

2 April 2019

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Australian Securities and Investments Commission
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Dear Madam

We welcome the opportunity to make a submission on Consultation Paper 308 Review of RG 97 Disclosing fees and costs in PDSs and periodic statements.

By way of background, the Property Funds Association of Australia (**PFA**) is the peak body industry body representing the Australian unlisted wholesale and retail property funds sector, currently some \$130 billion in size.

The PFA's members consist of Australian Financial Services Licensed property fund managers, their advisors, consultants and representatives.

We wish to make the following submissions on select items about which ASIC is seeking to consult in Consultation Paper 308 *Review of RG 97 Disclosing fees and costs in PDSs and periodic statements (CP 308)*.

1 Comments on specific proposals

1.1 Proposal B6: Removing property operating costs, borrowing costs and implicit transaction costs

The PFA welcomes ASIC's proposal to exclude property operating costs and borrowing costs from fees and costs disclosures in PDSs and periodic statements.

However, we consider that the drafting of 'property operating costs' the draft amendments to Schedule 10 be clarified as follows:

- (a) 'holding' should include holding via a custodian;
- (b) 'holding' should include holding via any number of interposed entities (such as sub-trusts); and
- (c) the definition should not relate only to 'holding' real property or an interest in real property, but making a decision in relation to holding or disposing of real property. This would therefore include costs associated with third parties involved in the decision making, such as due diligence costs, the costs of valuers, property

consultants and other property agents and experts, the fees charged by legal, audit and other professionals, and the like.

1.2 Fees and costs template/summary: 'Amount' column

ASIC may be aware that there is a widespread practice across a range of product issuers in the funds management industry of breaking down the management costs component in the fees and costs template into the components that comprise the management costs, such as 'management fees', 'indirect costs' and 'fund expenses/recoverable expenses' and perhaps other categories. Often the amounts are aggregated but the constituent parts are shown as sub-amounts. We understand that product issuers undertake this course of action in part to demonstrate to consumers the component parts, to emphasise that some elements may be the reason why an aggregate amount is relatively high and/or because the component parts are difficult to aggregate (such as some being based on a NAV basis and others on a GAV basis or another basis). We support this current approach.

We understand from proposed paragraph RG 97.370 in the draft Regulatory Guide 97 requires that issuers cease their current practices as this is not, in ASIC's view, of what is meant by the word 'component' as it is used in clause 204(6) of Schedule 10. If this understanding is correct then, to ensure consistency across the industry, ASIC should:

- (a) emphasis that the current practices are not permitted under the legislation; and
- (b) give guidance about how different component parts could be aggregated where they are determined on different bases (e.g., NAV or GAV, or, in the case of a performance fee, on the basis of a complex formula).

1.3 Fees and costs paid by third parties: Mortgage funds

In relation to many mortgage funds, many borrowers are required to pay for the costs of certain matters directly, such as the costs of valuers or legal costs. Often these costs are not included in the borrowed amounts (and then reduced as these amounts are paid), as they are additional third party costs.

We do not consider that such third party fees and costs should be disclosed in the PDS or periodic statements, as appears to be the case in the draft Regulatory Guide 97, at paragraphs RG 97.276 to RG 97.277. We take this view because such fees and costs do not reduce the return to investors as they are paid directly by the borrowers and have no bearing on borrowed amounts or interest or capital payments made by borrowers.

2 Other comments

2.1 Prospective vs retrospective costs disclosures

Putting aside new products, the current regime requires disclosure of a mix of disclosure of forward-looking information (fees and costs template and the additional explanation of fees

and costs) and retrospective information (example of annual fees and costs). This is evident in the current Regulatory Guide 97, at paragraphs RG 97.30, RG 97.41, RG 97.51, RG 97.128, RG 97.129, RG 97.132.

These outcomes follow from the current wording of Schedule 10 as amended by ASIC Class Order [14/1252]. In particular, in connection with managed investment products, in relation to the example of annual fees and costs, clause 214 which refers to 'typical ongoing amounts' is subsection to clause 218A(3), which refers to the 'indirect cost ratio', and clause the indirect cost ratio is defined in clause 104(2) requires disclosure in relation to the previous financial year. This contrasts with clause 104A which, coupled with ASIC's guidance in RG 97 cited above, requires disclosure of fees on a prospective basis but costs are to be disclosed on an historic basis, fees and costs template and the additional explanation of fees and costs.

These distinctions between prospective and retrospective fees and costs, and between fees on the one hand and costs on the other, makes the disclosure regime unnecessary complex and adds to the compliance burden.

The proposed new clause 104A appears to have removed these complexities because it appears to group together 'fees and costs' and the ICR concept has been removed in clauses 104 and 218A(3). Therefore, all fees and costs appear to have to be disclosed on an historic basis, unless the product is new. If this is an incorrect understanding, we consider that clarity in this important area is required.

2.2 Other comments: Interposed vehicles definition

We note that the draft amendments to Schedule 10 do not make any substantive amendments to the definitions of interposed vehicles in clause 101B of Schedule 10.

We consider that the definitions of interposed vehicle to be complex and difficult to understand. We would welcome ASIC taking the time to re-write these complex definitions into plain English.

Please contact us if you wish us seek our views on any matter.

Yours faithfully



Paul Healy
Chief Executive Officer