

First State Super Trustee Corporation

Feedback on ASIC Consultation Paper 308: Review of RG 97 Disclosing fees and costs in PDSs and periodic statements

For any questions regarding the responses to this consultation paper please

contact: Caroline Saunders

Lisa Kilpatrick

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1 Consultation Paper 308 Feedback

Introduction

We thank ASIC for the chance to provide feedback to Consultation Paper 308. This paper is a technical input paper and therefore our responses are made specifically to the requests for feedback, and follow ASIC's sequence of questions.

In addition, we have provided a mark-up of the consultation paper to highlight specific details. The attachments include:

- Attachment 1: Revised RG97 with First State Super Mark Ups
- Attachment 2: Revised Sch 10 with First State Super Mark Ups
- Attachment 3: OTC Derivatives Guidance (including counterparty spreads)
- Attachment 4: Performance Fees.

B1: Changing the superannuation product 'fees and costs template'

B1Q1 We broadly agree with ASIC's proposed changes to the 'Fees and costs template', in particular referring to each of the following points:

- The removal of the indirect cost ratio (ICR):
 - First State Super has not made any elections with respect to indirect costs and we therefore disclose all investment-related fees and costs as 'Investment fees'.
- The renaming of 'Investment fees' to 'Investment fees and costs':
 - We think this more accurately reflects what is included in the amounts disclosed, particularly for profit for member funds. However, ideally the same terminology would be used across super funds and collective investment vehicles, and we note that there continues to be a difference here.
- The separation of 'Transaction costs' from 'Investment fees and costs':
 - We agree with the separation of transaction costs, particularly since there is likely to be variability in the amount from year to year. However, we would prefer simply 'Transaction costs' as we don't believe a casual reader would necessarily understand 'Transaction costs (net)'. The 'net' versus 'gross' issue could be explained where necessary in the 'Fees and costs details' section. For funds which don't charge a buy-sell spread, there will be no net-gross difference, and so the reference to 'net' may be confusing rather than helpful. Even where a buy-sell spread is charged, it is arguably too much detail for the 'Fees and Costs Summary'.
- The proposed footnote with respect to performance fees:
 - We agree it is helpful to separately disclose the amount of the Investment fees and costs amount that relates to performance fees.
- The proposed groupings ('Ongoing annual fees and costs' and 'Member activity related fees and costs'):
 - We think the re-ordering and the use of the above groupings are logical and helpful for the consumer. However, we would prefer simply 'Ongoing fees and costs', noting that information on how and when the fee/cost is paid is shown separately. Also, it would be helpful if there was

a comment that Investment fees and costs and Transaction costs can vary from year to year and cannot be known precisely in advance. For various reasons, (e.g. asset allocation changes, manager/ strategy changes, variability in performance fees and transaction costs) the amounts will generally not be the same year on year for the majority of super funds.

Administration fees



We do not support the proposal to change 'Administration fees' to 'Administration fees and costs'. We think what is most appropriate to disclose with respect to administration is the administration fees that members are charged. For example, First State Super accumulation members currently pay administration fees of \$1 per week plus 0.15% p.a. of their account balance. For someone looking to join the fund, this is the information they need to help understand what they will be charged. Out of this fee, the costs of administering the fund are paid. Disclosing administration fees, in addition to the administration costs, as described in RG97.39, would result in a double counting issue.

Schedule 10 amendments

In addition to the above feedback, see some proposed amendments to the 'Fees and costs template' wording marked up in Attachment 2 which reflect the above comments, as well as:

- A proposal to change the word "charged" to "pay" in the preamble text to the "Fees and costs summary". This is because the word "charged" does not make sense with respect to costs e.g. costs which form part of the "Investment fees and costs" or "Transaction costs (net)" disclosures. While this is relevant for both retail and profit-for-member funds, it is especially relevant for profit-for-member funds as none (or only a few small portion) of the "Investment fees and costs" amount is typically "charged" to members in the way the term is generally understood.
- A proposal to change the reference to "insurance fees and other costs relating to insurance", noting that the term "insurance premiums" is more commonly used and some funds charge a small fee for administering members' insurance on top of insurance premiums which will generally be disclosed in the 'Other fees and costs' section of the 'Fee and cost summary'.

Alternatively, ASIC could give consideration to enabling some flexibility to the above wording so that the templates are not confusing or misleading for consumers.

B1Q2 We believe it may be helpful for some funds to provide a breakdown of 'fees' versus 'indirect costs'. For retail funds, a breakdown may help members understand what they are *charged* versus other amounts that are included in the total figure but are *not charged* as such by the product issuer and are subject to year to year variability. Having transaction costs disclosed outside of the headline fee helps with this, but other amounts may also be subject to change.

However, to assist with comparability between products, this breakdown should not be provided in the 'Fees and costs summary' or examples of annual fees and costs, but rather in the 'Fees and costs details' section.

B1Q3 This change primarily relates to disclosure in the PDS and website so system and process changes would be fairly insignificant.

B1Q4 We expect the additional or one-off costs to implement this change to be fairly immaterial.

B1Q5 In light of other changes proposed, we believe at least 6 months lead time would be required for implementation following the finalisation of the requirements. This would need to coincide with a financial year-end.

B2: Changing the managed investment product 'Fees and costs template'

B2Q1 We agree with the approach to group the fees and costs into 'ongoing' and 'member activity related' fees and costs and the addition of the buy-sell spread to the 'Fees and costs summary' table. However, we think there was a missed opportunity here to align the wording between collective investment vehicles and superannuation. Our preference would be to rename 'Management fees and costs' 'Investment fees and costs' so there is greater alignment between the two.

B2Q2-5 No feedback.

B2Q5 We think the examples and preamble text should be aligned as much as possible, so support the inclusion of buy-sell spread information in the example footnote and the cost of product preamble text.

B3: Including 'cost of product information'

B3Q1 We agree with ASIC's broad approach and think it is helpful for investors to get an idea of how much they are likely to pay in dollar amounts across different investment options, particularly for those members making a choice about how their super is invested.

B3Q2 Longer term, extending the 'Cost of product' information to balances other than \$50,000 would be helpful for consumers because:

- 1) pension members would generally start with a considerably higher balance than \$50,000, so this number would be less relevant to them,
- 2) larger balances are often subject to a fee cap, the impact of which would not be evident on a \$50,000 balance, and
- 3) as the superannuation system matures the average balance will increase to be well above \$50,000.

In addition, due to many funds charging dollar-based administration fees, it isn't as simple as a member with a \$100,000 balance doubling the figure for \$50,000.

We therefore recommend the 'cost of product' information be shown on a range of different balances, for example, \$20,000, \$50,000, \$200,000, \$500,000 and \$1,000,000.

This is broadly consistent with McShane's recommendation in REP 581 (p105). However, we have suggested adding on \$1,000,000 so that large member balances have a reference, and also noting that admin fee caps often only come into effect for balances above the \$500,000-\$750,000 mark.

B3Q3 Including a contribution of \$5,000 would more closely align managed investment products and superannuation disclosure. And we understand the intention of the additional \$5,000 investment for managed investment products was to force issuers to disclose any contribution fees that would be payable on this amount, which we believe is important.

However, we note that:

- i. The draft amendments to Schedule 10 show the \$5,000 contribution being made on the *last day of the year*, but *during the year* for managed investment products, so there is a slight inconsistency in approach;
- ii. It doesn't appear the inclusion of the \$5,000 contribution made on the last day of the year will have any impact on super since clause 218(3) of Schedule 10 states that, in calculating the amount of investment fees and costs for the example, contributions should be disregarded. It

would therefore only have an impact if contribution fees apply, which as ASIC have noted are prohibited for MySuper products and aren't currently included as a line item in the example for super. We therefore query whether the inclusion of the additional \$5,000 contribution adds much to the example.

- iii. It's not very realistic for superannuation accounts where contributions are made by the majority of members on a more regular basis (e.g. fortnightly or monthly);
- iv. It could be confusing/misleading for pension products where it isn't possible for a member to contribute any amount to their account once established;

Finally, we query why contribution fees are given so much prominence in the example, but buy-sell spreads are only footnoted for super funds, and not included at all for collective investment vehicles.

Taking into account all of the above, we think it is best to leave the \$5,000 contribution out of the example for super funds, and propose that ASIC remove the \$5,000 contribution from the 'Example of annual fees and costs' for collective investment vehicles for consistency. This would necessitate also removing the contribution fee line from the example for collective investment vehicles as there would not be a contribution on which a contribution fee would apply. If applicable, details of the contribution fee, along with any buy-sell spread, should be provided in a footnote to the example.

B3Q4 - B3Q6: See responses B1Q3-B1Q5.

B4: Simplifying periodic statements

B4Q1 We broadly agree with the proposed changes proposed with respect to disclosure of fees in periodic statements i.e.:

- i. The introduction of "Fees deducted directly from your account";
- ii. Renaming "Other fees of your investment" to "Fees and costs deducted from your investment"; and
- iii. Removing "Indirect costs of your investment", noting the proposal to retire the ICR.

However, ideally there would be consistency in the terminology between the PDS and periodic statement so that consumers can understand the link between the percentage-based fee disclosure in the PDS and the dollar-based disclosure in periodic statements.

B4Q2 The amendments would require updating the requirements with our administrator.

B4Q3 We estimate the costs of implementing the proposed changes to be negligible.

B4Q4 We think six to twelve months post the requirements being finalised would be sufficient to implement the changes.

B4Q5 We believe that calculation guidance should be provided for performance fees (i.e. that the amounts disclosed in periodic statements should reflect the performance fees incurred in the relevant year rather than the 5 year average). Also see response at B1Q1.

B4Q6 The way we understand it, the amount disclosed for "Fees and costs deducted from your investment" will be the sum of "Investment fees and costs" and "Transaction costs" percentage amounts (adjusted to reflect the prior year's performance fees rather than the 5 year average), converted to a daily percentage rate and then multiplied by the member's daily account balance.

The "Investment fees and costs" and "Transaction costs" will nearly always involve making reasonable estimates for a number of reasons.

However, reasonable estimates are more likely with respect to exit statements where up-to-date fee and cost information is generally not available, particularly given the requirement for exit statements to be issued within 30 days of exit. For practicality, unless a significant change has been made to a product (e.g. the manager of a single asset class option has changed and the new manager's fee is significantly higher), we would generally work on the assumption that the prior year's fees are the best estimate of the current year's fees, and disclose fees in the periodic statements on this basis.

B4Q7-Q12 No comment.

B5: Changing the treatment of transactional and operational costs

B5Q1 First State Super broadly agrees with ASIC's approach. However, see some feedback at B1Q1 regarding the proposed name "Transaction costs (net)".

B5Q2-B5Q4: See responses B1Q3-B1Q5.

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

B6Q1 We agree with the proposal to exclude these amounts from fee and cost disclosure. However, the way it is drafted currently with respect to implicit transaction costs is confusing, noting that counterparty spreads are a type of implicit cost.

We have suggested a number of amendments to the revised regulatory guide (Attachment 1) and Schedule 10 (Attachment 2). This includes:



- Removing 103(2)(c) from the definition of "Excluded transactional and operational costs" as this wording would seem to exclude implicit transaction costs on bond, spot FX and OTC derivative transactions, which doesn't seem to be the intention. While the phrase is commonly used, it would be helpful to be clear on precisely what constitutes a 'financial market'. We also felt that this wording could inadvertently exclude other amounts (as per the example at RG 97.274).
- Adding due diligence costs and sales commissions into the definition of Transaction costs at 103(1) of Schedule 10. These amounts can be substantial so warrant inclusion in the definition.
- Adding counterparty spreads into RG 97.334 to be consistent with 103(1) of Schedule 10.
- Combining "due diligence costs", "legal, advisory and other professional costs" and "any failed deal costs" into a single point since they are closely related.
- Simplifying "Sales commission on property transactions" to "Sales commissions" at RG 97.335, noting that property transactions are just one example of transactions where sales commissions may be incurred.
- Adding a specific clause into this section of the regulatory guide to reiterate that where the purchase price for an asset is higher because the seller has paid transaction costs the buyer would normally pay, the portion of the higher price that reflects those costs should be disclosed as transaction costs. This is explained earlier in the guide at 97.274 but we think is worth repeating in this section.
- Similarly, adding in a clause with respect to capitalized costs.
- Adding in a clause regarding the treatment of amortized transaction costs. There is currently no guidance on the treatment of amortized costs and this is fairly common, particularly for large real property and infrastructure transactions.

In addition, we believe further clarity needs to be provided with respect to property operating costs and borrowing costs. See the “Other feedback” section on pages 18 and 19.

B6Q2 Clauses 102(2)(c)-(d) of the draft amendments to Sch 10 do appear to fully exclude all implicit transaction costs. However, as noted in the response to B6Q1 above, this is confusing given there is a separate proposal to include counterparty spreads, which are a type of implicit transaction cost. As a result, the current drafting is very confusing and counterparty spreads seem to be both explicitly included (103(1)(f)) and explicitly excluded (103(2)(c)).

The exclusion of counterparty spreads in relation to derivative financial products should also be considered and cl 101A(3) amended accordingly.

B6Q3-B6Q5: See responses B1Q3-B1Q5.

B7: Inclusion of counterparty spreads

B7Q1 We agree with ASIC’s approach to include counterparty spreads in the transaction costs disclosed in periodic statements and PDSs. However:

- We note that the proposal contradicts the proposal to exclude implicit transaction costs per B6.
- Further clarity needs to be given regarding the types of markets / securities for which the concept of ‘counterparty spreads’ would apply.
- The same calculation methodology should be applied to all assets where the bid-ask spread is used to derive the implicit cost (see list under B7Q4).

We note that ASIC believes it needs to include counterparty spreads in RG97 to avoid gaming (i.e. deciding to deal with a market maker rather than a broker to avoid disclosure). However, the timing of implementation needs careful consideration as the data is not readily available (see response B7Q3).

B7Q2 Regarding how the concept of counterparty spreads could be defined, we propose the following: “Counterparty spread means the difference between the bid-offer spread that is applicable to over-the-counter derivative financial products and other securities that are traded on regulated, organised and interbank (but not quoted) markets.”

In addition, see marked up changes to the calculation methodology in Attachment 2 at cl 101A(3).

OTC Derivatives

Currently, OTC derivative cost calculations include (i) options (ii) OTC derivatives that are commonly traded on regulated markets by counterparties (iii) bespoke OTC derivatives.

ASIC has developed a calculation methodology for (i) and assumed the method for calculating (ii) and (iii) are identical, which they are not. The Industry Working Group, which comprised representatives from industry funds and retail funds, has developed a methodology for calculating (ii) – see section 6.7 of the Industry Working Group Guidance and Attachment 3 which is similar to that used for (i).

The calculation methodology preferred by industry was that 50% of the counterparty spread be recognised on entry and exit of the derivative whereas ASIC preferred to recognise 100% of the spread on entry only (and this reflects the wording of cl 101A(3)(a)(ii) of Sch 10). The benefit of the industry approach was that the costs matched what was actually incurred in any one year (as sometimes derivatives are held over a financial year end) and if the derivative is held to maturity, which is not uncommon for currency hedging, there is no exit cost (and so to recognise 100% of the spread up-front would overstate the cost).

Attachment 3 outlines the methodology that was agreed by the Industry Working Group and commonly used by the financial services market (industry and retail), including First State Super who uses it to guide external managers on the approach to adopt for our Fund. We recommend that ASIC should adopt this approach.

Other OTC markets (e.g. bonds and spot FX)

We suggest a similar approach to calculating counterparty spreads for derivatives be applied to bonds and spot FX.

B7Q3 Counterparty spreads are generally ascertainable at the time of trading provided the counterparty shows a two-way market (i.e. their best bid and offer). However, in practice, bid-offer spread information isn't currently captured or stored. System vendors / custodians would therefore need to make system enhancements to better facilitate reporting of such amounts. In the meantime, counterparty spreads in most instances would need to be estimated.

We discussed the issue of counterparty spreads with Goldman Sachs in relation to OTC derivatives. It was noted that:

- under Mifid, depending on what product is being traded, banks will have to record every inquiry, the price given, the trader, the time etc and send that information to the regulator;
- for USD swaps, Dodd Frank rules require that banks show the 'dodd-frank mid' (the mid-price when traded);
- for AUD or NZ swaps, the banks are not required to provide these details.

B7Q4 Counterparty spreads are applicable to a range of OTC derivatives that are commonly traded on regulated, organised and interbank markets (domestic and international) by counterparties. This includes:

- FX forwards
- Interest rate swaps
- Inflation swaps
- Credit default swaps
- Currency swaps
- Commonly traded total return swaps
- OTC options.

In addition, counterparty spreads are available for non-OTC derivatives on regulated, organised and interbank markets (domestic and international) by counterparties, including:

- Bond markets
- Listed options
- Spot FX.

B7Q5 We ask our managers to apply the counterparty calculation method proposed in B7Q2 for derivative financial products already, as the ASIC proposed method did not make sense for commonly traded OTC derivatives and could not be applied to a significant volume of trades. The Industry Working Group

Guidance promotes the approach at Attachment 3, so the financial services industry is applying this methodology already, albeit with estimates in most instances.

For non-OTC derivatives, we allow the managers discretion in calculation methodology and we understand that they would be applying an estimate.

In order to more accurately reflect counterparty spreads, managers need to capture and store bid/ask pricing for every executed trade which would require them to buy and implement systems or pay additional fees to vendors to source this data, so there will be an increase in costs to implement these requirements. Vendors may require system enhancements to provide this service. We have not investigated these costs so cannot comment further on them.

B7Q6 First State Super would not request vendors or managers to update their systems until ASIC has confirmed the approach to adopt and the requirements can be specified with some certainty.

Following this, the vendors would require development time, and once a solution was available, the industry would need a full year of data to calculate the costs (rather than estimate, which is potentially open to gaming).

In light of this, we suggest that rolling out the requirement to include counterparty spread costs (including those for derivative financial products) be required for FY22. This would give:

- CY20 for vendor/system upgrades and budget approvals to purchase additional systems;
- H121 for implementation and system integration; and
- FY22 for data collection and calculation.

B8: Removing the distinction between performance fees and performance-related fees

B8Q1 We agree with the proposal to remove the distinction between performance fees and performance-related fees.

B8Q2 No system or process changes would be required to facilitate the change. The change would be purely a disclosure change.

B8Q3 We don't anticipate there would be any additional costs from this change.

B8Q4 Changing the wording in PDSs shouldn't require much lead time, effort or cost. However, it may make sense for the name change to be implemented at the same time as the calculation methodology, as proposed at B9.

B9: Calculating performance fees

B9Q1 We agree with the proposal to calculate performance fees for the PDS based on the average of the last five financial years, as this will help limit the year-to-year variability in fees. However, we note that there will be a divergence between the PDS (5-year average) and periodic statements (period to which statement relates), which may create some confusion for consumers that try to compare the two.

B9Q2 We have historical performance fee data for FY17, FY18 and will have FY19 data soon. In order to calculate a 5-year average we would need FY20 and FY21 data which will not be known until late 2021.

Hence, we propose that some kind of transitional arrangement be in place until late 2021. For example, funds could calculate an average based on the data they have on hand and disclose details of their approach in the 'Fees and costs details' section.

