterparty spreads would not apply to products traded on quote-driven markets, such as OTC products. REP 581 refers to such spreads as market spreads which will be treated as excluded implicit transaction costs.

74. REP 581 and CP 308 intend to apply counterparty spreads disclosure to products traded on “regulated markets”. We submit that “regulated markets” should be confined to order-driven financial markets, being exchanges. We submit that the term “financial markets” as defined in the Corporations Act is too broad, as it captures OTC trading venues such as Yieldbroker and Bloomberg. We submit that the intent of REP 581 and CP 308 is not to capture OTC trading venues, as these are quote-driven market spreads. We therefore submit that any definition for counterparty spreads should distinguish between exchange-traded products and OTC products. ASIC may adopt the approach taken in rule 1.2.4 of the ASIC Derivative Transaction Rules (Reporting) 2013. Please see our draft definition in Response B7Q2.

B9 Calculating performance fees

Proposal: Recommendation 24 in REP 581

ASIC Question: *B9Q1 Do you agree with our approach? If not, please explain why*

75. CI 101C(3) of the draft amendments to Sch 10 requires all applicable performance fees (being each performance fee that accrues in relation to all or part of a product or option or any interposed vehicle that the product or options invests into) be calculated and averaged over the previous five financial years and the total amount be disclosed in Management fees and costs for managed funds or Investment fees and costs for super products. We understand that as a result of findings made and reported in ASIC REP 581 the period for calculating performance fees has been extended to five years on the basis performance fees have high volatility year to year which makes them an unreliable indicator of future fee impacts. By extending the period, these amounts should be less unreliable and therefore more meaningful to investors.

ASIC Question: *B9Q4 Should carried interest charged by general partners in private equity funds be included in the definition of performance fee in cl 101C of Sch 10? Please give details.*

76. We have received feedback from some members that carried interest should be included in the definition of performance fees on the basis that there is a reasonable argument that they should be disclosed on the basis of a 5 year average. On this line of thinking, the disclosure of carried interest would be clearer from the perspective of the consumer. It would also resolve issues with disclosing it otherwise as an indirect cost since in that case it would be limited to the last financial year amount.

77. However, ASIC may wish to consider the best approach in this context as we are aware that other industry stakeholders consider that carried interest should not be characterised as a cost by reference to the Q&A 12.

ASIC Question: *B9Q5* What system and process changes would be needed to implement these proposals?

78. The data fee collection template would require modification to obtain the five year history for all performance fees accrued in full or part on a product or in full or part on an interposed vehicle the products invests into. Currently, some of our members are simply recording information in spreadsheets which is not a long-term viable solution. The reason for this has been the uncertainty as to the finalisation of requirements. Once the requirements have been finalised a full system build and implementation process will be required.

ASIC Question: *B9Q6* What are the additional costs associated with implementing these proposals. Please provide details of one-off and/or annual costs as applicable.

79. The additional costs associated with implementation include modifying the template to capture the previous five year performance history for each product and interposed vehicle that has a performance fee. IT systems would need to apportion these into the relevant product allocation and calculate the average performance fee amount. Please refer to our earlier comments in relation to transitional periods, i.e., we believe that in order to enable industry to fully adapt to the new regime there should be say a two-year transitional period from finalisation of the requirements.

ASIC Question: *B9Q7* What would be a reasonable timeframe for issuers to implement these proposals, in light of other changes proposed in this paper?

80. Given the changes to all disclosure documents and IT systems noted above we think 24 months is a reasonable timeframe to fully implement the proposals including the requirement to disclose interposed vehicle performance fees.

B10 Disclosing performance fees

ASIC Question: *B10Q3* We have drafted cl 209(b)(iii) of Sch 10 so that it requires disclosure of the five-year average for each performance fee for each product, option, interposed vehicle or part that makes up the total performance fee. Do you believe this provides consumer with sufficient information? Should it also require disclosure of the performance fees for each year that is included in the five-year average? Please explain why or why not.

81. While we support the disclosure of a total performance fee consisting of the five year average of each performance fee incurred either in full or part at the product or interposed vehicle level, we do not agree with the approach posited by cl 209(b)(iii). Cl 209(b)(iii) requires disclosure of each individual name and performance fee which contributes to the overall performance fee. This is for the following reasons:
- (a) Many products with a diversified strategy invest into interposed vehicles. One of our members noted that their diversified products can consist of multiple of interposed vehicles which individually constitute less than 1% of the relevant product. If cl 209(b)(iii) remains in its current form, issuers will be required to set out the name and performance fee for each interposed vehicle. In our members' view, this is likely to be overwhelming and have little informational benefit for consumers' consideration of fees and costs. Furthermore, the proposed amount of information is unlikely to fit within the 8 page PDS limit, consequently requiring the incorporation of multiple pages of data by reference.
 - (b) An additional complication is that many of these investments are commercially sensitive. FSC members have entered into confidential undertakings with respect to the fund features (often extending to the name of a fund) as a condition of access to investing in these funds. If our members disclose this non-publicly available information as required by cl 209(b)(iii), they will be in breach of their investment agreements. Any remedial outcomes pursued by the manager would be detrimental to members' interest.
 - (c) With respect to investment in sub funds, issuer investors usually do not have a legal relationship with the sub fund. Currently, costs estimates for the sub fund are provided by each initial fund (first fund) the issuer directly invests into. Under cl 209(b)(iii), issuers will be expected to name and disclose the performance fee for each of the sub funds. Given no legal relationship exists

between the issuer and the sub fund, this information may not be possible to obtain.

- (d) Other ramifications of cl 209(b)(iii) which may adversely impact investors include:
- i. Limitations from investing in new funds as fund managers will refuse to accept the required regulatory disclosures.
 - ii. Limitations from negotiating non-standard fee arrangements, as fund managers will not want to expressly advertise preferential investor treatment.
 - iii. The outcomes of breaching fund agreements include reputational consequences for defaulting investors, as well as reputational risks related to Australian investor regulatory barriers. This may result in fund managers favouring non-Australian investors.

ASIC Question: B10Q5 What are the additional costs associated with implementing these proposals. Please provide details of one-off and/or annual costs as applicable.

82. To implement cl 209(b)(iii) members will need to review all agreements with managers to determine if there are confidentiality restrictions. Where disclosure is restricted, members will need to obtain the manager's consent and agreements updated to reflect the new arrangements. Given the volume of interposed vehicles and the market practice that the requesting party pays all costs for amendments, one member estimates this to be in the range of \$2-\$3 million in costs. It should be noted this estimate does not include sub funds, of which as above, are largely out of reach of the member. Should a manager not agree to the request, and there is insufficient liquidity to redeem from a fund the issuer will be in breach of the agreement by complying with Sch 10.
83. While not a direct cost, the cost to performance should not be understated. Going forward the more desirable managers will preclude Australian issuers from investing into their funds. Instead, managers may choose investors from jurisdictions or organisations who do not have onerous disclosure requirements. Consequently, investors may suffer performance impacts if high performing investments are restricted and the investable universe narrows.

B11 Clarifying the treatment of costs paid out of reserves

ASIC Question: *B11Q1 Do you agree with our approach? If not, please explain why.*

84. We understand that ASIC's purpose in clarifying the treatment of costs paid out of reserves is to ensure that all fees and costs shown in the 'Fee summary template' are disclosed as a figure before the benefit of any tax deductions available to the superannuation fund.
85. We understand that this is potentially confusing to members who see the deduction of any administration fee from their account which is then paid into an administration fee reserve, would not necessarily align to the disclosed costs paid from the reserve.
86. Our members believe that the better approach would be to ensure that amounts transferred to reserves for the purposes of meeting administration costs should be shown in the PDS gross of the benefit of any income tax deduction available to the fund when settling administration expenses.
87. We support the additional disclosure by way of note of the amounts paid out of reserves to meet administration costs for the previous financial year. These amounts should also be before the benefit of any tax deduction available to the super fund.

ASIC Question: *B11Q2 How should amounts that are transferred into reserves (as opposed to amounts transferred out to meet costs) be treated for the purposes of fees and costs disclosure? Please provide details, including whether the treatment should be different for amounts transferred into an operational risk reserve.*

88. Refer to our response to B11Q1. We believe amounts transferred into an operational risk reserve should be treated in the same manner as administration fees.