B9Q3 We expect that the majority of product issuers would be calculating and disclosing fees on an accounting basis (i.e. taking into account accrued, as well as paid amounts). However, ASIC should consider providing specific guidance to help ensure consistency in approach.

We have prepared a short paper (Attachment 4) with some additional background regarding the two possible calculation approaches and examples to illustrate the difference between the two.

Although this was originally prepared with private equity investments in mind, it is just as applicable to other illiquid/alternative investments such as real property and infrastructure investments.

In terms of how the 5-year average should be calculated, issuers will need to continue to collect and calculate an annual percentage figure for the most recent financial year based on that year's annual average funds under management (FUM). We understand this is what will be used to estimate the dollar amount of fees incurred by members in their annual statement. For the PDS disclosure, this figure could then simply be added to the previous 4-year's amounts and divided by 5 to obtain a 5-year average.

B9Q4 We agree with this approach. In order to prevent gaming and provide clarity, ASIC should note that performance fees include carried interest and incentive allocations. Ultimately all of these things are fees payable to an investment manager with reference to performance/returns, and as such, should be considered 'performance fees' for disclosure purposes. We have suggested amendments to the revised regulatory guide and Sch 10 cl 101C (see Attachments 1 and 2 respectively).

B9Q5 We do not anticipate any significant system changes would be required to implement this change. However, from a process perspective, there would be some work involved in calculating/maintaining the 5-year average performance fee data and updating the layout/wording in the PDS.

B9Q6 Additional or one-off costs to implement this change are expected to be immaterial.

B9Q7 In light of other changes proposed, we believe at least 6 months lead time would be required for implementation following the finalisation of the requirements. This would need to coincide with a financial year-end, and, as noted at B9Q2, transitional arrangements may need to be put in place until issuers have 5 years' worth of data to calculate the 5-year average for the PDS.

B10: Disclosing performance fees

B10Q1 We agree with the proposed disclosure approach for PDSs. However, we note that the requirement for disclosure of performance fees in periodic statements is not clear.



We recommend a section on 'Disclosing performance fees in periodic statements' be added into ASIC's draft updated RG97 Guidance. At the ASIC industry consultation meeting in March 2019, ASIC confirmed the 1-year performance fee should be used for annual statements, but this needs to be reflected in the guidance as it was not obvious that this was the case.

For exit statements, having up-to-date performance fee information is not always possible/practical, so we would need to consider whether the prior financial year amount or the average of the past five years is a better estimate for exiting members. Some flexibility in approach should be permitted.

B10Q2 We don't believe the reference to administration fees and costs in cl 209(b)(i) of Sch 10 needs to be retained as we aren't aware of any circumstances where performance fees would impact administration fees. As a result, this requirement is confusing.

B10Q3 Inclusion of the performance fee for each year that makes up the 5-year average would help consumers understand the variability of performance fees over time and the annual performance fee that will be reflected in their annual statement. Given the PDS/website disclosure and the annual statement may not match under ASIC's proposal, it would be useful to be able to point to the data in the PDS to help members understand how the fees disclosed in their annual statement have been calculated.

B10Q4 System/ process changes - See response to B9Q5 above.

B10Q5 Costs - See response to B9Q6 above.

B10Q6 Timeframe - See response to B9Q7 above.

B11: Clarifying the treatment of costs paid out of reserves

B11Q1 First State Super does not agree with ASIC's approach to include costs paid out of reserves and we would not know how to implement the proposed requirements based on the Schedule 10 wording and ASIC's draft updated guidance.

We understand that the purpose of this disclosure is to provide information about the true cost of running a fund, so that members can identify if a fund is spending more (administration costs) than it is charging (administration fee revenue).

Although the guidance is not clear, we expect this would require the fund's expenditure in dollar terms for the relevant year to be converted into a comparable cost per member figure. However, where a percentage-based fee is charged, it would be difficult to provide details of the fund's expenditure in a way that is useful or meaningful for the member.

Even with a dollar-based admin fee, providing this information could be difficult for someone reading the PDS to interpret. For example, in the current Australian Super Accumulation PDS an administration fee of \$1.50 per week is disclosed as well as the gross estimated cost of \$1.72 per week. One might believe that Australian Super are spending more than they are collecting from members, but because the tax benefit with respect to administration costs is retained by the fund, on a net basis their equivalent cost for FY18 would be closer to just \$1.42 (assuming the tax benefit is approximately 15%). This would be difficult for a casual reader to understand and may create unnecessary confusion and give the impression that they are depleting their reserves and managing the fund in an unsustainable way.

Fundamentally, we believe that it is APRA's role as prudential regulator to monitor and assess a fund's viability, not members of the fund. Members should be able to trust that a fund is well regulated and sustainably managed and we note that APRA already receives statistics from funds to enable such an assessment. Requiring disclosure of administration costs seems at odds with the purpose of a disclosure document, which is broadly to show an investor what they will pay, where there is some variability in these amounts, and what level of risk/returns they should expect. The oversight responsibility with

respect to whether a fund is sustainable should continue to rest with the regulator and not be tied into PDS disclosure.

ASIC could require that the PDS include some standard wording around the concept and types of reserves, that some reserves are a regulatory requirement (the ORFR), highlighting that reserves belong to members, and that details about the reserves can be found in the annual report available on the fund's website.

We have made some comments on the wording of the proposal below, but believe ASIC should focus on correct disclosure of administration fees charged and focus instead on the different tax treatments as discussed in our response to C6.



Administration fees and costs

While the guidance is currently unclear, it appears to require disclosure of both the admin *fee* members pay and the admin *costs* which would result in incorrect member disclosure and a potential double counting issue. Some proposed wording changes are marked up in Attachment 1 (RG 97.39) to prevent such double counting. However, we think in virtually all cases the items listed (b-h) would be paid out of the fee charged (a).

While we query how useful providing this information would be for the average person reading a PDS, if ASIC insists trustees disclose the actual amount spent in each year in relation to the administration and operation of the fund as proposed, our view is that such a figure would be better noted in the 'Fees and costs details' section rather than any headline table and called the 'Annual administration cost' with the fee that is charged to members continuing to be called the 'Administration fee'.

Further guidance would also need to be provided on how to calculate and disclose the 'Annual administration cost' amount e.g. clarity on whether it is a total \$ amount, or a \$ per member amount, or combined \$/% amount etc. Given funds have different products with different administration fee arrangements (e.g. between accumulation, transition to retirement and pension), as well as fee caps, per member disclosure would not be straight-forward.

As stated previously, we are not convinced that altering the disclosure to include a fee AND a cost for administration of a fund in the disclosure documentation is beneficial for consumers and is more likely to be confusing than helpful.

Investment fees and costs

In practice, the only investment-related cost paid from a reserve would be for operational errors. First State Super has a policy of paying for internal trading errors - whether positive or negative - from the ORFR or claiming on an insurance policy designed for this purpose (for larger amounts). Under ASIC's proposal, we are unsure how to treat funds paid into the ORFR (for a positive excess benefit received due to a trade error) (see response at B11Q2).

- B11Q2 We do not believe it makes sense to disclose amounts transferred either out (or into) reserves. However, under the proposal to disclose an administration cost amount, we believe amounts being paid into the reserves should be ignored in the calculation.
- B11Q3 We would require changes to systems and business practices to extract the relevant data to perform the calculations, and a sensible, practical methodology for the calculations.
- B11Q4 & Q5 It is difficult for us to comment on the cost/effort of implementation at this stage without a complete understanding of what ASIC is proposing. However, there would likely be additional costs.

B12: Drafting clarification in cl 201(2) of Sch 10

B12Q1 We are comfortable with the proposed re-drafting.

C1: Consumer testing some proposed changes

C1Q1 We believe it is most appropriate for administration and investment fees and costs to be disclosed separately. This is because many super fund administration fees are dollar based (or a combination of dollar and percentage-based). As a result, if a single percentage-based fee were to be disclosed, it would require an assumption with respect to account balance, and the amount would not apply to any other balances.

In addition, separate disclosure of administration and investment fees better facilitates comparison between platforms and superannuation funds (with the platform fees and costs comparable to the super fund administration fees).

C1Q2 We agree that the proposed name changes are clearer for consumers.

C2: Developing additional resources and information for consumers

C2Q1 While fees and costs matter and can have a significant impact on outcomes, we think a more nuanced approach where fees are viewed as one consideration consumers need to take into account when choosing a product/investment option would be helpful. Ideally fees should be thought about in the context of the investment strategy (e.g. active versus passive, asset allocations and diversification) and net returns/ outcomes.

Influences like the Productivity Commission, Royal Commission, the “Protecting your super” package and the Barefoot Investor book have all put fees in the spotlight. While we think it’s important for consumers to understand, and be mindful of, the fees and costs they incur, an undue focus on fees isn’t always helpful and may not drive the best behaviour.

For example, we were recently made of aware of a member of the fund in her early thirties who switched into our Conservative Growth option specifically to reduce her fees. As our lowest risk pre-mixed option with just 30% invested in growth assets, this decision could see the member tens or hundreds of thousands of dollars worse off at retirement age.

C2Q2 We don’t have any specific suggestions regarding the types of tool that could help explain the relevance of fees and costs. However, as mentioned above, we don’t think fees should be thought about in isolation, but rather in the context of the investment strategy and net returns.

C4: Explaining why fees and costs must be disclosed

C4Q1 We agree with the additions to the guidance which re-iterate the purposes of fee and cost disclosure.

C4Q2 We think the main purposes are adequately covered off in RG 97.6-RG 97.12.

We note that certain aspects of the proposed changes appear to be at odds with some of the objectives stated in this section. For example, comparability is stated as a key objective. However, the changes proposed with respect to administration fees would make comparability difficult.

C5: Prominent statement in 'Fees and costs template' for platforms

C5Q1 We agree with the proposed approach and think it is important that platform PDSs make it clear that the fees and costs their clients will incur is the *combination* of the platform fees and the fees and costs of the product(s) selected.

C6: Clarifying in RG97 the treatment of amounts paid by third parties or offset against other amounts

There are 2 issues that require addressing with this question:

1. *Amounts paid by third parties or offsets* that impact the investment fee calculation, particularly in relation to private equity investments and other fee rebates; and
2. *Tax deductions* received from administration fees and/or insurance premiums that are retained by the fund and not passed onto members.

1. Amounts paid by third parties or offsets

C6Q1 We broadly agree with the guidance with respect to amounts paid by third parties and offsets.

C6Q2 However, we think it would be helpful if additional examples of each were included. In addition, we believe the guidance provided at RG97.278 needs to clarify that it is not referring to management fee offsets which can be used to reduce management fees (i.e. the net amount may be disclosed). The final paragraph of [Question and Answer](#) 12 includes guidance on this issue, but this doesn't seem to have been incorporated in the updated guidance. We note that the intention to retire the [Questions and Answers](#) webpage would result in no guidance being available on this issue.

C6Q3 No systems or process changes are required to implement this guidance as First State Super is disclosing this information currently.

C6Q4 No additional costs are required to implement this guidance.

2. Tax deductions retained by the fund

First State Super believes this issue should sit with administration fee disclosure for clarity.

As Chant West noted in their September 2017 Fee Survey, many funds (around a third of not-for-profit funds and some retail products) have disclosed administration fees net of income tax. These funds would need to change to a gross of income tax disclosure and show a higher fee to comply with RG97. However, there is confusion around how to disclose this figure. Many funds would consider their current disclosure to be compliant because the figures disclosed in a PDS and periodic statement are those actually charged to members, and the tax benefit that is retained by the Fund is inherently included in this disclosure. For example, if a fund charges \$1 per week, receives a \$0.15 tax rebate and keeps that rebate rather than passing it back to the member, then the investor would still pay \$1 – so the “gross” figure remains \$1. However, there is an issue from a comparability perspective, since it would be very difficult for a casual reader to compare a fund charging \$1 per week that keeps the tax rebate with another fund that charges \$1 per week but passes on the tax benefit to members in full. Although on the surface the administration fee for both funds would appear the same, the net of tax cost for members of the second fund would in fact be lower.

First State Super acknowledges that the \$0.15 tax rebate in the above example is really an additional cost (or lost benefit) to members even though they don't physically pay it.

The cleanest way to rectify this issue around comparability would be for funds that do not currently pass the tax benefit onto members to alter their business practices. In the above example, this would likely involve increasing the administration fee by \$0.15 so that the amount charged to the member would be sufficient to cover costs and pass on the tax benefit.

We understand this is the approach adopted by SunSuper. They disclose the gross amount but footnote their ability to claim a tax deduction and illustrate that this effectively reduces the administration fee paid (i.e. the net amount).

- C6Q1 We broadly agree with the proposal to disclose administration fees gross of any tax deduction/benefit.
- C6Q2 Further guidance is required around disclosure, within the law, and in Draft updated RG97 as outlined below.

Disclosure

For super funds that continue the practice of retaining the tax deduction rather than passing it on to members, the amount disclosed should be the grossed-up amount, with a reference to the actual amount deducted from the member's account in the "how and when paid" section of the Fees and Costs Summary.

[Name of superannuation product]		
Type of fee or cost	Amount	How and when paid
Ongoing annual fees and costs		
<i>Administration fees and costs</i>	\$1.15	<p>EITHER</p> <p>Your account balance will have \$1.15 generally deducted [daily/weekly/monthly].</p> <p>We are able to claim a tax deduction for administration costs which we pass onto members which has the effect of reducing the administration fee to \$1 per week on the first [\$500,000] of your account balance.</p> <p>OR</p> <p>Your account balance will have \$1.00 generally deducted [daily/weekly/monthly].</p> <p>We are able to claim a tax deduction for administration costs [and insurance premiums] which we keep rather than pass on to you. This has the effect of increasing the administration fee to \$1.15 per week on the first [\$500,000] of your account balance.</p>

Legal definition

The definition of Administration fees and costs (cl 209A of Sch 10) should be amended to make it clear that any tax deductions received for administration fees or insurance premiums that are not passed back to member accounts should be included as an administration fee or cost.

Draft updated RG97 Guide

In the proposed RG97 Guide, we believe Example 12 on page 97 should be amended to the below.

Example 1: Impact of tax on administration fees and costs disclosure

Two superannuation entities charge members administration fees of \$1 per week.

Superannuation Entity A charges and discloses its administration fees and costs in the PDS as \$1 without reducing it by the benefit of any tax deduction that it may claim. Separately, it passes on the benefit of the tax deduction directly to the member's account.

Superannuation Entity B charges and discloses its administration fees and costs in the PDS as \$0.85, as it keeps the benefit of any tax deduction that it may claim rather than passing on the benefit of the tax deduction directly to the member's account. Superannuation Entity B is using the benefit of the tax deduction to pay some of the Fund's administration fees and costs.

The final overall effect of the two arrangements on the member is identical as the member is, ultimately, still bearing the \$1 per week cost, so \$1 is the fee that should be disclosed to members, notwithstanding this may not be the fee that members of Superannuation Entity B are actually charged.

Superannuation Entity A's approach is correct and Superannuation Entity B's approach is potentially misleading, as it does not disclose the true cost to members.

Note: If a Superannuation Entity adopts a similar approach with insurance fee tax deductions, the same principle applies, and the administration fee should be grossed up by the insurance fee tax deduction that is retained by the Fund to pay some of their administration fees and costs.

- C6Q3 If a super fund decided to alter its business practices from retaining the tax benefit to passing it back to members, significant changes would be necessary. This would include a fee review by the Trustee Board, and business practice and system changes by the administrator and finance teams. Any change would need to be aligned to the annual PDS roll to minimise unnecessary costs.
- C6Q4 There would be additional costs involved in re-engineering systems and processes, but we do not have an estimate of these.

C8: Consistent presentation of fee information in the 'Fees and costs template'

- C8Q1 We agree with the approach and think the appropriate place for further information is the 'Fees and costs details' section. Having some funds breakdown their investment fee in the 'Fees and costs summary' section, while other funds just show the total amount, is likely to be confusing and make it more difficult for investors to compare products.

C9: Reducing difference between superannuation product and MIS product fee disclosure

- C9Q1 Please see our response to E2Q1 Issue 1 which outlines where First State Super believes further alignment is required.

C10: Consolidated version of Sch 10

- C10Q1 We agree that having a consolidated version of Sch 10 available would be helpful.

C11: Surveillance strategy

C11Q1 No comments.

D1: Consumer comparison tool

D1Q1 We think a comparison tool would be beneficial, particularly since fees often include dollar and percentage-based components (e.g. for administration fees) and other complexities, such as fee caps, can make it difficult for investors to easily compare funds/options. The difference in terminology between superannuation funds and managed funds can also make comparisons difficult.

D1Q2 In addition to the above elements, a good consumer-facing comparison tool would also provide information on other relevant factors such as:

- Historical investment returns (we think fees should be viewed in the context of returns);
- The asset allocation of the investment options/managed funds being compared;
- For diversified options, the Growth/Defensive split e.g. 75%/25% (albeit we note that the way issuers categorise asset classes can vary).

E1: Removing the indirect cost ratio concept

E1Q1 We agree with removing the indirect cost ratio concept.

E1Q2 We do not believe the indirect cost ratio concept is still required (although the Protecting Your Super Bill may need amendment).

E2: Treatment of derivative financial products

E2Q1 First State Super does not agree with ASIC's approach to maintain the current requirements for the treatment of costs associated with derivative financial products as indirect costs in cl 101A(3) and (4) of Sch 10.

Issue 1: Super fund and MIS *disclosure* of derivative financial product costs need to be aligned so that fees and costs can be comparable for consumers.

The current requirements for MIS enable a Responsible Entity (RE) to exclude OTC derivative costs from indirect cost disclosure and instead disclose such costs as transaction costs. Exclusions include:

- (i) Hedging - where OTC derivatives are held for any kind of hedging (i.e. risk mitigation) purpose;
- (ii) Efficient portfolio management - where the RE determines that holding the OTC derivative is more cost effective than replicating the same investment outcome by holding physical securities directly; and
- (iii) Transaction costs - where the RE determines that a portion of the calculated costs represent the transaction costs that would have been incurred in replicating the same investment outcome by holding physical securities directly, that portion may be disclosed as transaction costs.

Super funds must disclose all OTC derivative costs as an indirect cost in the investment fee.

The bulk of costs relating to derivative financial instruments will be in the form of transaction costs (counterparty spreads). In order to simplify and align the treatment of derivative financial product costs between MIS and Super funds, it is proposed that all derivative financial instrument costs be treated as transaction costs and the exclusions noted above be removed. To do this would require:

- Amendment of the proposed cl 103(1)(fa) to read “derivative costs that satisfy clause 101A(3)” and remove all other wording;
- Removal of cl 101A(4); and
- Simplifying and updating ASIC’s draft updated RG97 Guidance at RG97.345-359.

Issue 2: The *calculation* methodology needs to be updated to include counterparty spread calculation methodology for the bulk of derivative financial products as outlined in Attachment 3 and above at response B7. To do this would require:

- Amendment of cl 103(3)(a) and (b) to make it clear that derivative financial products that are commonly traded on a regulated, organized or interbank market should have the same calculation methodology applied as an option AND that methodology should be 50% of the bid-ask spread on acquisition and disposal;
- Amendment of cl 103(3A) paragraph (b) definition of derivative financial product to include “an exchange-traded” financial market; alternatively, this paragraph could be removed; and
- Updating ASIC’s draft updated RG97 Guidance at RG97.345-359.