ASIC Question: *B11Q3 What system and process changes would be needed to implement this proposal?*

89. Our members do not anticipate any changes as a result of implementing this proposal.

ASIC Question: *B11Q4 What are the additional costs associated with implementing this proposal? Please provide details of one-off and/or annual costs as applicable.*

90. Our members do not anticipate any material additional costs as a result of implementing this proposal.

ASIC Question: *B11Q5* What would be a reasonable timeframe for issuers to implement this proposal, in light of the other changes proposed in this paper?

91. This proposal should be implemented as soon as practical to address the inconsistencies in current administration fee disclosure which disadvantages our members who disclose administration fee gross of tax in the PDS.

Recommendations that do not require amendment to Sch 10

C3 Working with industry bodies on choice of product advice

ASIC Question: *C3Q1* Are you aware of any particular topics within fees and costs disclosure that advisers need guidance on? Please provide details.

92. FSC is aware that advisers face significant challenges associated with responding to the developing approach to fees and costs disclosure. FSC would welcome the opportunity to participate in ASIC's further work in this area, including in connection with liaising with other industry bodies.
93. Under the current regime it unclear to advisers which costs need to be included when providing replacement financial product comparisons in statements of advice and records of advice. This is particularly true in relation to amounts disclosed in the 'Additional explanation of fees and costs' and to performance fees, which may be disclosed either retrospectively or prospectively. For the purposes of product comparison, we recommend providing guidance to advisers that:
 - a. only ongoing amounts disclosed in the 'Example of annual fees and costs' need to be considered; and
 - b. for platform products, the fees and costs of accessible products should be included on the same basis.

ASIC Question: *C3Q2* Do you have any suggestions on what resources about fees and costs disclosure may be useful to advisers?

94. The FSC welcomes the opportunity to participate in the Industry Working Group to further develop the industry-wide template which trustees and responsible entities can use when requesting fees and costs information on interposed vehicles.
95. We acknowledge ASIC's commitment in ensuring that the regime is practicable for the industry. A 'single' template for asset managers would assist with this. We do not think

that proliferation of multiple templates will be beneficial to the industry. However it should remain each organisation's decision as to how they collect the data.

C5 Guidance on including a prominent statement in the 'Fees and costs template' for platforms

ASIC Question: C5Q1 Do you agree with our approach? If not, please explain why.

96. In order to address current inconsistencies in approach, and to not disadvantage platform providers who already substantively comply with this recommendation, we support the proposal to include guidance in RG 97 that platform operators should include a prominent statement in the 'Fees and costs' section of the PDS but not in the 'Fees and cost template' as follows:
- a. The standard text indicating that the fees and costs charged by the platform relate only to gaining access to the accessible financial products and do not include the fees and costs that may be charged by the issuers of accessible financial products should be included immediately after the heading 'Fees and other costs'
 - b. The cross-reference should be to the investment menu which sets out the fees and costs of the accessible products
97. We also support the inclusion of additional examples that illustrate the combined effect of the fees and costs of the platform and accessible financial products for each typical type of accessible product offered e.g. managed funds, direct shares and term deposits. Although additional examples can provide further clarity to members of platform products, we suggest this should not apply to all products on the investment list as has been suggested in the past.
98. This is on the same basis as incorporating by reference the 'cost of product' requirement for long-form PDS disclosure i.e. a platform with 300 plus investment options would then need the same number of examples, and examples for a platform product do not provide any value to members (and can be misleading to the extent members generally invest in a diversified portfolio comprising 10 or more investments).

ASIC Question: C5Q2 What system and process changes would be needed to implement this guidance?

99. No substantial system or process changes are expected.

ASIC Question: C5Q3 What are the additional costs associated with implementing this guidance? Please provide details of one-off and/or annual costs as applicable.

100. A PDS roll would be required for those providers who had not already updated PDSs to include this disclosure.

ASIC Question: C5Q4 What would be a reasonable timeframe for issuers to implement this guidance, in light of the other changes proposed in this paper?