E2Q2 First State Super would prefer equivalent treatment for derivative financial products between MIS and Super funds rather than maintenance of the status quo.

E2Q3 ASIC’s draft updated RG97 Guidance needs to be updated as follows:

- Derivative costs should be included as part of transaction costs for MIS and Super funds (consistent with the recommendations at E2Q1 and E2Q2);
- Update the section on “Derivative products that are options” to include derivatives with counterparty spreads, to include 50% of the bid-ask spread on acquisition or disposal and incorporate details on calculating this from Attachment 3; and
- Removing the section on “exceptions for certain derivative financial products used in managed investment schemes” or amending this section to say that these exceptions no longer apply (for clarity).

E2Q4 Yes – the requirements around disclosing costs for derivative financial products should be aligned between MIS and super funds. Please see above comments.

2 Additional Feedback

[Questions and Answers webpage](#)

We note the intention to retire the [Questions and Answers](#) webpage which would result in no guidance being available on the areas noted below. We believe this information is useful for practitioners and should be included in the revised guidance:

Issue	FAQ	Draft Guide RG97
Situations where an investment manager receives an interest in an investment as a form of remuneration for their role	12*	Include as an example for private equity investments in RG97.
Where a GP receives an interest in an investment at a discount, the value of the discount on the arms-length market value needs to be disclosed as a cost	12	Include as an example for private equity investments in RG97.
Whether a PE Fund which is deemed to 'control' the companies that the fund invests in, is an interposed vehicle or should be excluded as a result of the assets test, and how fees and costs should therefore be disclosed	14	Include in Appendix 1 as an Example and cross reference to RG97.312
How a super fund or managed investment product calculates the buy-sell spread to obtain the transaction cost (net) figure. The example in FAQ 15 will need some amendments so it is relevant to the newly proposed disclosure but the principles are broadly similar and need to be captured in the Guidance.	15	Include in Appendix 1 as an example and cross reference to RG97.383, RG97.44 (super) and RG97.164 (managed investment product)
Development or refurbishment costs with respect to property investments are generally not fees or costs that require disclosure.	18(b)	Add guidance into section G after "Purchase price of an investment is not a fee or cost that needs to be disclosed" section

* See point 4 of "Other feedback" below.

[Other feedback](#)

There are several areas where the guidance is unclear. In particular:

1. **The Assets and PDS tests** – the way the two tests are worded is very confusing, and arguably could be interpreted and applied in different ways by different product issuers, making comparability difficult. For example, we have determined that the REITs in our listed property portfolio are interposed vehicles under the PDS test as the portfolio sits within our "Property" asset class. However, other funds have indicated that, based on their interpretation of the Assets and PDS tests, listed property trusts would never be interposed and our listed property manager has indicated the same. Further, it isn't clear how we should estimate the look-through fees and costs for listed property trusts.
2. **Property operating costs** – Schedule 10 defines property operating costs as amounts paid in relation to the holding of real property. A broad interpretation of this definition would extend to things like investment management fees and performance fees. We don't believe this is ASIC's intention, so we have suggested a small amendment to the definition, including providing some specific examples.

3. **Borrowing costs** – the current definition of borrowing costs per Schedule 10 is quite vague. We think some examples of amounts that are considered ‘borrowing costs’ should be provided for clarity, especially since the proposal is to exclude such amounts from the disclosure. One area we have struggled with is whether legal costs associated with the establishment of a loan to gear an unlisted asset, should be treated as transaction costs (disclosable) or borrowing costs (not disclosable).
4. **Bespoke arrangements with managers in lieu of management fees** – a manager may receive an interest in an investment they are managing as a form of remuneration, typically in lieu of management or performance fees. Q&A 12 provides some guidance on how such arrangements should be disclosed, the overarching premise being that the “interest is a cost that must be disclosed”. However, the specific guidance that follows regarding the calculation methodology isn’t clear and is contradictory in parts. In particular, it isn’t clear whether the amount should be disclosed upfront at the time of investment or based on the revenue/profit forgone at the time cashflows are received.

In addition to the above areas requiring clarification, there are a number of items for which no guidance is currently provided. This includes the below items:

1. **Development fees** – development fees are often payable during the construction phase of a property asset. This fee will often be payable to the manager in addition to base management fees. Alternatively, where the manager does not have the development management capability in house it may be payable to a third party. While Q&A 18 provided guidance on the treatment of development costs, there is currently no clear guidance with respect to how such development fees should be treated for disclosure purposes. We believe development fees are a type of development cost as they form part of the cost base of developing (as opposed to acquiring) a property asset, and therefore do not need to be disclosed. However, it would be helpful to have clarity on this issue to ensure consistency in approach between funds, particularly since these amounts can be substantial.
2. **Property management fees & leasing fees** – as noted in our response to B6Q1, the guidance on the types of expenses/fees that should be categorized as property operating costs is limited. One area where we would like clarity is with respect to property management fees, which are a separate fee payable for property management services, either to the investment manager or a third-party property manager (e.g. where the investment manager lacks property management expertise in house). Similarly, there may be separate leasing fees for sourcing tenants and establishing/ renewing leases. We believe such fees are property operating costs, which under the proposed guidance, would be ‘Excluded transactional and operational costs’. However, it would be helpful for clearer guidance on this to ensure consistency in approach.
3. **Amortisation of transaction costs** – as noted in our response to B6Q1, there is currently no guidance on how amortised transaction costs should be treated. We believe that, where costs are amortised for unit pricing purposes, only the amount amortised over the relevant financial year should be included in the calculations. We have proposed adding the below guidance into RG 97 for clarity in section 7.6. *“For certain property, infrastructure and other real asset transactions, transaction costs may be amortised for unit pricing purposes over a specified period (e.g. 5 years). Where this is the case, the amount amortised over the relevant financial year should be disclosed as transaction costs, as this best reflects what investors incurred over the period.”*
4. **Equalisation payments** – closed-ended investment vehicles (e.g. private equity and infrastructure funds) may have multiple funding rounds or ‘closings’, where new investors (“subsequent investors”) have an opportunity to commit to the fund. The subsequent investors are required to compensate the initial investors for the fact that they have had their capital tied up in the fund for longer. This is an interest compensation charge and it is based on the capital amount put forward by the subsequent investor, an agreed interest rate, and the time between the initial and the subsequent closing. The equalisation interest is paid by the subsequent investors to the initial investors and, depending on the circumstances, can be material in size. Where we make an equalisation payment, we treat the interest compensation charge as an indirect cost and include the relevant amount as part of our Investment fee disclosure.

Likewise, where we are an initial investor and *receive* an equalisation payment, we offset this amount against other Investment fee amounts. We note, however, that ASIC has not provided clear guidance to date on how equalisation payments should be treated, so it would be helpful to confirm that our approach is correct.

Attachment 1: Revised RG97 with First State Super Mark Ups



ASIC
Australian Securities &
Investments Commission

REGULATORY GUIDE 97

Disclosing fees and costs in PDSs and periodic statements

January 2019

About this guide

This guide is for:

- issuers of certain superannuation products;
- issuers of managed investment products; and
- platform operators that operate superannuation platforms, investor directed portfolio services (IDPSs) and IDPS-like schemes.

It explains how fees and costs should be disclosed in Product Disclosure Statements (PDSs), shorter PDSs (if the shorter PDS regime applies), IDPS Guides and periodic statements.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

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

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This draft guide was issued in January 2019 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 97, issued November 2011, reissued November 2015, February 2017 and March 2017
- Superseded *Enhanced fee disclosure regulations: Questions and answers—An ASIC guide*, issued March 2006, updated June 2006 and May 2007, rebadged as Regulatory Guide 97 *Enhanced fee disclosure regulations: Questions and answers* on 5 July 2007

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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Section 10 Overview

Key points

Disclosing fees and costs in Product Disclosure Statements (PDSs) and periodic statements benefits consumers, product issuers and market professionals.

This guide explains how fees and costs should be disclosed in PDSs, in shorter PDSs (if the shorter PDS regime applies), IDPS Guides and in periodic statements. It is for:

- issuers of certain superannuation products;
- issuers of managed investment products; and
- platform operators that operate superannuation platforms, investor directed portfolio services (IDPSs) and IDPS-like schemes.

We seek to ensure compliance with the fees and costs disclosure requirements and that consumers have accurate information to assist their decision making. ASIC has powers to stop or seek enforcement outcomes in relation to misleading disclosure or disclosure that does not meet legal requirements.

Note 1: Some terms used (e.g. 'PDS', 'periodic statement' and 'indirect cost') have specific meanings, which are included in 'Key terms' at the end of this guide.

Note 2: In this guide, references to 'sections', 'Pts', 'Divs' and 'Chs' relate to the *Corporations Act 2001* (Corporations Act) and references to 'cls', 'regs' and 'Schs' relate to the *Corporations Regulations 2001* (Corporations Regulations), unless otherwise indicated.

1.1 This guide explains your fees and costs disclosure obligations

- RG 97.1 This guide helps issuers of certain superannuation products and managed investment products (you) understand how to disclose fees and costs in PDSs and periodic statements. It aims to promote consistent adherence to the fees and costs disclosure requirements to further the purposes of fees and costs disclosure identified at RG 97.6–RG 97.12.
- RG 97.2 This guide complements our general guidance on PDSs in [Regulatory Guide 168](#) *Product Disclosure Statements (and other disclosure obligations)* (RG 168) and other guidance on PDS requirements for specific types of products.
- RG 97.3 This guide only concerns the fees and costs disclosure requirements of the Corporations Act and Corporations Regulations as modified by [Class Order \[CO 14/1252\]](#) *Technical modifications to Schedule 10 of the Corporations Regulations*, not other relevant disclosures for consumers.
- RG 97.4 The legislative framework for fees and costs disclosure is prescriptive in a number of respects and we have exercised our modification powers to clarify the legislative framework. Within the scope of our powers and the core elements of the legislative framework, we have sought to strike a

balance between ensuring that consumers have useful information and you being able to practically comply with the requirements.

- RG 97.5 This guide seeks to provide clear information on how to comply with your obligations. However, responsibility for compliance rests with you. This guide cannot provide a decision-making tool for every decision you may need to make about disclosing fees and costs that relate to your particular products. When making such decisions, you should have regard to the purposes of disclosing fees and costs, including, where relevant, good market practices.

1.2 The purposes of disclosing fees and costs

Disclosure makes important information available to consumers

- RG 97.6 Generally, every consumer who acquires a superannuation product or managed investment product must receive:
- (a) a PDS to help them understand the product terms or to make a decision; and
 - (b) a yearly periodic statement about the product.
- RG 97.7 Disclosing fees and costs in these documents has several important benefits for consumers who actively seek such information. It helps them:
- (a) make confident and informed value for money decisions;
 - (b) compare products; and
 - (c) understand the fees and costs they are charged.

Issuers benefit from improved transparency

- RG 97.8 Proper disclosure helps keep issuers accountable and transparent.
- RG 97.9 When you deduct fees and costs from an account or investment, you are dealing with members' money. Transparent disclosure of all fees, underlying costs and conflicts of interest reflects a culture of good governance and conduct within an issuer of superannuation products or managed investment products.

Market professionals can use the information

- RG 97.10 Financial advisers and other professionals can use the information you publicly disclose to the market to:
- (a) advise consumers; and
 - (b) analyse and benchmark the market.

Other factors that are important for consumers

- RG 97.11 Fees and costs are particularly important for investments that a consumer will hold for a long time (such as superannuation). This is because the effect

of fees and costs on an investment can be substantial and can compound over time.

RG 97.12 Although it is important that consumers consider fees and costs when making an investment decision, they should also consider other factors. For instance, it is important that they consider the risks of a particular investment, the types of assets the product holds, and the likely returns. Disclosures about these other factors are not addressed in this guide.

1.3 Entities this guide applies to

Table 1: Entities this guide applies to

Entity	Fees and costs document	Excludes
Superannuation trustees	PDS Periodic statement	Self-managed superannuation funds (SMSFs) 'No investment' component ('risk-only') superannuation products Annuities (except market-linked annuities, including both investment-linked annuities and investment account annuities) Pensions provided under regs 1.06(2), 1.06(6) or 1.06(7) of the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations) Non-investment or accumulation life insurance policies offered through superannuation
Responsible entities	PDS Periodic statement	No exclusions apply
Platform operators: superannuation platforms	PDS Periodic statement	No exclusions apply
Platform operators: IDPS-like schemes	PDS Periodic statement	No exclusions apply
Platform operators: IDPSs	IDPS Guide	No exclusions apply

1.4 Location of legal requirements for fees and costs disclosure

Table 2: Location of the legal requirements for fees and costs disclosure

Entity	Disclosure document	Location	Further discussion in this guide
Superannuation trustees	Full PDS	Part 7.9 of the Corporations Act, Subdiv 4C.2 of Pt 7.9 of the Corporations Regulations, and Sch 10 to the Corporations Regulations	See Section B
Superannuation trustees	Shorter PDS	Part 7.9 of the Corporations Act, Subdiv 4.2B of Pt 7.9 of the Corporations Regulations, and Sch 10D to the Corporations Regulations	See Section B
Superannuation trustees	Periodic statement	Part 7.9 of the Corporations Act, Pt 7.9 of the Corporations Regulations and Pt 3 of Sch 10 to the Corporations Regulations (other regs may also apply)	See Section C
Responsible entities	Full PDS	Part 7.9 of the Corporations Act, Subdiv 4C.2 of Pt 7.9 of the Corporations Regulations, and Sch 10 to the Corporations Regulations	See Section D
Responsible entities	Shorter PDS	Part 7.9 of the Corporations Act, Subdiv 4.2C of Pt 7.9 of the Corporations Regulations, and Sch 10E to the Corporations Regulations See also Class Order [CO 12/749] Relief from the Shorter PDS regime , which excludes certain simple managed investment schemes from the shorter PDS regime	See Section D
Responsible entities	Periodic statement	Part 7.9 of the Corporations Act, Pt 7.9 of the Corporations Regulations, and Pt 3 of Sch 10 to the Corporations Regulations (other regs may also apply)	See Section E
Platform operators: superannuation platforms	Full PDS	Part 7.9 of the Corporations Act, Subdiv 4C.2 of Pt 7.9 of the Corporations Regulations, and Sch 10 to the Corporations Regulations	See Sections B and F

Entity	Disclosure document	Location	Further discussion in this guide
Platform operators: superannuation platforms	Shorter PDS (if permitted under [CO 12/749])	Part 7.9 of the Corporations Act, Subdiv 4.2B of Pt 7.9 of the Corporations Regulations, and Sch 10D to the Corporations Regulations	See Sections B and F
Platform operators: superannuation platforms	Periodic statement	Part 7.9 of the Corporations Act, Pt 7.9 of the Corporations Regulations, and Pt 3 of Sch 10 to the Corporations Regulations (other regs may also apply)	See Sections C and F
Platform operators: IDPS-like schemes	Full PDS	Part 7.9 of the Corporations Act, Subdiv 4C.2 of Pt 7.9 of the Corporations Regulations, and Sch 10 to the Corporations Regulations	See Sections D and F
Platform operators: IDPS-like schemes	Periodic statement	Part 7.9 of the Corporations Act, Pt 7.9 of the Corporations Regulations, and Pt 3 of Sch 10 to the Corporations Regulations (other regs may also apply)	See Sections E and F
Platform operators: IDPS	IDPS Guide	An IDPS Guide must provide information about fees and costs in relation to the IDPS that complies with Pt 2 of Sch 10 to the Corporations Regulations as if an interest in the IDPS were a managed investment product: see s912AD as notionally inserted by Class Order [CO 13/763] <i>Investor directed portfolio services</i>	See Sections D and F

Managed discretionary account (MDA) providers

- RG 97.13 When an MDA provider issues a Financial Services Guide (FSG), it must provide information about fees and costs in relation to its MDA services that complies with Pt 2 of Sch 10 to the Corporations Regulations as if the client were being offered a managed investment product: see s912AEA as notionally inserted by [ASIC Corporations \(Managed Discretionary Account Services\) Instrument 2016/968](#). Part 2 of Sch 10 as it relates to managed investment products is discussed in Section D of this guide. For further guidance on MDAs, see [Regulatory Guide 179](#) *Managed discretionary account services* (RG 179).

1.5 ASIC monitors compliance with disclosure requirements

- RG 97.14 We aim to ensure that:

- (a) issuers comply with the disclosure requirements, including the fees and costs disclosure requirements; and
- (b) consumers are provided with accurate information to help their decision making.

RG 97.15 We review PDSs, periodic statements and marketing materials to promote this outcome.

RG 97.16 We have powers to stop, or seek enforcement outcomes in relation to, misleading disclosure, disclosure that does not contain all relevant information or disclosure that does not meet legal requirements (such as making a stop order under s1020E).

1.6 Considering the needs of consumers

RG 97.17 We encourage you to carefully consider what types of consumers invest in the products you offer and how you can disclose fees and costs (within the limits of the fees and costs disclosure requirements), and to provide other fees and costs information and other fees and costs tools in a way that will best meet the needs of those consumers. We believe this will help consumers make informed value for money decisions.

Section 2 Disclosing fees and costs in PDSs for superannuation products

DRAFT FOR FEEDBACK

Key points

This section provides guidance on the fees and costs disclosure requirements for full PDSs (see RG 97.25–RG 97.82) and shorter PDSs (see RG 97.83–RG 97.96) for superannuation products.

You will need to prepare the following key fees and costs information for any superannuation product requiring a PDS:

- a 'Consumer advisory warning';
- a 'Fees and costs summary';
- an example showing the effect of the fees and costs;
- 'Cost of product information'; and
- 'Fees and costs details'.

This section also provides guidance on:

- including amounts from reserves in your disclosure (see RG 97.97–RG 97.101);
- calculating costs for superannuation products (see RG 97.102–RG 97.107); and
- disclosing fees and costs for insurance (see RG 97.108–RG 97.110).

2.1 Overview

- | | |
|----------|---|
| RG 97.18 | This section details the requirements for fees and costs disclosure in PDSs for superannuation products. The requirements are different, depending on whether you are using a full PDS or a shorter PDS. |
| RG 97.19 | <p>You must prepare the following key fees and costs information for any superannuation product requiring a PDS:</p> <ul style="list-style-type: none"> (a) a 'Consumer advisory warning'; (b) a 'Fees and costs summary'; (c) an example showing the effect of the fees and costs; (d) 'Cost of product information'; and (e) 'Fees and costs details'. |
| RG 97.20 | <p>Most issuers of superannuation products must prepare shorter PDSs (including for MySuper products). However, there are exceptions and a full PDS is required for a superannuation product that is:</p> <ul style="list-style-type: none"> (a) an interest that is solely a defined benefit interest; (b) solely a pension product; or (c) a risk-only superannuation product (see reg 7.9.11K). |

- RG 97.21 [\[CO 12/749\]](#) provides that other superannuation products (such as superannuation platforms) are also generally excluded from using a shorter PDS.
- RG 97.22 In this section, we detail the requirements for a full PDS first (at RG 97.25–RG 97.82), as the requirements for a shorter PDS are derived directly from those requirements. For ease of understanding, the references in RG 97.25–RG 97.82 are to superannuation products generally, although, as noted in RG 97.20, most superannuation products require a shorter PDS.
- RG 97.23 The shorter PDS requirements for superannuation products are detailed at RG 97.83–RG 97.96.
- RG 97.24 You should also refer to Sections G and H for further guidance on particular fees and costs concepts, and how to calculate and present fees and costs. In the guidance below, we have inserted cross-references to relevant parts of those sections.