101. We refer to our previous comments on timing i.e. generally we believe, given the various changes in systems and processes required, in order to properly implement the new regime, a two-year transitional period following finalisation of the requirements is optimal.

102. Note our comments under D2Q1 that we strongly support delaying implementation of non-platform proposals to allow for full consideration of platform fee and cost disclosure changes at the same time.

Consistent presentation of fee information in the 'Fees and costs template'

Proposal: Recommendation 3 in REP 581

ASIC Question: C8Q1 Do you agree with our approach? If not, please explain why.

103. Please refer to our responses under B1Q2 and B2Q1.

ASIC Question: C8Q2 Do you believe further guidance is required?

104. We believe further guidance should be included to cater for the examples provided in B1Q2 and B2Q1.

Reducing differences between superannuation product and managed investment product fee disclosure

Proposal: Recommendation 5 in REP 581

ASIC Question: C9Q1 Do you believe further changes are needed to reduce the differences in the fees and costs disclosure requirements for managed investment products and superannuation products? If so, please give details

105. Alignment between fees and costs disclosed for a managed investment product, and fees and costs disclosed for a superannuation product is critical for platform providers to avoid having to seek additional information from fund managers to calculate 'superannuation equivalent' costs as required by draft RG97.257. However, we do believe it is necessary for ASIC to undertake further consultation with all of industry to ensure that this is a feasible and practicable outcome. Such an alignment may suit some providers who issue both superannuation and managed investment products and accordingly run "two books". It may not be beneficial however, for managed investment schemes whose systems are in alignment with existing requirements.
106. A necessary question which must be asked is how, if at all, the alignment benefits consumers. A decision to invest in a managed investment product generally comes from quite a different perspective from a decision to invest in superannuation or remain in a default superannuation product.
107. We do note however that in the context of platforms, it is likely to be in the interests of members for there to be such an alignment as disclosure is less complex and aligned between platforms and accessible managed funds.
108. With this in mind, we recommend that the treatment of OTC costs is aligned, and that superannuation products disclose OTC transaction costs on the same basis as the current treatment for managed investment products.
109. Further, we also believe the "specific asset exemption" clause for management costs in c 102(2)(h) also has potential to cause fee and cost disclosure misalignment. We believe the definition of indirect costs and other provision in Schedule 10 are sufficient to exclude any of these costs from being disclosed.
110. However, to avoid different interpretations by different managed fund providers we recommend deleting this clause.

Recommendations that ASIC does not propose to adopt at this stage

Platform disclosure

Proposal: Recommendations 17–21 in REP 581

ASIC Question: D2Q1 Do you agree with our approach? If not, please explain why.

111. Platform providers who already substantively comply with the recommendations should not be further disadvantaged by further delays in implementing these recommendations.
112. If necessary, we support delaying implementation of non-platform proposals to allow for full consideration of platform fee and cost disclosure changes at the same time. This would enable a more comprehensive consideration of related disclosure obligations and legislation which could impact disclosure obligations such as the Protecting Your Super Package and the CCIV.
113. We would seek for platforms to be included in the review. As noted in REP 581, platforms are complicated and uncertainty for platforms has resulted in divergent approaches to compliance that could result in consumer uncertainty. We are concerned that by not fully consulting on and adopting recommendations 17-21 on platform disclosure, this will give rise to additional costs associated with IT changes for platform providers.
114. Platforms are also often in a position of offering both IDPS and superannuation products. The structures often result in a similar client experience and so divergent approaches between IDPS (which must follow MIS rules) and superannuation without considering both MIS and superannuation disclosure requirements and overarching platforms guidance, are likely to result in similar products with similar fees appearing more distinct than these products are in practice. This is likely to result in consumer uncertainty and making comparisons between products more difficult.
115. For superannuation platforms, the recent passage of the Protecting Your Super Package legislation has made this a more pressing matter. Platform trustees need greater certainty as to what fees are to be included in fee caps. The draft regulations currently include fees in the fee cap that are required to be disclosed in statements as per s 1017D of the Corporations Act. Superannuation platforms require certainty as to

whether the indirect fees associated with investments accessed through the platform are captured by s1017D, and therefore captured in the fee cap.

116. CP 308 notes how fees should be described in periodic statements. For platforms, the proposed disclosure we believe may not result in the best client outcomes. Having two 'total fees and costs you paid' is potentially confusing for investors. The FSC would propose for platform disclosure to be aligned with non-platforms and the indirect costs of accessible investments available on platforms to be included in the 'fees and costs deducted from your investment'.

ASIC Question: D2Q2 What system and process changes would be needed to implement the guidance in relation to showing the cost impacts of accessible financial products in periodic statements for platforms?

117. The majority of FSC platform providers currently include an estimate of the management costs of managed funds under 'Indirect costs of your investment' based on the ICR% rates provided by data aggregators.
118. For these providers system changes would be limited to updating data feeds to source enhanced ICR% rates and changes to the template positioning and wording.
119. However, data aggregators would need to update their feeds to provide the relevant data.
120. Each product issuer would have different costs and impacts. As noted above, where Platform providers have sought to best implement RG 97, approaches have diverged. Differences in approach include whether investment fees of the underlying managers should be disclosed in the PDS for superannuation products or under Guides for IDPS.
121. Many product providers also use outsource vendors for implementing changes to their systems and statement disclosures. That is, changes to software or templates used for statements etc must be scheduled in and contracts may have lead times and significant costs where changes need to be made and other work for which the vendor manages reprioritised (or additional resources brought in).
122. In addition, some platforms maintain multiple systems for managing IDPS and superannuation products. It may therefore not simply be a case of updating one system but a level of duplication or testing across multiple systems is required.

ASIC Question: *D2Q3* What are the additional costs associated with implementing the guidance in relation to showing the cost impacts of including accessible financial products in periodic statements for platforms? Please provide details of one-off and/or annual costs as applicable.

123. Members of the FSC have varying changes that they would need to make due to different systems and approaches to date.
124. An example from one member has identified changes to Exit Statements alone would be estimated to cost \$250,000. This change, combined with others and including costs involved in rolling offer documents could cost in the vicinity of \$500,000 to \$1million.
125. In addition, there would also be ongoing costs in maintaining the updated disclosure information although these costs would likely diminish as fee disclosure certainty is confirmed and more automated systems can be established.

ASIC Question: *D2Q4* What would be a reasonable timeframe for issuers to implement the guidance in relation to showing the cost impacts of accessible financial products in periodic statements for platforms, in light of the other changes proposed in this paper?

126. It is paramount that sufficient time is provided to implement any required changes. In the case of platform products that do not currently disclose in periodic statement any indirect fees of products accessed through the platform, the build time will be considerably larger than those products that currently do disclose this information. We estimate that build times will range from 12 to 18 months for such changes to be made. This would be dependent on what further guidance was provided as part of the Platform review.

ASIC Question: *D2Q5* Should recommendation 17 (showing fees and costs of accessible financial products available through a platform within the platform's investment menu documents) be made a legal obligation? Please provide details.

127. In order to address current inconsistencies in approach, and to not disadvantage platform providers who already substantively comply with this recommendation, we support the proposal to make it a legal obligation to show the fees and costs of accessible financial products available through a platform within the platform's investment menu documents with the following caveats:

- a. This disclosure should be limited to those fees and cost that are required to be disclosed in the 'Fees and costs summary' of the accessible financial product.
 - b. It should be made clear in any introductory text that the platform provider has relied upon information provided by external parties and whilst reasonable care is taken to ensure this information is accurate, investors should refer to the underlying PDS before making any investment decisions.
128. In addition, it must be clear that this information can be incorporated by reference and located outside the PDS in an online format. For most Platforms, this information is incorporated by reference and readily updatable.
129. In our view, the investment menu for platforms should be used to provide fee examples in a form that could be readily understood and compared across platforms. This will require further consideration and refinement in order to deal with situations. For example, where there may be many hundreds of accessible financial products.
130. Platforms would need to be indemnified for any minor errors in the fee rates of accessible products disclosed in investment menu documents where they have relied on information from third parties (such as data aggregators) and the information provided by the third party is incorrect. Platform providers must still act reasonably in implementing the rates provided to them.
131. Finally, and importantly, there needs to be an appropriate transitional period, consistent with observations we have previously made, and given the scope and breadth of these changes we suggest also a period of facilitative compliance.