2.2 Fees and costs disclosure requirements for full PDSs

- RG 97.25 In preparing a full PDS for a superannuation product, you must include a 'Fees section' comprising:
- (a) a 'Consumer advisory warning';
 - (b) a 'Fees and costs summary';
 - (c) an 'Example of annual fees and costs';
 - (d) 'Cost of product information'; and
 - (e) 'Fees and costs details' (see reg 7.9.16N).

- RG 97.26 You must also include the definitions for the fees set out in cl 209A of Sch 10. These definitions can either be set out in the 'Fees section' of the full PDS or incorporated by reference. For further information on incorporation by reference, see reg 7.9.15DA. For further information on these fees, see RG 97.36–RG 97.55.

'Consumer advisory warning'

- RG 97.27 You must include a 'Consumer advisory warning' at the beginning of the 'Fees section' of a full PDS for a superannuation product: see reg 7.9.16N(2)(c) and cl 222 of Sch 10.
- RG 97.28 The content of the 'Consumer advisory warning' is set out in cl 221(1) of Sch 10. You must not make any changes or additions to this warning.
- RG 97.29 Figure 1 shows the text of the 'Consumer advisory warning'.

Figure 1: Consumer advisory warning for superannuation products

DID YOU KNOW?

Small differences in both investment performance and fees and costs can have a substantial impact on your long term returns.

For example, total annual fees and costs of 2% of your account balance rather than 1% could reduce your final return by up to 20% over a 30 year period (for example reduce it from \$100 000 to \$80 000).

You should consider whether features such as superior investment performance or the provision of better member services justify higher fees and costs.

You or your employer, as applicable, may be able to negotiate to pay lower fees. Ask the fund or your financial adviser.

TO FIND OUT MORE

If you would like to find out more, or see the impact of the fees based on your own circumstances, the **Australian Securities and Investments Commission (ASIC)** website (www.moneysmart.gov.au) has a superannuation calculator to help you check out different fee options.

Superannuation 'Fees and costs summary'

- RG 97.30 You must include a 'Fees and costs summary' in a full PDS for superannuation products: see reg 7.9.16N(2)(a).
- RG 97.31 The content of the 'Fees and costs summary' is set out in cl 201 of Sch 10. The 'Fees and costs summary' is contained in a table separated into 'Ongoing ~~annual~~ fees and costs' and 'Member activity related fees and costs'. The items in the 'Fees and costs summary' show the significant fees and costs members will ~~be charged pay~~.
- RG 97.32 Figure 2 shows the 'Fees and costs summary' that you must complete for your product.
- RG 97.33 For information on how to complete the 'Fees and costs summary', see RG 97.56–RG 97.57 and RG 97.366–RG 97.376.
- RG 97.34 For more information on the line items in the 'Fees and costs summary', see RG 97.36–RG 97.55 and RG 97.366–RG 97.376.

Commented [LK1]: The reference to 'annual' here seems superfluous and could be misconstrued as meaning the amount is only charged annually.

Commented [LK2]: The term 'charged' is confusing in relation to costs (e.g. transaction costs), and also doesn't work for profit-for-member funds where most amounts are on a cost recovery basis.

Figure 2: 'Fees and costs summary' for superannuation products**Fees and other costs**

This section shows fees and other costs that you may be charged. These fees and other costs may be deducted from your money, from the returns on your investment or from the assets of the superannuation entity as a whole.

Other fees, such as activity fees, advice fees for personal advice and insurance fees, may also be charged, but these will depend on the nature of the activity, advice or insurance chosen by you.

Taxes, insurance fees and other costs relating to insurance are set out in another part of this document.

You should read all the information about fees and other costs because it is important to understand their impact on your investment.

[If relevant] The fees and other costs for each MySuper product offered by the superannuation entity, and each investment option offered by the entity, are set out on page [insert page number].

Commented [LK3]: Refer to Attachment 2 for some suggested amendments to this section.

Fees and Costs Summary

[Name of superannuation product]		
Type of fee or cost	Amount	How and when paid
Ongoing annual fees and costs		
Administration fees and costs		
Investment fees and costs ¹		
Transaction costs (net)		
Member activity related fees and costs		
Buy-sell spread		
Switching fee		
Exit fee		
Other fees and costs ²		

Commented [LK4]: See previous page

Commented [LK5]: See response to B1Q1

Commented [LK6]: See response to B1Q1

1. [If relevant insert a footnote *Investment 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".*]
2. [If there are other fees and costs, such as activity fees, advice fees for personal advice or insurance fees, include a cross reference to the "Fees and Costs Details".]

Explanation of 'Ongoing annual fees and costs' for superannuation products

RG 97.35 As shown in Figure 2, the 'Ongoing annual fees and costs' comprise:

- (a) administration fees and costs;
- (b) investment fees and costs; and
- (c) transaction costs (net).

Administration fees and costs

- RG 97.36 Administration fees and costs are defined in cl 209A of Sch 10. They are fees and costs that relate to the administration or operation of the superannuation entity, and specifically include:
- (a) costs that relate to the administration or operation of the superannuation entity that are met through the use of reserves (for more information on reserves, see RG 97.97–RG 97.101);
 - (b) indirect costs that relate to the administration or operation of the superannuation entity (for more information on indirect costs, see RG 97.280–RG 97.290); and
 - (c) intrafund advice costs (see RG 97.38).
- RG 97.37 Administration fees and costs do not include:
- (a) transaction costs (for more information about transaction costs, see RG 97.333–RG 97.340);
 - (b) excluded transactional and operational costs (for more information about excluded transactional and operational costs, see RG 97.341–RG 97.344); and
 - (c) costs ~~charged~~ categorised as another type of fee or cost.
- RG 97.38 Intrafund advice costs are costs incurred by the superannuation trustee of the superannuation entity in making financial product advice—provided by the trustee or another person—available to all members: see cl 101 of Sch 10. Where the trustee provides financial product advice to a member that is not included within the definition of intrafund advice costs, the costs of the advice are captured as an advice fee and is disclosed as ‘Other fees and costs’: see footnote 2 to the ‘Fees and costs summary’ in Figure 2.
- RG 97.39 Examples of the types of things that may be included in administration fees and costs are:
- (a) fees charged by the superannuation trustee for the administration and operation of the superannuation entity;
 - (b) fees charged by an administrator or custodian (e.g. for registry related services);
 - (c) audit costs and regulator levies;
 - (d) product development costs;
 - (e) costs of providing member communications;
 - (f) costs of professional indemnity, directors’ and officers’, and other superannuation trustee insurances;
 - (g) staff costs for member services teams; and
 - (h) overheads ~~(such information technology costs and accommodation).~~

Commented [LK7]: The fact that the Administration fee charged by a trustee isn’t included anywhere in this definition is confusing, albeit we note that it is mentioned at 97.39.

Commented [LK8]: Suggest (a) be added to the definition per Sch 10 Cl 209A for clarity

Commented [LK9]: Suggest this be added in for clarity as custody fees are mentioned both under Administration fees and Investment fees

Commented [LK10]: Items b-h are paid out of the administration fee revenue so disclosing the sum of all of these items would result in double counting.

Investment fees and costs

- RG 97.40 Investment fees and costs are defined in cl 209A of Sch 10. They are fees and costs that relate to the investment of the assets of a superannuation entity, and specifically include:
- (a) fees charged for the exercise of care and expertise in the investment of those assets (including performance fees);
 - (b) costs that relate to the investment of the assets of the superannuation entity that are met through the use of reserves (for more information on reserves, see RG 97.97–RG 97.101); and
 - (c) indirect costs that relate to the investment of the assets of the superannuation entity (for more information on indirect costs, see RG 97.280–RG 97.290).
- RG 97.41 Investment fees and costs do not include:
- (a) transaction costs (for more information on transaction costs, see RG 97.44–RG 97.45);
 - (b) excluded transactional and operational costs (for more information on excluded transactional and operational costs, see RG 97.341–RG 97.344); and
 - (c) costs ~~charged~~ categorised as another type of fee or cost.
- RG 97.42 Examples of the types of things that may be included in investment fees and costs are:
- (a) fees charged by the superannuation trustee that relate to investing the assets of the superannuation entity;
- And, to the extent that they are an additional cost to members:
- (b) investment fees (both base management and performance fees) paid to an external investment manager;
 - ~~(c)~~ (c) investment fees charged by an interposed vehicle (both base management fees and performance fees). ~~For more information about interposed vehicles, see RG 97.291–0;~~
 - ~~(b)~~ fees charged by the investment manager of an interposed vehicle;
 - ~~(d)~~ (d) custody fees charged by either a custodian appointed by the superannuation trustee or an interposed vehicle (other than those charged as administration fees and costs);
 - ~~(e)~~ (e) internal staff costs for investment teams;
 - (f) fees paid to asset consultants;
 - ~~(g)~~ (g) securities lending costs (see 97.279 for more information); and
 - ~~(h)~~ (h) operational costs such as valuation costs, audit fees, accounting/tax reporting expenses, organisational expenses ('expense recoveries').

Commented [LK11]: There is a double counting issue here. Amounts paid out of the reserves do not represent an additional cost for members, nor does it reduce their return in any way.

Commented [LK12]: I think this is the same as (b).

Commented [LK13]: It's not clear in the guidance that these items should be included

DRAFT FOR FEEDBACK

RG 97.43 For information on performance fees, see RG 97.360–RG 97.364.

Transaction costs ~~(net)~~

RG 97.44 Transaction costs are defined in cl 103 of Sch 10. Transaction costs are costs of the superannuation entity associated with acquiring or disposing of assets: for more information on transaction costs, see RG 97.333–RG 97.340.

RG 97.45 In the 'Fees and costs summary', transaction costs are shown net of amounts recovered by the buy–sell spread charged by the superannuation trustee, if applicable: see cl 204A of Sch 10. Transaction costs are shown in this way so that members can better understand the costs that may affect their investment, as some transaction costs will be paid for by members who are charged the buy–sell spread when they enter or exit a superannuation product: for information on the buy–sell spread, see RG 97.47–RG 97.48.

Explanation of 'Member activity related fees and costs' for superannuation products

RG 97.46 In addition to the 'Ongoing annual fees and costs', 'Member activity related fees and costs' can also be charged. As shown in Figure 2, they can comprise:

- (a) buy–sell spread;
- (b) a switching fee;
- (c) an exit fee; and
- (d) other fees and costs.

Buy–sell spread

RG 97.47 A buy–sell spread is a fee to recover costs incurred in transactions by the superannuation trustee in relation to selling or buying assets of the superannuation entity: see cl 209A of Sch 10. This is charged to the member on entry contributions or exit withdrawals from the superannuation product or option.

RG 97.48 A buy–sell spread that relates to an underlying investment of the superannuation entity forms part of transaction costs: see RG 97.339–RG 97.340.

Switching fee

RG 97.49 For MySuper products, a switching fee is a fee to recover the costs of switching all or part of the member's interest in the superannuation entity from one class of beneficial interest in the entity to another: see cl 209A of Sch 10.

RG 97.50 For other superannuation products, a switching fee is a fee to recover the costs of switching all or part of the member's interest in the superannuation entity from one investment option or product in the entity to another: see cl 209A of Sch 10.

Exit fee

RG 97.51 An exit fee is a fee to recover the costs of disposing of all or part of the member's interest in the superannuation entity and is separate from the buy-sell spread described in RG 97.47: see cl 209A of Sch 10.

Other fees and costs

RG 97.52 These can include activity fees charged when the superannuation trustee undertakes activities for a member:

- (a) at the member's request;
- (b) with the member's consent; or
- (c) that are required by law.

Activity fees do not include costs charged as another type of fee or cost (e.g. administration fees and costs): see cl 209A of Sch 10.

RG 97.53 Examples of activity fees are fees charged for supplying information or dealing with superannuation accounts for family law purposes.

RG 97.54 Examples of other fees that may be included in 'Other fees and costs' include dishonoured payment fees, fees for providing a member with personal advice and insurance fees.

RG 97.55 If there is an item under 'Other fees and costs', you must include a cross-reference to the 'Fees and costs details', where an additional explanation of the 'Other fees and costs' must be provided: see cl 209(a) of Sch 10.

How to fill in the 'Fees and costs summary'

RG 97.56 You must ensure that fee information for each MySuper product and each investment option is set out in the 'Fees and costs summary' or that the 'Fees and costs summary' contains a cross-reference to another section of the PDS that contains the relevant fee information: see cl 205 of Sch 10.

RG 97.57 Some fees or costs may be charged across a MySuper product and other investment options in the superannuation entity. If this is the case, you must appropriately apportion the fees and costs so that the amounts in the 'Fees and costs summary' for each product or option reflects that portion of the fees or costs that relate to that particular product or option.

RG 97.58 For further information on how to fill in the 'Fees and costs summary', see RG 97.366–RG 97.376

Commented [LK14]: This seems inconsistent with Figure 2

'Example of annual fees and costs'

Content of the 'Example of annual fees and costs'

- RG 97.59 You must include an 'Example of annual fees and costs' in the 'Fees section' of a full PDS for superannuation products, following the 'Fees and costs summary': see reg 7.9.16N(2)(b) and cl 210(c) of Sch 10. An 'Example of annual fees and costs' is not required for defined benefit superannuation entities: see cl 213 of Sch 10.
- RG 97.60 You must set out the 'Example of annual fees and costs' using the headings and form in cl 211 of Sch 10: see cl 210(b) of Sch 10.
- RG 97.61 Figure 3 shows the 'Example of annual fees and costs' from cl 211 of Sch 10 that you must complete for your product.

Figure 3: Example of annual fees and costs

This table gives an example of how the ongoing ~~annual~~ fees and costs for the *[insert name of generic MySuper product or other investment option as required by subclause 220(1)]* for this superannuation product can affect your superannuation investment over a 1 year period. You should use this table to compare this superannuation product with other superannuation products. However, you should keep in mind that investment fees and costs and Transaction costs can vary from year to year and cannot be precisely calculated in advance.

EXAMPLE — <i>[insert name of generic MySuper product or other investment option as required by subclause 220(1)]</i>		BALANCE OF \$50 000 WITH A CONTRIBUTION OF \$5 000 DURING YEAR
Investment fees and costs []		For every \$50 000 you have in the superannuation product you will be charged or have deducted from your investment \$[] each year
PLUS Administration fees and costs []		And , you will be charged \$[] in administration fees and costs regardless of your balance
Investment fees and costs []		<u>For every \$50 000 you have in the superannuation product, you will have approximately \$[] deducted from your investment each year.</u>
PLUS Transaction costs (net) []		And , you will be charged <u>incur approximately</u> \$[] in transaction costs (net)
EQUALS Cost of product		If your balance was \$50 000 at the beginning of the year and you put in an additional \$5 000 on the last day of that year , then for that year you will be charged <u>would pay fees and costs of approximately</u> \$[] for the superannuation product.

Note:* Additional fees may apply. ~~And~~For example, if you leave the superannuation entity, you may be charged an **exit fee** of **\$x**. In addition, and a buy/sell spread which ~~also~~ applies whenever you make a contribution, exit, rollover or investment switch. The **buy/sell spread** for exiting is **y%** (this will be equal to **\$z** for every \$50,000 you withdraw).

Note: Substitute the relevant exit fee, buy/sell spread and total amount payable you charge for \$x, y% and \$z.

Commented [LK15]: I think there should be some acknowledgement of the year to year variability.

Commented [LK16]: We understand the intention is to align the examples between super and managed funds. However, this won't work for pension products where members are unable to make contributions. Hence, we proposed that the \$5,000 contribution be removed from the example for managed funds.

Commented [LK17]: I have proposed changing the order (I think Investment fees and costs and Transaction costs need to be closer together) and some minor amendments to the wording to make it clear that the amount is an approximate amount only.

How to fill in the 'Example of annual fees and costs'

- RG 97.62 You should base the 'Example of annual fees and costs' on your generic MySuper product. If you do not offer a generic MySuper product, base the example on:
- where a balanced investment option is offered, the balanced investment option under which most assets of the superannuation entity are invested; or
 - where no balanced option is offered, the investment option under which most assets of the superannuation entity are invested (see cl 220(1) of Sch 10).
- RG 97.63 The fees and costs stated in the 'Example of annual fees and costs' must ~~be~~ **reflect the** typical ongoing fees **and costs** that **are expected to** apply to the MySuper product or investment option. They should not be based on 'honeymoon' rates and must be consistent with the statement for an existing member having the stated balance and level of contributions each year: see cl 214 of Sch 10.
- RG 97.64 **If the minimum balance required to join the superannuation entity is greater than \$50,000, the 'Example of annual fees and costs' must be based on an amount that is the lowest multiple of \$50,000 that exceeds the minimum balance:** see cl 215 of Sch 10. You must show the effect of exit fees and withdrawal fees: see cls 216 and 219 of Sch 10.
- RG 97.65 Where investment fees and costs, administration fees and costs, or transaction costs (net) are disclosed as a range, the 'Example of annual fees and costs' must use the highest fees and costs in the range: see cls 218(2), (4) and (4B) of Sch 10. Also, the calculation of the fees and costs to be disclosed must not take into account contributions that may be made during the year: see the notes to cls 218(1), (3) and (4A) of Sch 10.
- RG 97.66 If the 'Example of annual fees and costs' is for a lifecycle MySuper product, the investment fees and costs quoted must be the highest investment fee for a lifecycle stage of the lifecycle MySuper product: see cl 214A of Sch 10.

Commented [LK18]: Wouldn't this affect comparability between products?

'Cost of product information'

- RG 97.67 You must also include 'Cost of product information' for each MySuper product and investment option in a full PDS. As the 'Example of annual fees and costs' is only provided for one product or option (see RG 97.62), the 'Cost of product information' is designed to give consumers an abbreviated example of how fees and costs can affect their investment if they choose to invest in one of the other products or options offered in your full PDS.

- RG 97.68 The 'Cost of product information' must be included in the 'Fees section' of a full PDS, following the 'Example of annual fees and costs': see cl 220A(1)(a) of Sch 10.
- RG 97.69 You must calculate the 'Cost of product information' using the method for calculating the 'Example of annual fees and costs' shown in Div 6 of Sch 10: see cl 220A(1)(d) of Sch 10.
- RG 97.70 You do not need to provide 'Cost of product information' for:
- a defined benefit superannuation entity (see cl 220A(2) of Sch 10); or
 - where a PDS relates to only one product or option and an 'Example of annual fees and costs' has been included for that product or option (see cl 220A(3) of Sch 10).
- RG 97.71 Figure 4 shows the heading and text you must include immediately before presenting the first 'Cost of product information'.

Figure 4: Preamble for 'Cost of product information'**Cost of product for 1 year**

The cost of product gives a summary calculation about how ongoing **annual** fees and costs can affect your superannuation investment over a 1 year period for all superannuation products and investment options. It is calculated in the manner shown in the example of annual fees and costs.

The cost of product information assumes a balance of \$50 000 ~~at the beginning of the year and an additional contribution of \$5 000 on the last day of that year.~~
(Additional fees such as an exit fee or buy-sell spread may apply, refer to the fees and costs summary for the relevant product or option.)

You should use this figure to help compare superannuation products and investment options. ~~However, you should keep in mind that fees and costs can vary from year to year and cannot be precisely calculated in advance.~~

Commented [LK19]: I think there should be some acknowledgement of the year to year variability.

- RG 97.72 Figure 5 shows the form you must use when setting out the 'Cost of product information'.

Figure 5: Form for 'Cost of product information' for superannuation products

[Insert name of product or option]	€ <u>Approximate cost of product on</u> <u>\$50,000</u>
	\$[]

'Fees and costs details'

- RG 97.73 You must include 'Fees and costs details' in a full PDS for a superannuation product: see reg 7.9.16N(2)(a). You must include all the information listed in cl 209 of Sch 10 to the extent that information is relevant to the superannuation product. This can include information on:

- (a) performance fees (for more information on performance fees, see RG 97.360–RG 97.364); and
 - (b) transaction costs (for more information on transaction costs, see RG 97.44–RG 97.45 and RG 97.333–RG 97.340).
- RG 97.74 You must also provide an explanation of any intrafund advice costs (see cl 209(f) of Sch 10), which should include:
 - (a) a statement that intrafund advice costs are included in administration fees and costs; and
 - (b) a cross-reference to another section of the PDS or to another place (such as the superannuation trustee’s website) where the member can find out more about intrafund advice services.
- RG 97.75 You must also provide an explanation of advice fees paid for providing financial product advice to a member: see cl 209(f) of Sch 10. (The prohibition on paying or receiving conflicted remuneration and the sole purpose test restrict the payments that can be made in relation to financial product advice: see Subdiv C of Div 4 of Part 7.7A and s62 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act).)
- RG 97.76 If the superannuation product offers insurance, you must include a cross-reference to the insurance section of the PDS: see cl 209(ca) of Sch 10. For more information about disclosing fees and costs for insurance, see RG 97.108–RG 97.110.
- RG 97.77 If the superannuation product is subject to tax, you must include a cross-reference to the tax section of the PDS: see cl 209(c) of Sch 10.
- RG 97.78 If the superannuation product is subject to tax, you must also state whether the benefit of any tax deduction is passed on to the member in the form of a reduced fee or cost: see cl 209(d) of Sch 10.
- RG 97.79 You must also include relevant information about:
 - (a) your right to change the amount of fees and the period of advance notice required to do so; and
 - (b) any change in fee structure that is dependent on a person’s employment (see cl 209(k) of Sch 10).
- RG 97.80 If you have instituted a flexible charging structure, the ‘Fees and costs details’ must include, for each applicable fee:
 - (a) any maximum, and when it would apply; and
 - (b) any waiver, and when it would apply (see cl 209(l) of Sch 10). We consider a waiver to be any possible reduction in the amount of the fees and costs disclosed in the ‘Fees and costs summary’ (including through a rebate).

- RG 97.81 We consider the requirement in RG 97.80 applies in relation to fees that are shown as part of a line item in the 'Fees and costs summary' or are mentioned in the footnotes.
- RG 97.82 You should also consider what other information is appropriate to include in the 'Fees and costs details'. You should ensure that any other information is shown in a clear, concise and effective manner, as required by s1013C(3). When providing any other information, we encourage you to consider how you can disclose this information in a way that best meets the needs of the types of consumers who invest in your product.

2.3 Fees and costs requirements for shorter PDSs

- RG 97.83 As set out at RG 97.20, most issuers of superannuation products must prepare a shorter PDS. The shorter PDS regime for superannuation products is facilitated by regulations that modify the Corporations Act: see Pt 5B of Sch 10A.
- RG 97.84 A shorter PDS must contain:
- (a) a 'Consumer advisory warning';
 - (b) a 'Fees and costs summary';
 - (c) a 'Worked example'; and
 - (d) other fees and costs information (which may be incorporated by reference).
- RG 97.85 A shorter PDS must be in the form set out in Sch 10D: see reg 7.9.110(2). Schedule 10D sets length requirements for the shorter PDS (e.g. eight pages if it is printed on A4 paper), requires specific sections to be included and sets the content for each section.
- RG 97.86 Clause 8 of Sch 10D sets out the requirements for the 'Fees and costs section' of a shorter PDS. Most of the requirements are the same as those in Sch 10.
- RG 97.87 A shorter PDS must also:
- (a) incorporate by reference the fees defined in cl 209A of Sch 10 and include the address of a link to the definitions maintained on a website (see cl 8(6A) of Sch 10D);
 - (b) refer to our calculator and any calculator you provide on your website. It must also state that these calculators can be used to calculate the effect of fees and costs on account balances (see cl 8(8) of Sch 10D); and
 - (c) set out a statement about your right to change the amount of fees without the member's consent, the period of advance notice required,

any indexation arrangements that apply and any change to the fee structure that is dependent on a person's employment (see cl 8(5) of Sch 10D).

RG 97.88 You must include detailed information about the superannuation products you offer in section 5 ('How we invest your money') of a shorter PDS. This information includes a list of asset classes and a description of the investment return objective. At a minimum, you must provide this information for your generic MySuper product: see cl 7(3) and (4) of Sch 10D. If you do not have a generic MySuper product:

- (a) but you do have a balanced investment option, the detailed information must be provided for the balanced investment option under which most assets of the superannuation entity are invested (see cl 7(3) and (5) of Sch 10D); or
- (b) and you do not have a balanced investment option, the detailed information must be provided for the investment option under which most assets of the superannuation entity are invested (see cls 7(3) and (6) of Sch 10D).

'Consumer advisory warning'

RG 97.89 You must include a 'Consumer advisory warning' at the start of the 'Fees and costs section' of the shorter PDS in the same form required in Sch 10: see cl 8(2) of Sch 10D, RG 97.27–RG 97.29 and Figure 1.

'Fees and costs summary'

RG 97.90 You must include a 'Fees and costs summary' in the body of the shorter PDS for each MySuper product or investment option presented in detail in section 5 of the shorter PDS: see cls 8(1) and (3) of Sch 10D.

RG 97.91 The layout of the 'Fees and costs summary' is set out in cl 8(3) of Sch 10D. It is the same as the 'Fees and costs summary' in Sch 10, apart from there being no preamble text. Instead, you must state that information in the 'Fees and costs summary' can be used to compare costs between different superannuation products and state concisely, and in general terms, that fees can be paid directly from the person's account or deducted from investment returns: see cl 8(6) of Sch 10D.

RG 97.92 You must complete the 'Fees and costs summary' in the same way as for a full PDS described in RG 97.30–RG 97.57, apart from some minor differences that are detailed in cl 8(4) of Sch 10D.

'Worked example'

RG 97.93 You must also include a 'Worked example' in the body of the shorter PDS for each MySuper product or investment option presented in detail in section 5 of the shorter PDS: see cl 8(7) of Sch 10D. You must complete the

‘Worked example’ in the same way as the ‘Example of annual fees and costs’ for a full PDS: see RG 97.59–RG 97.66.

Other fees and costs information

- RG 97.94 You must also provide the fees and costs of each of the MySuper products and investment options offered (including the products or options profiled in the body of the shorter PDS). These must be provided in accordance with the requirements in Sch 10: cl 8(10)(a) of Sch 10D. The fees and costs information that should be provided is the ‘Fees and costs summary’, ‘Fees and costs details’ and ‘Cost of product information’, but not the ‘Example of annual fees and costs’.
- RG 97.95 You can incorporate this other fees and costs information by reference: see cl 8(10)(a) of Sch 10D. For more information on the Sch 10 requirements for superannuation products, see RG 97.30–RG 97.82.
- RG 97.96 You should not include any additional voluntary information in the ‘Fees and costs summary’ or in the ‘Worked example’ in the shorter PDS. Additional voluntary information can, however, be included elsewhere in the ‘Fees and costs section’ of the shorter PDS, or you may provide more detailed fee information by incorporating it by reference: see cl 8(10)(b) of Sch 10D and reg 7.9.11P. When providing any voluntary information, we encourage you to consider how you can disclose this information in a way that best meets the needs of the types of consumers who invest in your product.

2.4 Requirement to include amounts from reserves in fees and costs disclosure

- RG 97.97 Superannuation trustees often establish reserves for several different purposes. These may include administration reserves (used to fund future administration and operational expenses), investment reserves, and operational risk reserves. We acknowledge that reserves can be a necessary and appropriate tool for superannuation entities to use to meet their operational requirements.
- RG 97.98 Money held in reserves remains an asset of the superannuation entity and is therefore members’ money.
- RG 97.99 The definitions of administration fees and costs and investment fees and costs in cl 209A of Sch 10 specifically state that these fees and costs include costs met through the use of reserves.
- RG 97.100 This means that if you deduct money from reserves and use it to pay for costs that would meet the definition of administration fees and costs or investment fees and costs, you must include that amount in the relevant fees and costs disclosed in your PDS.

RG 97.101 We believe that if you do not disclose these types of expenditures from reserves as fees and costs, members will not be aware of the full costs of operating the superannuation entity. This may also mean that your PDS could be misleading.

Commented [LK20]: We disagree with the proposal to include amounts paid from reserves in fees and costs disclosure and suggest this section be removed.

2.5 Calculating costs for superannuation products

- RG 97.102 The cost components included in administration fees and costs and investment fees and costs (including indirect costs, see RG 97.280–RG 97.290) disclosed in a PDS for superannuation products or investment options are generally determined based on the costs incurred in the previous financial year.
- RG 97.103 Exceptions apply if the product or investment option was not previously offered for a full financial year or if the investment option was not offered at all during the previous financial year.
- RG 97.104 Fees charged by you to members directly or otherwise to the superannuation entity as part of administration fees and costs or investment fees and costs are always disclosed based on what currently applies.

Table 3: Calculating costs for superannuation products

If the product or option was:	Issuers must base costs on:	Reference
offered for the entire last financial year	the costs for that last financial year	see cl 104(2A)(a) of Sch 10
offered from at least 11 months before the end of the last financial year but for less than a full financial year	the costs for that period, adjusted to reflect a 12-month period	see cl 104(2A)(b) of Sch 10
not offered from at least 11 months before the end of the last financial year and not first offered in the current financial year	their reasonable estimate of the costs for the 12-month period of the current financial year	see cl 104(2A)(c) of Sch 10
first offered in the current financial year	their reasonable estimate of the costs for that part of the current financial year when the product or option was offered, adjusted to reflect a 12-month period	see cl 104(2A)(d) of Sch 10
RG 97.105	We recognise that to calculate costs (under cls 104(2A)(a) and 104(2A)(b) of Sch 10), an estimate may be required if information about costs incurred towards the end of the last financial year is not available.	
RG 97.106	Clauses 104(2A)(c) and 104(2A)(d) of Sch 10 both require you to make a reasonable estimate of the costs for the current financial year.	

RG 97.107 Where you use an estimate, you should specify this in the 'Fees and costs details'. For more information on making reasonable estimates, see RG 97.396–RG 97.406.

2.6 Disclosure of fees and costs for insurance

RG 97.108 You must disclose the fees and costs relating to insurance coverage in the insurance section of the PDS: see cls 201 and 209(ca) of Sch 10. The disclosure should include information about:

- (a) insurance premiums and how they are calculated, including factors that affect the premiums (e.g. an adviser commission) and how these factors affect the member, the amount of the premiums and whether the member will receive a rebate;
- (b) the imposition of any loading factors, such as occupational-based loading or any additional amount charged because the member chooses to pay their premiums monthly rather than as an annual upfront payment;
- (c) any policy or administration fee you charge in addition to the amounts to cover the premium payable to the insurer; and
- (d) whether the superannuation entity or the member will meet any costs of stamp duty and how stamp duty is calculated if the member is liable.

RG 97.109 To allow members to more easily compare insurance premiums offered across different superannuation products, and to ensure that your PDS is worded and presented in a clear, concise and effective manner, the information should:

- (a) be presented in a table; and
- (b) relate to the ages of members.

RG 97.110 For shorter PDSs, Sch 10D requires that specific disclosures about insurance are included: see cls 10(2)(c)–(d), 10(3)(b) and 10(4)(b) of Sch 10D.

Section 3 Disclosing fees and costs in periodic statements for superannuation products

Key points

This section provides guidance on the requirements for periodic statements for superannuation products.

In relation to disclosing fees and costs, a periodic statement must contain:

- a transaction list;
- the amount of 'Fees deducted directly from your account';
- the approximate amount of 'Fees and costs deducted from your investment';
- the total of all fees and costs disclosed in the periodic statement (titled 'Total fees and costs you paid'); and
- 'Fees and costs details'.

Periodic statements provide each member with information about their account for the relevant reporting period. Periodic statements are generally provided annually and after the member ceases to hold the superannuation product.

This section also provides guidance on how the periodic statement requirements apply to defined benefit members: see RG 97.139–RG 97.141.

3.1 Requirement to provide periodic statements

- RG 97.111 You must give members who acquire superannuation products as a retail client a periodic statement for:
- (a) a period of no more than 12 months (reporting period) during which the member holds the product (see s1017D(2)). You must give a periodic statement as soon as practicable after the end of the reporting period and, in any event, within six months after the end of the reporting period to which it relates (see s1017D(3)); and
 - (b) the start of a reporting period until the time of exit, if a member ceases to hold the superannuation product during the reporting period. You must give a periodic statement as soon as you become aware that the member has ceased to hold the product, in particular, you must make reasonable efforts to give the periodic statement within one month after becoming aware that the former member has ceased to hold the product (see s1017D(3A), as inserted by Pt 12 of Sch 10A to the Corporations Regulations).
- RG 97.112 Most members will be considered to be a retail client when acquiring superannuation products: see s761G(6).
- ~~RG 97.113~~ The fees and costs disclosed in a periodic statement are to be determined over the latest reporting period: see cl 104B of Sch 10.

~~RG 97.113~~

3.2 Content requirements for periodic statements

- RG 97.114 A periodic statement must give the member the information that you reasonably believe the member needs to understand their investment: see s1017D(4).
- RG 97.115 Detailed content requirements for fees and costs disclosure in periodic statements for superannuation products are set out in s1017D(5) and s1017DA, and in Pt 7.9 to the Corporations Regulations, including Subdivs 4C.3 and 5.2, and Divs 5AA and 8.
- RG 97.116 In providing details of the amounts of the member's withdrawal benefit or other significant benefits (including disability benefits), a periodic statement must also include details of any deduction for fees, charges or expenses that has or might be made: see regs 7.9.19(g) and 7.9.20(1)(kb).
- RG 97.117 In relation to disclosing fees and costs, a periodic statement must contain:
- (a) a transaction list;
 - (b) the amount of 'Fees deducted directly from your account';
 - (c) the approximate amount of 'Fees and costs deducted from your investment';
 - (d) the total of all fees and costs disclosed in the periodic statement ('Total fees and costs you paid'); and
 - (e) 'Fees and costs details'.

Transaction list

Requirements for a transaction list

- RG 97.118 Section 1017D(5)(c) requires you to include a list of transactions relating to the superannuation product during the reporting period in a periodic statement. The transaction list must include a brief description of each transaction in relation to the superannuation product during the reporting period: see reg 7.9.60B(2).
- RG 97.119 You only need to itemise those fees and costs shown in the 'Fees and costs summary' in the transaction list: see reg 7.9.60B(6). You must describe those fees and costs using the terms used in the 'Fees and costs summary': see reg 7.9.60B(7) and Figure 2. If a fee or cost is not charged, you do not need to include it in the transaction list.
- RG 97.120 You should only include fees and costs in the transaction list that are deducted directly from the member's account. The impact of other fees and costs is shown in the 'Fees and costs deducted from your investment': see RG 97.132–RG 97.134.

- RG 97.121 You may describe transactions of the same kind (other than contributions) in a single item in the transaction list if it is practicable to do so and the items are described together on a consistent basis in the periodic statement: see reg 7.9.60B(5). You must assess whether a particular grouping of transactions will achieve clear disclosure of the relevant transaction.
- RG 97.122 If you decide to group fees in a single line item, this should not obscure the true frequency or amount of a recurring fee. Using a subtotal would help meet this objective—for example, a weekly administration fee of \$1 for 52 weeks (total \$52). In some cases, it may not be appropriate to use an annual grouping. If there is a fee increase during the reporting period, this should be set out clearly—for example, a weekly administration fee of \$1 for 26 weeks until 31 December 2019 (total \$26) and a weekly administration fee of \$1.50 for 26 weeks until 30 June 2020 (total \$39).
- RG 97.123 You must include the amounts paid by the member of the superannuation product during the period: see regs 7.9.75(1)(a) and 7.9.20(1)(d) (we note that reg 7.9.75(1)(b) has been omitted by [\[CO 14/1252\]](#)). An amount is considered to be paid by a member in respect of a superannuation product if:
- (a) the member has paid an amount in respect of the product;
 - (b) an amount has been deducted from a payment made by or to the member;
 - (c) the member has paid an amount or an amount has been deducted or debited as a fee, expense or charge in relation to the superannuation product; or
 - (d) an amount is held on the member's behalf under the financial product (see reg 7.9.75(2)).

Impact of tax on disclosed transactions

- RG 97.124 You must include, if applicable, goods and services tax (GST), stamp duty and income tax (after deductions have been taken into account) in transaction amounts: see reg 7.9.60B(3). We consider that GST should be included less reduced input tax credits.
- RG 97.125 We consider that if GST or stamp duty is not disclosed as part of the transaction amount, they should be reported as separate transactions.
- RG 97.126 If the payment of a fee or cost results in the superannuation entity becoming entitled to a tax deduction and you pass that tax deduction on to a member, the periodic statement must show two transactions:
- (a) one for the full amount charged; and
 - (b) one for the tax benefit that was passed on to the member.

RG 97.127 Where a transaction creates an income tax liability or a tax deduction is given to the member, you should show this transaction separately and include an explanation of the basis for the transaction and its relationship with other transactions. An example is a superannuation contribution by a member. The receipt of the contribution does not, of itself, involve income tax at the time it is received. Reduction of the member's account balance to reflect income tax you pay for the contribution is another transaction that may occur after the superannuation entity has received its income tax assessment. You should explain in the periodic statement how the income tax transaction amount is calculated. In this case, there are two transactions that you must report separately:

- (a) the receipt of the contribution; and
- (b) any reduction of benefits for the superannuation entity's income tax.

Disclosure of amounts deducted from accounts and investments

RG 97.128 You must include the details set out in Pt 3 of Sch 10 in the periodic statement: see regs 7.9.16O and 7.9.75(1)(e). These requirements are set out at RG 97.129–RG 97.138.