AISC Question: D2Q6 Should recommendation 18 (including abbreviated 'Cost of product' information - calculated, to the extent possible, consistently with the 'Cost of product information' figure in proposal B3- in platforms' investment menu documents, which include the fees and costs for both the platform and the accessible financial products) be made a legal obligation? Please provide details.

132. On the basis that disclosure of 'Cost of product' is a requirement for non-platform products, then we support the proposal to make it a legal obligation to disclose the equivalent 'Cost of product' information for platform funds, in keeping with the principle that fees and costs disclosure for platform products should be on the same basis as equivalent non-platform products, with the following caveats:

- a. This information should be labelled consistently with the additional examples required to be shown in the PDS e.g. 'Total fees and costs' or 'Cost of product and accessible investment'.
- b. The format of the disclosure should not be prescribed so that this additional information can be presented as an additional column in existing investment menu tables which detail the fees and cost of accessible investments.

133. We note this information should alternatively be required to be disclosed in the investment menu and not in the PDS/Guide. D2Q5 helps to address this point.

134. We do think it is important that ASIC consider and consult further on this topic. For example, for some platform providers this will involve significant cost and changes to systems. Again, there ought to be in place an appropriate transitional period and consideration of facilitative compliance.

ASIC Question: D2Q7 Should recommendation 19 (that periodic statements should explicitly include the cost impacts of accessible financial products in platforms) be made a legal obligation? Please provide details.

135. We support the proposal to make it a legal obligation. In order to address current inconsistencies in approach, and avoid disadvantaging platform providers who already substantively comply with this recommendation, our members do so with the following caveats:

- a. To avoid over complex and redundant disclosure, platform providers should disclose these amounts under the proposed heading of 'Fees and costs deducted from your investment'.
- b. Prescribed text should be able to be extended to make it clear that disclosure includes fees and costs of accessible investment as appropriate.
- c. A note should be included to explain that the platform provider has relied upon information provided by external parties and whilst care is taken to ensure this information is as accurate as possible, investors should not rely solely on this information when making any investment decisions.

136. This should include amendments to CO 13/763 in relation to IDPS providers.

137. We would also seek to note that the Platform may not have all required data at the time the statement is issued and so would seek to make a reasonable estimate at the time the statement is issued. We also suggest that more general guidance is provided as to how a reasonable estimate can be arrived at where a substantial amount of data is not available.
138. As noted above regarding fee disclosure on statements – on one view, for platforms, the proposed disclosure may not result in the best client outcomes. One member has commented that having two ‘total fees and costs you paid’ is potentially confusing and would propose for platform disclosure to be aligned with non-platforms and the indirect costs of accessible investments available on platforms to be included in the ‘fees and costs deducted from your investment’.
139. Again, we do think it is important that ASIC consider and consult further on this topic. For example, for some platform providers this will involve significant cost and changes to systems. Again, there ought to be in place an appropriate transitional period and consideration of facilitative compliance.

AISC Question: D2Q8 Should recommendation 20 (positioning a prominent statement in the ‘Fees and costs template’ for platforms to indicate that the fees and costs charged by the platform relate only to gaining access to the accessible financial products and do not include the fees and costs that may be charged by the issuers of accessible financial products, and including a cross-reference to the ‘Cost of product information’ described in recommendation 18) be made a legal requirement? Please provide details. Should this statement be positioned in the management costs line (for managed investment products) or the investment fee line (for superannuation products)?

140. In order to address current inconsistencies in approach, and to not disadvantage platform providers who already substantively comply with this recommendation, we support the proposal to make it a legal obligation to include a prominent statement in the ‘Fees and costs’ section of the PDS, but not in the ‘Fees and cost summary’. Our members provide the following recommendations:
- a. The standard text referring to fees and costs charged by the platform relate only to gaining access to the accessible financial products, and exclude the fees and

costs that may be charged by the issuers of accessible financial products, should be included immediately after the heading 'Fees and other costs'

- b. The cross-reference should be to the investment menu which sets out the fees and costs of the accessible products.