RG 97.129 Clause 301(1) of Sch 10 requires periodic statements for MySuper products or investment options to include certain text (with the appropriate amounts in dollars) after the transaction list under the heading 'Fees and costs summary'. Figure 6 shows the text required by cl 301(1) of Sch 10.

Figure 6: Text required after the transaction list

Fees deducted directly from your account

This amount has been deducted directly from your account (reflected in the transactions listed on this statement).

Fees and costs deducted from your investment

This approximate amount has been deducted from your investment and covers amounts that have reduced the return on your investment and that are not reflected as transactions listed on this statement or in the fees and costs details.

RG 97.130 You must show each of these amounts as a single total amount in dollars: see cl 301(3) of Sch 10.

RG 97.131 The amount to be shown as the 'Fees deducted directly from your account' is the total amount of fees deducted on the transaction list in the periodic statement: see cl 301(2)(a) of Sch 10.

RG 97.132 The amount shown as the 'Fees and costs deducted from your investment' is an apportioned amount: see cl 301(2)(b) of Sch 10. This is the amount of fees and costs for the product or option that are attributed to the particular member, and that are not:

- (a) excluded transactional or operational costs (see RG 97.341–RG 97.344);
- (b) reflected in the transaction list (see RG 97.118–RG 97.127); and
- (c) reflected in the ‘Fees and costs details’ in the periodic statement (see RG 97.137–RG 97.138).

RG 97.133 Where performance fees apply, the amounts reported in the periodic statement should be calculated with reference to the relevant period, rather than the 5-year average disclosed in the PDS.

RG 97.134 For a period ending on or before 29 June 2020, the amount disclosed in ‘Fees and costs deducted from your investment’ may be calculated excluding the buy–sell spread charged to a member if you include the following statement:

The total fees you paid do not include the buy–sell spread fee, because it is not reasonably practicable for us to include the buy–sell spread fee that you incurred during the period.

You must include this statement either immediately after ‘Total fees and costs you paid’ in the periodic statement (see RG 97.135–RG 97.136) or, if it is not reasonably practicable to include it in that position, in a separate document that accompanies the periodic statement: see cl 301(3A) of Sch 10.

RG 97.135 If the superannuation product is subject to tax (for any reporting period ending after 29 June 2020) and a reduced fee or cost is shown in the statement because of the benefit of an income tax deduction, you must include the part of the cost that reduced the disclosed fee or cost in the ‘Fees and costs deducted from your investment’: see cl 301(5) of Sch 10.

Disclosure of total fees and costs paid

RG 97.136 Clause 302(1) of Sch 10 requires a periodic statement to include certain text (with the appropriate amount in dollars) either after ‘Fees and costs deducted from your investment’ or in a summary part of the periodic statement. Figure 7 shows the text required by cl 302(1) of Sch 10.

Figure 7: Text required for ‘Total fees and costs you paid’

TOTAL FEES AND COSTS YOU PAID

This approximate amount includes all the fees and costs which affected your investment during the period.

RG 97.137 The amount to be inserted is the total of all fees and costs disclosed in the periodic statement, including any fees detailed in the ‘Fees and costs details’ in cl 303(1)(a) of Sch 10: see cl 302(2) of Sch 10.

‘Fees and costs details’

~~RG 97.137~~ **RG 97.138** Clause 303(1) of Sch 10 requires you to include the following information in a periodic statement for superannuation products under the heading 'Fees and costs details' if that information has not been included in another part of the periodic statement:

- (a) details of any activity fees, advice fees and insurance fees that were incurred by the member during the period; and
- (b) if the superannuation product is subject to tax, whether the benefit of any tax deduction has been passed on to the member in the form of a reduced fee or cost.

~~RG 97.138~~ **RG 97.139** If details of activity fees, advice fees and insurance fees are shown in 'Fees and costs details', these must include the relevant amounts incurred. This ensures that these fees are included in 'Total fees and costs you paid', which makes sure that all relevant fees and costs are captured in the periodic statement.

3.3 Periodic statements for defined benefit members

~~RG 97.139~~ **RG 97.140** We recognise that some common types of transactions may not be relevant to defined benefit members, given that often the obligation to make contributions and pay fees and costs may be the responsibility of those members' employers. However, we expect that in periodic statements for defined benefit members you will, at a minimum, report transactions for a particular defined benefit member that are in receipt of:

- (a) contributions; and
- (b) benefits rolled over or transferred into the superannuation entity (see reg 7.9.20(1)(a) and (b)).

~~RG 97.140~~ **RG 97.141** We do not expect you to report in periodic statements for defined benefit members:

- (a) any bulk and generalised employer contributions that are made to maintain the general solvency of the superannuation entity and that do not specifically relate to individual members; and
- (b) any transactions that are made at the superannuation entity level that do not relate to a particular defined benefit member.

~~RG 97.141~~ **RG 97.142** If there are no fees and costs that affect the defined benefit member's entitlement, the 'Fees deducted directly from your account', 'Fees and costs deducted from your investment' and the 'Total fees and costs you paid' in the periodic statement, required by cls 301(1) and 302(1) of Sch 10, can be shown as zero.

Section 4 Disclosing fees and costs in PDSs for managed investment products

Key points

This section provides guidance on the fees and costs disclosure requirements for full PDSs (see RG 97.147–RG 97.194) and shorter PDSs (see RG 97.195–RG 97.212) for managed investment products.

Although there are some similarities, the fees and costs disclosure requirements for managed investment products are different to the requirements for superannuation products. For example, managed investment products charge management fees and costs instead of investment fees and costs and administration fees and costs.

You will need to prepare the following key fees and costs information for any managed investment product requiring a PDS:

- a 'Consumer advisory warning';
- a 'Fees and costs summary';
- an example showing the effect of the fees and costs;
- 'Cost of product information'; and
- 'Fees and costs details'.

This section also provides guidance on calculating costs for managed investment products (see RG 97.213–RG 97.218).

4.1 Overview

~~RG 97.142~~ **RG 97.143** This section details the requirements for fees and costs disclosure in

PDSs for managed investment products. The requirements are different, depending on whether you are using a full PDS or a shorter PDS. You must to prepare the following key fees and costs information for any managed investment product requiring a PDS:

- (a) a 'Consumer advisory warning';
- (b) a 'Fees and costs summary';
- (c) an example showing the effect of the fees and costs;
- (d) 'Cost of product information'; and
- (e) 'Fees and costs details'.

~~RG 97.143~~ **RG 97.144** In this section, we detail the requirements relating to full PDSs at RG 97.147–RG 97.194 first, as the requirements for shorter PDSs are derived directly from those requirements.

~~RG 97.144~~ **RG 97.145** Most issuers of managed investment products must prepare full PDSs. Registered schemes that are simple managed investment schemes must generally use the shorter PDS regime: see RG 97.195–RG 97.212.

~~RG 97.145~~ **RG 97.146** Australian passport funds cannot be simple managed investment schemes: see reg 1.0.02 (definition of simple managed investment scheme).

~~RG 97.146~~ **RG 97.147** You should also refer to Sections G and H for further guidance on particular fees and costs concepts and how to calculate and present fees and costs. In the guidance below, we have inserted cross-references to relevant parts of those sections.

4.2 Disclosure requirements for full PDSs

~~RG 97.147~~ **RG 97.148** In preparing a full PDS for a managed investment product, you must include a single 'Fees section' comprising:

- (a) a 'Consumer advisory warning';
- (b) a 'Fees and costs summary';
- (c) an 'Example of annual fees and costs';
- (d) 'Cost of product information'; and
- (e) 'Fees and costs details' (see reg 7.9.16N).

Consumer advisory warning

~~RG 97.148~~ **RG 97.149** You must include a 'Consumer advisory warning' in a full PDS for managed investment products: see reg 7.9.16N(2)(c). The only circumstance where you are not required to include the 'Consumer advisory warning' is where the structure of the managed investment product means there is no fund from which fees and costs are paid. This reflects that, for these types of products, including a 'Consumer advisory warning' would confuse consumers.

~~RG 97.149~~ **RG 97.150** You must include the 'Consumer advisory warning' at the beginning of the 'Fees section' of the PDS: see cl 222 of Sch 10.

~~RG 97.150~~ **RG 97.151** The content of the 'Consumer advisory warning' is set out in cl 221(2) of Sch 10. You must not make any changes or additions to the 'Consumer advisory warning', other than to change the reference from 'account balance' to 'investment balance', if appropriate: see cl 221(3) of Sch 10.

~~RG 97.151~~ **RG 97.152** Figure 8 shows the text of the 'Consumer advisory warning'.

Figure 8: Consumer advisory warning for managed investment products

DID YOU KNOW?

Small differences in both investment performance and fees and costs can have a substantial impact on your long term returns.

For example, total annual fees and costs of 2% of your account balance rather than 1% could reduce your final return by up to 20% over a 30 year period (for example reduce it from \$100 000 to \$80 000).

You should consider whether features such as superior investment performance or the provision of better member services justify higher fees and costs.

You may be able to negotiate to pay lower fees. Ask the fund or your financial adviser.

TO FIND OUT MORE

If you would like to find out more, or see the impact of the fees based on your own circumstances, the **Australian Securities and Investments Commission (ASIC)** website (www.moneysmart.gov.au) has a managed funds fee calculator to help you check out different fee options.

Fees and costs summary

RG 97.152 **RG 97.153** You must include a 'Fees and costs summary' in a full PDS for a managed investment product: see reg 7.9.16N(2)(a).

RG 97.153 **RG 97.154** There are two types of 'Fees and costs summary', depending on whether the relevant managed investment product has a single fee structure or a multiple fee structure.

RG 97.154 **RG 97.155** The content of the two types of 'Fees and costs summary' is set out in cls 202 and 202A of Sch 10. Each type of 'Fees and costs summary' is a table separated into 'Ongoing annual fees and costs' and 'Member activity related fees and costs'. The items in the 'Fees and costs summary' show the significant fees and costs that will be charged to members.

RG 97.155 **RG 97.156** Figure 9 shows the 'Fees and costs summary' that you must complete for a managed investment product with a single fee structure.

RG 97.156 **RG 97.157** The 'Fees and costs summary' for a managed investment product with a multiple fee structure is shown in Example 1 in Appendix 1. For more information on how to fill in the 'Fees and costs summary', see RG 97.168 and RG 97.366–RG 97.376.

RG 97.157 **RG 97.158** For more information on the line items in the 'Fees and costs summary', see RG 97.159–RG 97.167.

Figure 9: Fees and costs summary for a managed investment product with a single fee structure**Fees and other costs**

This section shows fees and other costs that you may be charged. These fees and costs may be deducted from your money, from the returns on your investment or from the assets of the managed investment scheme as a whole.

Taxes are set out in another part of this document.

You should read all the information about fees and costs because it is important to understand their impact on your investment.

[If relevant] Fees and costs for particular investment options are set out on page *[insert page number]*.

Fees and Costs Summary

<i>[Name of collective investment product]</i>		
Type of fee or cost	Amount	How and when paid
Ongoing annual fees and costs		
<i>Management fees and costs</i> ¹ The fees and costs for managing your investment ²		
<i>Transaction costs (net)</i> The costs incurred by the product when buying or selling assets		
Member activity related fees and costs (fees for services or when your money moves in or out of the product)³		
<i>Establishment fee</i> The fee to open your investment		
<i>Contribution fee</i> ² The fee on each amount contributed to your investment		
<i>Buy-sell spread</i> An amount deducted from your investment representing costs incurred in transactions by the product		
<i>Withdrawal fee</i> ² The fee on each amount you take out of your investment		
<i>Exit fee</i> ² The fee to close your investment		
<i>Switching fee</i> The fee for changing investment options		

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".]*
2. This fee includes an amount payable to an adviser. (See Division 4, "Adviser remuneration" under the heading "Fees and Costs Details".)
3. *[If there are other service fees, such as advice fees or special request fees, include a cross reference to the "Fees and Costs Details".]*

Explanation of ongoing annual fees and costs for managed investment products

~~RG 97.158~~ **RG 97.159** As shown in Figure 9, the 'Ongoing annual fees and costs' comprise:

- (a) management fees and costs; and
- (b) transaction costs (net).

Management fees and costs

~~RG 97.159~~ **RG 97.160** Management fees and costs are defined in cl 102 of Sch 10.

Management fees and costs include:

- (a) amounts payable for administering the managed investment scheme;
- (b) performance fees (see RG 97.360–RG 97.364);
- (c) amounts paid for investing in the assets of the managed investment scheme; and
- (d) other expenses and reimbursements in relation to the managed investment scheme.

~~RG 97.160~~ **RG 97.161** Management fees and costs also include indirect costs: see cl 102(1)(i) of Sch 10. For information about indirect costs, see RG 97.280–RG 97.290.

~~RG 97.161~~ **RG 97.162** A number of items are excluded from the definition of management fees and costs: see cl 102(2) of Sch 10. These are:

- (a) costs that are otherwise charged as another type of fee, such as a contribution fee;
- (b) transaction costs other than those costs that relate to derivative financial products under cl 101A(3) of Sch 10. For more information on transaction costs, see RG 97.333–RG 97.340;
- (c) excluded transactional and operational costs. For more information on excluded transactional and operational costs, see RG 97.341–RG 97.344; and
- (d) costs (related to a specific asset or activity to produce income) that a member would incur if they invested directly in the asset. However, costs relating to a security or interest in an interposed vehicle or derivative financial product (within the meaning of cl 101A(3A) of Sch 10) must not be excluded from management fees and costs, even if the investor would incur these costs if they invested directly in the asset. This means, for example, that you cannot exclude the costs incurred in relation to an investment in an underlying managed investment scheme that would be considered to be an interposed vehicle (see RG 97.291–0) from management fees and costs, even though the investor would incur those costs if they invested directly in the relevant managed investment scheme.

~~RG 97.162~~ **RG 97.163** Examples of the types of things that would be included in management fees and costs are:

(a) fees charged for administering, operating and managing the managed investment scheme (including start-up and initial one-off fees or costs);

And, to the extent they are additional costs to unitholders:

~~(b)~~ **(c)** ~~custodian and~~ custody fees;

~~(c)~~ **(d)** amounts payable for investing the assets of the managed investment scheme, including fees paid to asset consultants and valuation costs;

~~(d)~~ **(e)** audit costs and regulatory levies;

~~(e)~~ **(f)** overheads, including ~~accommodation~~, information technology costs and internal staff costs in member services teams (including costs associated with member communication) and investment teams;

~~(f)~~ **(g)** costs of professional indemnity, directors' and officers', and other insurance; and

~~(g)~~ **(h)** product development costs; and

~~(h)~~ **(i)** investment fees and costs (including performance fees) and management fees and costs charged by an interposed vehicle.

Transaction costs (net)

~~RG 97.163~~ **RG 97.164** Transaction costs are defined in cl 103 of Sch 10. For further information on transaction costs, see RG 97.333–RG 97.340.

~~RG 97.164~~ **RG 97.165** In the 'Fees and costs summary', transaction costs are shown net of amounts recovered by the buy–sell spread charged by the responsible entity: see cl 204A of Sch 10. Transaction costs are shown in this way so that members can better understand the costs that may affect their investment, as some transaction costs will be paid for by members who are charged the buy–sell spread when they enter or exit the managed investment scheme.

~~RG 97.165~~ **RG 97.166** It is important that you do not incorrectly categorise a cost that should be included in management fees and costs as a transaction cost. Incorrect categorisation of costs could make your PDS misleading.

Explanation of 'Member activity related fees and costs' for managed investment products

~~RG 97.166~~ **RG 97.167** These fees are defined in cl 101A of Sch 10. They are also described in the standard text in the 'Type of fee or cost' column in the 'Fees and costs summary'. See Figure 9 and Example 1 in Appendix 1.

~~RG 97.167~~ **RG 97.168** If there are other service fees, such as advice fees or special request fees, the line item for 'Member activity related fees and costs' must include a cross-reference to 'Fees and costs details'.

How to fill in the 'Fees and costs summary'

~~RG 97.168~~ **RG 97.169** You must ensure that the fee information for each investment option offered by the managed investment scheme is either set out in the 'Fees and costs summary' or that the 'Fees and costs summary' contains a cross-reference to another section of the PDS that contains the relevant information: see cl 205 of Sch 10.

~~RG 97.169~~ **RG 97.170** For further information on how to fill in the 'Fees and costs summary', see RG 97.366–RG 97.376.

'Example of annual fees and costs'

Content of the 'Example of annual fees and costs'

~~RG 97.170~~ **RG 97.171** You must include an 'Example of annual fees and costs' in the 'Fees section' of a full PDS for a managed investment product, following the 'Fees and costs summary': see reg 7.9.16N(2)(b) and cl 210(c) of Sch 10.

~~RG 97.171~~ **RG 97.172** Issuers have some flexibility as to the form of the 'Example of annual fees and costs' used: see RG 97.174–RG 97.175.

~~RG 97.172~~ **RG 97.173** Where the product and its fees and costs arrangements can be disclosed using the format set out in cl 212 of Sch 10, you must use that format without any alterations.

~~RG 97.173~~ **RG 97.174** Figure 10 shows the 'Example of annual fees and costs' that you must complete if your product can be disclosed using the format set out in cl 212 of Sch 10.

Figure 10: Example of annual fees and costs for a balanced investment option or other investment option

Example of annual fees and costs for a balanced investment option or other investment option

This table gives an example of how the ongoing annual fees and costs in the balanced investment option for this product can affect your investment over a 1 year period. You should use this table to compare this product with other products offered by managed investment schemes.

EXAMPLE —[insert name of balanced investment option or other investment option required by subclause 220(2)]		Balance of \$50 000 with a contribution of \$5 000 during year
Contribution Fees	[]	For every additional \$5 000 you put in, you will be charged between \$0 and \$[].

PLUS Management Fees and Costs	[]	And , for every \$50 000 you have in the <i>[insert name of balanced investment option or other investment option required by subclause 220(2)]</i> you will be charged \$[] each year.
PLUS Transaction Costs (net)	[]	And , you will be charged \$[] in transaction costs (net).
EQUALS Cost of <i>[insert name of balanced investment option or other investment option required by subclause 220(2)]</i>		<p>If you had an investment of \$50 000 at the beginning of the year and you put in an additional \$5 000 during that year, you would be charged fees of from:</p> <p style="text-align: center;">\$[] to \$[]*</p> <p>What it costs you will depend on the investment option you choose and the fees you negotiate.</p>

* Additional fees may apply:

Establishment fee—\$[]

And, if you leave the managed investment scheme early, you may also be charged **exit fees** of between 0 and []% of your total account balance (between \$0 and \$[] for every \$50 000 you withdraw).

[RG 97-174](#)[RG 97-175](#) Where the format in cl 212 of Sch 10 does not suit the product, you can use an alternative format that provides a clear example of the application of the fees and costs for the product. You must make the minimum adaptations necessary to the required format and content of the 'Example of annual fees and costs'. You must also ensure that the alternative format and content is not misleading.

[RG 97-175](#)[RG 97-176](#) An example of where you may need to adapt the 'Example of annual fees and costs' is an agricultural scheme where, during a typical ongoing year, low fees apply but other fees (such as harvest fees) may apply at the end of the managed investment scheme. In these circumstances, we expect the adapted 'Example of annual fees and costs' to clearly refer to the fact that future fees may apply in addition to the low fees that apply for a typical ongoing year. Another example would be where start-up or initial one-off fees apply. As these are not typical ongoing fees, we would expect the adapted 'Example of annual fees and costs' to explain these start-up and initial one-off fees to avoid the possibility that consumers may misunderstand the fee structure of the product.

How to fill in the 'Example of annual fees and costs'

[RG 97-176](#)[RG 97-177](#) You should base the 'Example of annual fees and costs' on your balanced investment option. If you do not offer a balanced investment option, you should base the example on the default investment option. If you do not offer a default investment option, base the example on the investment option under which most assets of the managed investment scheme are invested: see cl 220(2) of Sch 10.

[RG 97-177](#)[RG 97-178](#) You should base the fees and costs in the 'Example of annual fees and costs' on typical ongoing fees that apply to the investment option. The example should not be based on 'honeymoon' rates and must be consistent

with the statement for an existing member having the stated balance and level of contribution each year: see cl 214 of Sch 10.

~~RG 97.178~~ **RG 97.179** If the minimum balance required to invest in the managed investment scheme is greater than \$50,000, the 'Example of annual fees and costs' must be based on an amount that is the lowest multiple of \$50,000 that exceeds the minimum balance: see cl 215 of Sch 10.

~~RG 97.179~~ **RG 97.180** You must also show the effect of contribution fees, exit fees and withdrawal fees: see cls 216–217 and 219 of Sch 10. If the product is paid for by a single lump sum amount or does not allow additional contributions, then the references to contributions or contribution fees can be removed from the 'Example of annual fees and costs': see cl 217(2) of Sch 10.

~~RG 97.180~~ **RG 97.181** If there is a range in the amount of management fees and costs or transaction costs (net), that may be charged, the example must use the highest fees and costs in the range: see cls 218A(2) and (7) of Sch 10. Also, the calculation must not take into account contributions that may be made during the year: see notes to cls 218A(1) and (6) of Sch 10.

~~RG 97.181~~ **RG 97.182** You must show any dollar-based management fees and costs that are deducted directly from the member's account separately in the management fees and costs line item: see cl 218A(5) of Sch 10.

'Cost of product information'

~~RG 97.182~~ **RG 97.183** You must also include 'Cost of product information' for each investment option offered. As the 'Example of annual fees and costs' is only provided for one investment option (**see Error! Reference source not found.**), the 'Cost of product information' is designed to give consumers an abbreviated example of how fees and costs can affect their investment if they choose to invest in one of the other investment options that are offered in your PDS. This information must be included in the 'Fees section' of a full PDS, following the 'Example of annual fees and costs': see cl 220B(1)(a) of Sch 10.

~~RG 97.183~~ **RG 97.184** You must calculate the 'Cost of product information' using the same method as for calculating the 'Example of annual fees and costs' in Div 6 of Sch 10: see cl 220B(1)(d) of Sch 10.

~~RG 97.184~~ **RG 97.185** You do not need to provide 'Cost of product information' where a PDS relates only to one investment option and an 'Example of annual fees and costs' has been included in relation to that investment option: see cl 220B(2) of Sch 10.

~~RG 97.185~~ **RG 97.186** Figure 11 shows the text and heading that you must include immediately before the presentation of the first 'Cost of product information'.

Figure 11: Preamble for the example of 'Cost of product information'**Cost of product information for 1 year**

The cost of product gives a summary calculation about how ongoing annual fees and costs can affect your investment over a 1 year period for all investment options. It is calculated in the manner shown in the example of annual fees and costs.

The cost of product assumes a balance of \$50 000 at the beginning of the year with a contribution of \$5 000 during the year. (Additional fees such as an establishment fee, or an exit fee may apply, refer to the fees and costs summary for the relevant option.)

You should use this figure to help compare this product with other products offered by managed investment schemes.

~~RG 97.186~~ **RG 97.187** Figure 12 shows the form you must use when setting out the 'Cost of product information'.

Figure 12: Form for 'Cost of product information' for managed investment products

[Insert name of option]	Cost of product
	\$[]

'Fees and costs details'

~~RG 97.187~~ **RG 97.188** You must include 'Fees and costs details' in a full PDS for a managed investment product: see reg 7.9.16N(2)(a).

~~RG 97.188~~ **RG 97.189** You must include all the information listed in cl 209 of Sch 10, to the extent that information is relevant to the managed investment product. This includes information on:

- performance fees (for more information on performance fees, see RG 97.360–RG 97.364); and
- transaction costs (for more information on transaction costs, see RG 97.333–RG 97.340).

~~RG 97.189~~ **RG 97.190** If the managed investment product is subject to tax, you must include a cross-reference to the tax section of the PDS: see cl 209(c) of Sch 10.

~~RG 97.190~~ **RG 97.191** If the managed investment product is subject to tax, you must also state whether the benefit of any tax deduction is passed on to the member in the form of a reduced fee or cost: see cl 209(d) of Sch 10.

~~RG 97.191~~ **RG 97.192** You must also include relevant information about your right to change fees and the period of advance notice required to do so: see cl 209(k) of Sch 10.

~~RG 97.192~~[RG 97.193](#) If you have instituted a flexible charging structure, the 'Fees and costs details' must include, for each applicable fee:

- (a) any maximum, and when it would apply; and
- (b) any waiver, and when it would apply (see cl 209(l) of Sch 10). We consider that a waiver relates to any amount by which the fees and costs disclosed in the 'Fees and costs summary' may be reduced (including through a rebate).

~~RG 97.193~~[RG 97.194](#) We consider the requirement in RG 97.192 applies in relation to fees that are shown as part of a line item in the 'Fees and costs summary' or are mentioned in the footnotes.

~~RG 97.194~~[RG 97.195](#) You should also consider what other information is appropriate to include in the 'Fees and costs details'. You should ensure that any other information is shown in a clear, concise and effective manner, as required by s1013C(3). When providing any other information, we encourage you to consider how you can disclose this information in a way that best meets the needs of the types of consumers who invest in your product.

4.3 Disclosure requirements for shorter PDSs

~~RG 97.195~~[RG 97.196](#) As set out at RG 97.144, registered schemes that are simple managed investment schemes must prepare a shorter PDS in most circumstances: see reg 7.9.11S. The shorter PDS regime for simple managed investment schemes is facilitated by regulations that modify the Corporations Act: see Pt 5C of Sch 10A.

~~RG 97.196~~[RG 97.197](#) As noted at RG 97.145, Australian passport funds cannot be simple managed investment schemes: see reg 1.0.02.

~~RG 97.197~~[RG 97.198](#) Simple managed investment schemes are registered schemes that have predominantly very liquid assets. They are required to have at least 80% of their assets in a bank account where funds can be withdrawn within three months or in arrangements where the responsible entity can reasonably expect to realise the investment at market value within 10 days: see reg 1.0.02.

~~RG 97.198~~[RG 97.199](#) See [\[CO 12/749\]](#) for details of other managed investment schemes (such as multi-funds and hedge funds) that may be unable to use the shorter PDS regime.

~~RG 97.199~~[RG 97.200](#) A shorter PDS must contain:

- (a) a 'Consumer advisory warning';
- (b) a 'Fees and costs summary';
- (c) a 'Worked example'; and

- (d) other fees and costs information (which may be incorporated by reference).

~~RG 97.200~~ **RG 97.201** A shorter PDS must be in the form set out in Sch 10E to the Corporations Regulations: see reg 7.9.11W(2). Schedule 10E sets length requirements for the shorter PDS (e.g. eight pages if it is printed on A4 paper), requires specific sections to be included and sets the content for each section.

~~RG 97.201~~ **RG 97.202** Clause 8 of Sch 10E sets out the requirements for the 'Fees and costs section' of the shorter PDS. Most of the requirements are the same as those in Sch 10.

~~RG 97.202~~ **RG 97.203** A shorter PDS must:

- (a) refer to our calculator and any calculator you provide on your website. It must also state that these calculators can be used to calculate the effect of fees and costs on account balances (see cl 8(8) of Sch 10E); and
- (b) set out a statement about your right to change the amount of fees without the member's consent, any indexation arrangements that apply and the notice period required (see cl 8(5) of Sch 10E).

~~RG 97.203~~ **RG 97.204** You must include detailed information about investment options you offer in section 5 ('How we invest your money') of a shorter PDS. This information includes a list of asset classes and a description of the investment return objective. At a minimum, you must provide this information for the simple managed investment scheme's balanced investment option. If you do not offer a balanced investment option:

- (a) you must provide detailed information for the investment option under which the simple managed investment scheme has the most funds invested; or
- (b) and the simple managed investment scheme has never previously been offered to investors and does not have a balanced investment option, or an investment option under which the simple managed investment scheme has the most funds invested, you must provide detailed information for the investment option that you reasonably believe has the least volatile underlying assets (see cls 7(3)–(5) of Sch 10E).

'Consumer advisory warning'

~~RG 97.204~~ **RG 97.205** You must include a 'Consumer advisory warning' at the start of the 'Fees and costs section' of the shorter PDS in the same form as required in Sch 10: see cl 8(2) of Sch 10E, RG 97.148–RG 97.151 and Figure 8.

'Fees and costs summary'

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~~RG 97.205~~ **RG 97.206** You must include a 'Fees and costs summary' in the body of a shorter PDS for each investment option presented in detail in section 5 of a shorter PDS: see cls 8(1) and (3) of Sch 10E.

~~RG 97.206~~ **RG 97.207** The layout of the 'Fees and costs summary' is set out in cl 8(3) of Sch 10E. You must state that the information in the 'Fees and costs summary' can be used to compare costs between different simple managed investment schemes and state concisely, and in general terms, that fees and costs can be paid directly from the person's account or deducted from investment returns: see cl 8(6) of Sch 10E.

~~RG 97.207~~ **RG 97.208** You should complete the 'Fees and costs summary' in the same way as for a full PDS, as described in RG 97.152–RG 97.168, apart for some minor differences that are detailed in cls 8(3)–(4) of Sch 10E.

'Worked example'

~~RG 97.208~~ **RG 97.209** You must include a 'Worked example' for a balanced investment option in the body of a shorter PDS. If there is no balanced investment option, the 'Worked example' must be given for the default investment option. If there is no default option or balanced investment option, the 'Worked example' must be for the option under which the simple managed investment scheme has the most funds invested: see cl 8(7) of Sch 10E.

~~RG 97.209~~ **RG 97.210** You should complete the 'Worked example' in the same way as the 'Example of annual fees and costs' for a full PDS: see RG 97.170–RG 97.181.

Other fees and costs information

~~RG 97.210~~ **RG 97.211** You must also provide the fees and costs information for each investment option offered (including for the option profiled in the body of the shorter PDS). This must be provided in accordance with the requirements in Sch 10: cl 8(10)(a) of Sch 10E. The fees and costs information that should be provided is the 'Fees and costs summary', the 'Fees and costs details' and the 'Cost of product information' but not the 'Example of annual fees and costs'.

~~RG 97.211~~ **RG 97.212** You can incorporate this other fees and costs information by reference: see cl 8(10)(a) of Sch 10E. For more information on the Sch 10 requirements for managed investment products, see RG 97.152–RG 97.194.

~~RG 97.212~~ **RG 97.213** You should not include any additional voluntary information in the 'Fees and costs summary' or in the 'Worked example' of the shorter PDS. Additional voluntary information can, however, be included elsewhere in the 'Fees and costs section' or incorporated by reference. You may provide more detailed information about fees and costs by incorporating it by reference: see cl 8(10)(b) of Sch 10E and reg 7.9.11X. When providing any voluntary information, we encourage you to consider how you can disclose

this information in a way that best meets the needs of the types of consumers who invest in your product.

4.4 Calculating costs in management fees and costs

[RG 97.213](#)[RG 97.214](#) Costs in management fees and costs for managed investment products, including indirect costs, are generally determined based on the costs incurred in the last financial year: for information on including indirect costs, see RG 97.280–RG 97.290.

[RG 97.214](#)[RG 97.215](#) Exceptions apply if the investment option was not previously offered for a full financial year or if the investment option was not offered at all during the previous financial year.

[RG 97.215](#)[RG 97.216](#) Fees charged by you to members directly or otherwise to the managed investment scheme that are part of management fees and costs are always disclosed based on what currently applies.

Table 4: Calculating costs in management fees and costs

If the product or option was:	Issuers must base costs on:	Reference
offered for the entire last financial year	the costs for that last financial year	see cl 104A(a) of Sch 10
offered from at least 11 months before the end of the last financial year but for less than a full financial year	the costs for that period, adjusted to reflect a 12-month period	see cl 104A(b) of Sch 10
not offered from at least 11 months before the end of the previous financial year and not first offered in the current financial year	their reasonable estimate of the costs for the 12-month period of the current financial year	see cl 104A(c) of Sch 10
first offered in the current financial year	their reasonable estimate of the costs for that part of the current financial year, adjusted to reflect a 12-month period	see cl 104A(d) of Sch 10

[RG 97.216](#)[RG 97.217](#) We recognise that to calculate costs (under cls 104A(a) and (b) of Sch 10), an estimate may be required if information about costs incurred towards the end of the last financial year is not available.

[RG 97.217](#)[RG 97.218](#) Clauses 104A(c) and (d) of Sch 10 both require you to make a reasonable estimate of the costs for the current financial year.

[RG 97.218](#)[RG 97.219](#) Where you use an estimate, you should specify this in the 'Fees and costs details'. For more information on making reasonable estimates, see RG 97.396–RG 97.406.

Section 5 Disclosing fees and costs in periodic statements for managed investment products

Key points

This section provides guidance on the requirements for periodic statements for managed investment products.

In relation to disclosing fees and costs, a periodic statement must contain:

- a transaction list;
- the amount of 'Fees deducted directly from your account';
- the approximate amount of 'Fees and costs deducted from your investment'; and
- the total of all fees and costs disclosed in the periodic statement (titled 'Total fees and costs you paid').

Periodic statements provide each member with information about their account for the relevant reporting period. Periodic statements are generally provided annually and after the member ceases to hold the managed investment product.

5.1 Requirement to provide periodic statements

~~RG 97.219~~ **RG 97.220** You must give members who acquire a managed investment product as a retail client a periodic statement for:

- (a) a period of no more than 12 months (reporting period) during which the member holds the product (see s1017D(2)). You must provide a periodic statement as soon as practicable after the end of the reporting period and, in any event, within six months after the end of the reporting period to which it relates (see s1017D(3)); and
- (b) the start of a reporting period until the time of exit, if the member ceases to hold the managed investment product during the reporting period. You must provide the statement as soon as practicable after you become aware that the member has ceased to hold the product, and, in any event:
 - (i) within six months after the end of the reporting period; or

- (ii) if you have published a notice on your website stating that you will provide the relevant periodic statement within a specified period—within the period ending at least one month and less than six months after the end of the reporting period (see s1017D(3AA) as notionally inserted by [\[CO 14/1252\]](#)). Once the notice has been published, it may not be revoked or amended to increase the period specified (see s1017D(3AB) as notionally inserted by [\[CO 14/1252\]](#)).

~~RG 97-220~~ **RG 97.221** A financial product is provided to a person as a retail client unless s761G(5)–(7) or s761GA provide otherwise: see s761G(1).

~~RG 97-221~~ **RG 97.222** The fees and costs disclosed in a periodic statement are to be determined over the latest reporting period: see cl 104B of Sch 10.

5.2 Content requirements for periodic statements

~~RG 97-222~~ **RG 97.223** A periodic statement must give the member the information that you reasonably believe the member needs to understand their investment: see s1017D(4).

~~RG 97-223~~ **RG 97.224** Detailed content requirements for periodic statements for managed investment products are set out in s1017D(5) and in Pt 7.9 to the Corporations Regulations, including Subdiv 4C.3 and Divs 5AA and 8.

~~RG 97-224~~ **RG 97.225** Special content requirements apply for periodic statements for quoted managed investment products, including where they form part of a stapled security: see [Class Order \[CO 13/1200\]](#) *Periodic statements relief for AQUA quoted and listed managed investment scheme manager*.

~~RG 97-225~~ **RG 97.226** In relation to disclosing fees and costs, a periodic statement must contain:

- (a) a transaction list;
- (b) the amount of 'Fees deducted directly from your account';
- (c) the approximate amount of 'Fees and costs deducted from your investment'; and
- (d) the total of all fees and costs disclosed in the periodic statement (titled 'Total fees and costs you paid').

The transaction list

Requirements for the transaction list

~~RG 97-226~~ **RG 97.227** Section 1017D(5)(c) requires you to include a list of transactions relating to the managed investment product during the reporting period in a periodic statement. The transaction list must include a brief description of

each transaction in relation to the managed investment product during the reporting period: see reg 7.9.60B(2).

~~RG 97.227~~ **RG 97.228** You only need to itemise those fees and costs shown in the 'Fees and costs summary' in the transaction list: see reg 7.9.60B(6). You must describe those fees and costs using the terms used in the 'Fees and costs summary': see reg 7.9.60B(7) and Figure 9. If a fee or cost is not charged, you do not need to include it in the 'Transaction list'.

~~RG 97.228~~ **RG 97.229** You should only include fees and costs in the 'Transaction list' that are deducted directly from the member's account. The impact of other fees and costs is shown in the 'Fees and costs deducted from your investment': see RG 97.240–RG 97.241.

~~RG 97.229~~ **RG 97.230** You may describe transactions of the same kind (other than contributions) in a single item in the transaction list if it is practicable to do so and the items are described together on a consistent basis in the periodic statement: see reg 7.9.60B(5). You must assess whether a particular grouping of transactions will achieve clear disclosure of the relevant transaction.

~~RG 97.230~~ **RG 97.231** If you decide to group fees in a single line item, this must not obscure the true frequency or amount of a recurring fee. Where relevant, using a subtotal would help meet this objective—for example, a quarterly management fee of \$100 for four quarters (total \$400). In some cases, it may not be appropriate to use an annual grouping. If there is a fee increase during the year, this should be set out clearly—for example, a quarterly management fee of 1.1% for two quarters until 31 December 2019 and a quarterly management fee of 1.2% for two quarters until 30 June 2020.

~~RG 97.231~~ **RG 97.232** You must also include the amounts the member of the managed investment product paid during the period: see reg 7.9.75(1)(a) (we note that reg 7.9.75(1)(b) has been omitted by [\[CO 14/1252\]](#)). An amount is considered to be paid in respect of a managed investment product if:

- (a) the member has paid an amount in respect of the product;
- (b) an amount has been deducted from a payment made by or to the member;
- (c) the member has paid an amount or an amount has been deducted or debited as a fee, expense or change in relation to the managed investment product; or
- (d) an amount is held on the member's behalf under the financial product (see reg 7.9.75(2)).

Impact of tax on disclosed transactions

[RG 97.232](#)[RG 97.233](#) You must include, if applicable, GST, stamp duty and income tax (after deductions have been taken into account) in transaction amounts: see reg 7.9.60B(3). We consider that GST should be included less reduced input tax credits.

[RG 97.232](#)[RG 97.234](#) We consider that if GST or stamp duty is not disclosed as part of the transaction amount, they should be reported as separate transactions.