141. If the text is situated above the main table, we do not believe it should be a legal obligation to refer to the accessible product's fees and costs in the main table. However, assuming that investment fees are shown as nil in the main table, it may be appropriate to also include a footnote cross-reference to the accessible product's fees and costs. This approach would also apply where the buy/sell spread is shown as nil in the main table.
142. Further, as platforms do not control the investment fees, there are often hundreds of choices and these fees can change at any time, it would be most practical to have the investment fees and any examples accessible via the investment menu.
143. By having a prominent statement to the effect of what is proposed, this would provide more clarity and a positive client experience than trying to sift through a disclosure document that could have hundreds of pages of fee examples. Disclosure via the investment menu would be updated on a more regular basis and so could be more readily relied upon by a client. This would also be more efficient for industry rather than effort spent on rolling PDSs for no gain for neither the client nor the platform.
144. We emphasise again that we do think it is important that ASIC consider and consult further on this topic. For example, for some platform providers this will involve significant cost and changes to systems. Again, there ought to be in place an appropriate transitional period and consideration of facilitative compliance.

AISC Question: D2Q9 Is it practical for a paper-based point-of sale document - which covers a large number of options permitting the acquisition of accessible financial products - to practically present aggregated fees and costs for a platform and each available accessible financial product, or is a technological solution required? Please provide details.

145. Many platform providers currently provide this information in an investment menu available for download from their web-site.
146. Data is generally sourced via an IT solution using an external data provider.

147. We do not support mandating that a paper based document is made available on request.
148. A technological solution is required. It is not practicable to print the entire investment menu which is constantly being updated and contains many hundreds of investment options as accessible products. The proposal to have a printed paper based document covering fees of all accessible products is one of the major concerns for platforms.
149. As suggested above, we would welcome consideration of the investment menu to serve such a purpose as the PDS should be used to for the fees as they relate to the platform but investment fees and management costs of accessible products would be more clear and could be more effectively updated via material incorporated by reference in the platform's investment menu

D3 At this stage ASIC does not propose to introduce legal requirements or include additional guidance dealing with consistency in the way fees and costs information is incorporated by reference in PDSs. However, ASIC seeks industry feedback developing standards or best practice guidelines to improve consistency.

ASIC Question: *D3Q1* Do you agree with our approach? If not, please explain why

150. At this stage, our members agree with the comments made in part D3, i.e., there is no current proposal to introduce legal requirements or include additional guidance dealing with consistency in the way fees and costs information is incorporated by reference in PDSs. However, ASIC should consider writing rules if there is evidence of poor adoption of the fees and costs disclosure regime.

E2 Treatment of derivative financial products

E2Q4 Should the requirements around disclosing costs of derivative financial products be aligned so they are the same for managed investment products and superannuation products? Please provide details.

151. OTC derivatives treatment remains inconsistent as between MIS and Super e.g. hedging costs.
152. One member noted that their currency hedging is done using FX forwards which are all OTC. They have been estimating the counterparty spreads as transaction costs to date. In MIS, it is included as part of transaction costs. But in Super, they have had to extract that out and exclude it from transaction costs and instead include it as part of Indirect Costs. FSC members are interested to understand ASIC's rationale for this different treatment.
153. Alignment between fees and costs disclosed in management costs for a managed investment product, and fees and costs disclosed under investment and administration fees and costs for a superannuation product is critical for platform providers to avoid having to seek additional information from fund managers to calculate "super equivalent" costs.
154. It also in the best interest of members as disclosure is less complex and aligned i.e. if there's alignment platform members can rely solely on underlying managed fund disclosure.
155. We strongly recommend that the treatment of OTC costs is aligned between superannuation products and managed investment products.
156. We believe this alignment is best achieved by amending cl 101A(4) so that this clause also applies to superannuation products. This would ensure that any transactional costs are appropriately disclosed under 'Transaction costs' in the 'Fees and costs summary'.