[RG 97.234](#)[RG 97.235](#) If the payment of a fee or cost results in the managed investment scheme becoming entitled to a tax deduction and you pass that tax deduction on to a member, the periodic statement must show two transactions:

- (a) one for the full amount charged; and
- (b) one for the tax benefit that was passed on to the member.

[RG 97.235](#)[RG 97.236](#) Where a transaction creates an income tax liability or a tax deduction is given to the member, you should show this transaction separately and include an explanation of the basis for the transaction and its relationship with other transactions.

Disclosure of amounts deducted from accounts and investments

[RG 97.236](#)[RG 97.237](#) You must also include the details set out in Pt 3 of Sch 10 in a periodic statement: see regs 7.9.16O and 7.9.75(1)(e). These requirements are set out at RG 97.237–RG 97.244.

[RG 97.237](#)[RG 97.238](#) Clause 301(1A) of Sch 10 requires that periodic statements for managed investment products include certain text (with the appropriate amounts in dollars) after the transaction list. Figure 13 shows the text required by cl 301(1A) of Sch 10.

Figure 13: Text required after the transaction list**Fees deducted directly from your account**

This amount has been deducted directly from your account (reflected in the transactions listed on this statement).

Fees and costs deducted from your investment

This approximate amount has been deducted from your investment and covers amounts that have reduced the return on your investment and that are not reflected as transactions listed on this statement or in the fees and costs details.

[RG 97.238](#)[RG 97.239](#) You must show each of these amounts as a single total amount in dollars: cl 301(3) of Sch 10.

~~RG 97.239~~ **RG 97.240** The amount to be inserted in the 'Fees deducted directly from your account' is the total amount of fees deducted shown on the transaction list in the periodic statement: see cl 301(2)(a) of Sch 10.

~~RG 97.240~~ **RG 97.241** The amount inserted in 'Fees and costs deducted from your investment' is an apportioned amount: see cl 301(2)(b) of Sch 10. This is the amount of fees and costs for the product or option that are attributed to the particular member, and that are not:

- (a) excluded transactional or operational costs (see RG 97.341–RG 97.344);
- (b) reflected in the transaction list (see RG 97.226–RG 97.235); and
- (c) reflected in the 'Fees and costs details' in the periodic statement (see RG 97.243–RG 97.244).

~~RG 97.241~~ **RG 97.242** If the managed investment product is subject to tax (for any reporting period ending after 29 June 2020) and a reduced fee or cost is shown in the statement because of the benefit of any income tax deduction, you must include the part of the cost that reduced the disclosed fee or cost in the 'Fees and costs deducted from your investment': see cl 301(6) of Sch 10.

Disclosure of total fees and costs paid

~~RG 97.242~~ **RG 97.243** Clause 302(1) of Sch 10 requires a periodic statement to include certain text (with the appropriate amount in dollars), either after 'Fees and costs deducted from your investment' or in a summary part of the periodic statement. Figure 14 shows the text required in cl 302(1) of Sch 10.

Figure 14: Text required for 'Total fees and costs you paid'

TOTAL FEES AND COSTS YOU PAID

This approximate amount includes all the fees and costs which affected your investment during the period.

Fees and costs details

~~RG 97.243~~ **RG 97.244** Clause 303(2) of Sch 10 requires you to include the following information in a periodic statement for managed investment products under the heading 'Fees and costs details' if that information has not been included in another part of the periodic statement:

- (a) details of incidental fees, such as cheque dishonour fees, that were incurred by the member during the period;
- (b) details of any service fees that may have been incurred by the member; and

- (c) if the managed investment product is subject to tax, whether the benefit of any tax deduction has been passed on to the member in the form of a reduced fee or cost.

[RG 97.244](#)[RG 97.245](#) If details of incidental fees or service fees are shown in 'Fees and costs details', these must include the relevant amounts incurred. This ensures that these fees are included in the 'Total fees and costs you paid' section, which makes sure that all relevant fees and costs are captured in the periodic statement.

Section 6 Additional requirements for disclosing fees and costs for platforms

Key points

This section sets out our guidance on:

- the fees and costs disclosure requirements for PDSs for superannuation platforms and IDPS-like schemes, and IDPS Guides for IDPSs;
- the fees and costs disclosure requirements for periodic statements for superannuation platforms, IDPS-like schemes and IDPSs; and
- comparing platforms and non-platforms.

6.1 PDS requirements for platforms

[RG 97.245](#)[RG 97.246](#) Platform operators must comply with the PDS requirements for their broad type of product (i.e. superannuation products or managed investment products). The PDS requirements vary between the different types of platforms. These are:

- superannuation platforms;
- IDPS-like schemes; and
- IDPSs.

PDS requirements for superannuation platforms

[RG 97.246](#)[RG 97.247](#) Superannuation platform operators can prepare either a full PDS or a shorter PDS, depending on the circumstances: see [\[CO 12/749\]](#). The requirements for a full PDS for a superannuation product are set out at RG 97.25–RG 97.82. The requirements for a shorter PDS for a superannuation product are set out at RG 97.83–RG 97.96.

PDS requirements for IDPS-like schemes

~~RG 97.247~~ **RG 97.248** Responsible entities of IDPS-like schemes must prepare a full PDS (not a shorter PDS): see reg 7.9.11S(4), as modified by [Class Order \[CO 13/762\]](#) *Investor directed portfolio services provided through a registered managed investment scheme*. The requirements for a full PDS for managed investment products are set out at RG 97.147–RG 97.194.

Requirements for IDPSs

~~RG 97.248~~ **RG 97.249** IDPS operators are exempt from the requirement to prepare a PDS and must instead prepare an IDPS Guide. The guide must provide information about fees and costs in relation the IDPS that complies with Pt 2 of Sch 10 as if an interest in the IDPS were a managed investment product: see s912AD(5)(e) as notionally inserted by [\[CO 13/763\]](#). These requirements are set out in RG 97.147–RG 97.194.

6.2 Disclosure of cost impact for accessible financial products

~~RG 97.249~~ **RG 97.250** Fees and costs of accessible financial products made available through a platform are not required to be disclosed (in most circumstances) in the PDS (or IDPS Guide) or in the periodic statements of the platform. As the member, rather than the platform operator, chooses to invest in a particular accessible financial product and receives disclosures about that product, the accessible financial product is not considered to be an interposed vehicle for the purposes of fees and costs disclosure: see the platform test described in RG 97.299–RG 97.305.

~~RG 97.250~~ **RG 97.251** So that members can take into account the cumulative effect of costs at the platform level and in the accessible financial products they select, it is important that members understand that they will incur both:

- (a) fees and costs in relation to the platform; and
- (b) fees and costs in relation to the relevant accessible financial products.

~~RG 97.251~~ **RG 97.252** For this reason, and also to ensure that PDSs and periodic statements for the platform are not misleading, you should meet the special fees and costs disclosure requirements described at RG 97.252–RG 97.259 for PDSs and IDPS Guides and at RG 97.260–RG 97.266 for periodic statements.

6.3 Special fees and costs disclosure requirements for platform PDSs and IDPS Guides

~~RG 97.252~~ **RG 97.253** RG 97.253–RG 97.257 sets out our general expectations in relation to platform disclosure. To the extent that you must include specific disclosures as a result of [\[CO 13/762\]](#) or [\[CO 13/763\]](#), you should include those disclosures in addition to the disclosures described in the general guidance at RG 97.253–RG 97.257.

~~RG 97.253~~ **RG 97.254** To ensure PDSs (or IDPS Guides) for platforms are not misleading, you should include a prominent statement within either the investment fees and costs line item or the management fees and costs line item (as applicable) in the 'Fees and costs summary' stating that the fees and costs charged by the platform:

- (a) relate only to gaining access to the accessible financial products through the platform; and
- (b) do not include the fees and costs that may be charged by the issuers of the accessible financial products.

~~RG 97.254~~ **RG 97.255** To ensure that consumers are not misled, you should also include prominent statements after the 'Example of annual fees and costs' that:

- (a) the fees and costs charged by the platform relate to the platform and access to the accessible financial products only and do not include the fees and costs charged by the issuers of the accessible financial products; and
- (b) additional fees and costs will be charged by the issuers of the accessible financial products that the investor decides to invest in.

~~RG 97.255~~ **RG 97.256** You can also help ensure that the PDS (or IDPS Guide) for a platform is not misleading by including an 'Example of annual fees and costs' that shows the combined effect of the fees and costs for the platform and the fees and costs for an accessible financial product. The accessible financial product used in the example should reflect the typical fees and costs and investment strategy for a major proportion of those products selected by investors in the relevant platform.

~~RG 97.256~~ **RG 97.257** We also encourage you to provide an example that shows the combined effect of the fees and costs for the platform and for an accessible financial product for each product that can be selected.

~~RG 97.257~~ **RG 97.258** The examples described at RG 97.255 and RG 97.256 should be prepared in accordance with Div 6 of Sch 10. In the case of a superannuation platform, the example should take into account the fees and costs for the accessible financial product on the same basis as for a superannuation entity (even if the product is a managed investment scheme).

~~RG 97.258~~ **RG 97.259** In addition to PDSs (or IDPS Guides), some platform operators provide disclosures—via their platform tools—that allow a consumer to understand the total fees and costs for the platform and the accessible financial products chosen. We support these efforts to attempt to increase consumer understanding of fees and costs.

~~RG 97.259~~ **RG 97.260** In conducting surveillance, we will focus on ensuring that PDS (or IDPS Guide) fees and costs disclosure is not misleading and promotes consumer understanding.

6.4 Special fees and costs disclosure requirements for platform periodic statements

Special requirements for superannuation platforms and IDPS-like schemes

~~RG 97.260~~ **RG 97.261** Issuers of superannuation products and managed investment products that are platforms must issue periodic statements: see s1017D and Section C and Section E. However, as the member of the superannuation platform or IDPS-like scheme is not the holder of the accessible financial products they select, they will not receive a separate periodic statement for those products.

~~RG 97.261~~ **RG 97.262** As set out at RG 97.249, due to the operation of the platform test, the fees and costs of accessible financial products are not included in the PDS or the periodic statement for the platform, in most circumstances.

~~RG 97.262~~ **RG 97.263** It is important that members understand that they have incurred fees and costs relating to the accessible financial products they have selected, in addition to the costs charged by the platform that are disclosed in the periodic statement for the superannuation product or IDPS-like scheme.

~~RG 97.263~~ **RG 97.264** So that the periodic statement gives the member the information you reasonably believe they need to understand their investment (as required by s1017D(4))—and to prevent the periodic statement from being misleading—if it is reasonably practicable to demonstrate the effect of those additional fees and costs, you should include:

- (a) an additional item for 'Other fees and costs' after 'Total fees and costs you paid'. You should also include a note saying that this figure is an estimate of all the fees and costs of the accessible financial products based on the actual holdings of the member during the period. The figure must be a reasonable estimate (see RG 97.396–RG 97.406); and
- (b) an additional item for 'Total fees and costs you paid—with investment option fees and costs', after the new item for 'Other fees and costs', and with a note that this figure is the sum of 'Total fees and costs you paid' and 'Other fees and costs'.

~~RG 97.264~~ **RG 97.265** Where it is not reasonably practicable for you to include the items set out at RG 97.263, the periodic statement should include a statement that it does not include the fees and costs for any accessible financial products. We also think it would be appropriate to provide a link to

additional information relevant to understanding the costs of accessible financial products, calculated as if they were interposed vehicles.

~~RG 97.265~~ **RG 97.266** We expect you to take reasonable steps to address any limitations in your existing systems to ensure you will be able to provide information about fees and costs of accessible financial products.

Special requirements for IDPSs

~~RG 97.266~~ **RG 97.267** IDPS operators are not required to issue periodic statements, but instead they must provide annual investor statements. However, so that members are aware of the fees and costs of the accessible financial products they access through the IDPS, we consider the guidance in RG 97.260–RG 97.265 also applies to IDPS operators when they provide annual investor statements to members.

6.5 Other disclosure requirements

~~RG 97.267~~ **RG 97.268** For superannuation platforms, other requirements may apply if you rely on the relief in [ASIC Corporations \(Superannuation: Investment Strategies\) Instrument 2016/65](#). See also [Regulatory Guide 184 Superannuation: Delivery of product disclosure for investment strategies](#) (RG 184).

~~RG 97.268~~ **RG 97.269** For IDPS-like schemes, the requirements in [\[CO 13/762\]](#) will also apply. See also [Regulatory Guide 148 Platforms that are managed investment schemes and nominee and custody services](#) (RG 148).

~~RG 97.269~~ **RG 97.270** For IDPSs, the requirements in [\[CO 13/763\]](#) will apply. See also [RG 148](#).

6.6 Comparisons must not be misleading

~~RG 97.270~~ **RG 97.271** In preparing marketing material or financial product advice, you should take care not to make inappropriate or misleading comparisons between platforms and non-platforms. The fees and costs of platforms should not generally be compared with non-platforms.

~~RG 97.271~~ **RG 97.272** For example, it would be misleading:

- (a) to compare the fees and costs for an investment option in a non-platform superannuation entity against the fees and costs for an accessible financial product accessed via a platform, without also including the fees and costs charged by the platform; and
- (b) to compare the fees and costs for a platform against the fees and costs for a non-platform, without including the fees and costs for the accessible financial products.

~~RG 97.272~~ **RG 97.273** In relation to personal advice, we expect that a statement of advice will cover the fees and costs associated with the platform and how they relate to other fees and costs. This includes the fees and costs of the accessible financial products to be acquired through the platform and those connected with the advice service: see RG 148.189(c).

Section 7 Explaining common fees and costs concepts

Key points

This section provides information about fees and costs concepts that are relevant to both superannuation products and managed investment products.

It includes guidance on disclosing costs, including:

- whether the purchase price of an investment is a fee or cost that needs to be disclosed (see RG 97.273–RG 97.275);
- whether fees and costs paid by third parties must be disclosed (see RG 97.276–RG 97.277);
- whether fees and costs can be reduced or offset by other income or income-sharing arrangements (see RG 97.278–RG 97.279); and
- about indirect costs (see RG 97.280–RG 97.290) and interposed vehicles (see RG 97.291–0), including how to determine whether an entity is an interposed vehicle.

It also includes guidance on:

- transaction costs (see RG 97.333–RG 97.340), including what is considered an excluded transactional and operational cost (see RG 97.341–RG 97.344);
- derivative financial products (see RG 97.345–RG 97.359); and
- performance fees (see RG 97.360–RG 97.364).

7.1 Purchase price of an investment is not a fee or cost that needs to be disclosed

RG 97.1 The costs associated with making an investment (such as stamp duty for real property or brokerage for shares) are fees and costs that may need to be disclosed: see, for example, indirect costs at RG 97.280–RG 97.290, transaction costs at RG 97.333–RG 97.340, investment fees and costs in RG 97.40–RG 97.43 and management fees and costs at RG 97.159–RG 97.162.

~~RG 97.273~~ **RG 97.2** The purchase price of an investment or asset is not a fee or cost that must be disclosed under the fees and costs disclosure requirements. The fees and costs disclosure regime aims to capture the fees and costs associated with making investments and deriving returns, not the actual cost of an investment or asset.

~~RG 97.274~~ The costs associated with making an investment (such as stamp duty for real property or brokerage for shares) are fees and costs that may need to be disclosed: see, for example, indirect costs at ~~RG 97.280–RG 97.290~~, transaction costs at ~~RG 97.333–RG 97.340~~, investment fees and costs in ~~RG 97.40–RG 97.43~~ and management fees and costs at ~~RG 97.159–RG 97.162~~.

Example: if a superannuation entity or managed investment scheme pays a higher purchase price for an asset because the seller is paying costs the buyer would normally pay (such as stamp duty or land title registration fees on real property), the portion of the higher price that reflects those costs should be disclosed as transaction costs (for further information on transaction costs, see ~~RG 97.333–RG 97.340~~).

~~RG 97.3~~ However, if a superannuation entity or managed investment scheme pays a higher purchase price for an asset because the seller has paid costs the buyer would normally pay (such as stamp duty or land title registration fees on real property), the portion of the higher price that reflects those costs should be disclosed as transaction costs (for further information on transaction costs, see ~~RG 97.333–RG 97.340~~).

~~RG 97.275~~ **RG 97.4** Sometimes, there may be amounts that, for accounting or operational purposes, are capitalised and reflected in the value of the asset that may be relevant fees and costs. You must ensure that these fees and costs are included in the fees and costs disclosure in the PDS and/or periodic statements for the product or option.

7.2 Fees and costs paid by third parties must be disclosed

~~RG 97.276~~ **RG 97.5** Fees and costs include amounts paid by third parties that would have otherwise been charged to, or paid by, the product or option (or an interposed vehicle of the product or option). Even if a third party pays a fee or cost, this does not affect its characterisation as a fee or cost for disclosure purposes.

~~RG 97.277~~ **RG 97.6** Capturing fees and costs paid by third parties ensures that the fees and costs of a product or option reflect the true costs involved.

7.3 Fees and costs cannot be reduced or offset by other income or through income-sharing arrangements

~~RG 97-278~~ **RG 97.7** The fees and costs of a superannuation product or managed investment product cannot be reduced or offset by income. Although an issuer or interposed vehicle may show in its accounts that a fee or cost has been netted off against a particular source of income, this must not be done for fees and costs disclosure purposes. The gross amount of the fee and cost must be disclosed. This is because although income may be generated, this does not affect the fact that incurring the income will have resulted in the superannuation entity or managed investment scheme incurring costs.

~~RG 97-279~~ **RG 97.8** The fees and costs of a superannuation product or managed investment product cannot be reduced or offset through income-sharing arrangements. For example, where a superannuation entity or managed investment scheme generates income through lending securities, and a custodian keeps a portion of the income as payment for providing the lending service, that portion should be considered a cost. This cost should be included in investment fees and costs (for a superannuation product) or management fees and costs (for a managed investment product).

7.4 Explanation of indirect costs

~~RG 97-280~~ **RG 97.9** Indirect costs seek to capture all relevant costs involved in deriving an investment return for a product or investment option. They are an important part of comprehensive fees and costs disclosure.

~~RG 97-281~~ **RG 97.10** For superannuation products, indirect costs form part of investment fees and costs: see paragraph (b) of the definition of investment fees and costs in cl 209A of Sch 10. For managed investment products, indirect costs form part of management fees and costs: see cl 102(1)(i) of Sch 10.

~~RG 97-282~~ **RG 97.11** Indirect costs are defined by cl 101A of Sch 10.

~~RG 97-283~~ **RG 97.12** Indirect costs are amounts that you know or reasonably ought to know (or may reasonably estimate) have reduced or will reduce the return on the relevant product or investment option.

~~RG 97-284~~ **RG 97.13** The reduction can be to the amount or value of the income or property attributable to either the product or option itself, or attributable to an interposed vehicle that the product or option is invested in or through. The reduction can occur by deducting costs from the return before receiving it.

~~RG 97-285~~ **RG 97.14** You will normally obtain information about indirect costs from the operators of interposed vehicles that the product or option is invested in. You may be able to obtain information by requesting it from the operator. You may also be able to obtain information from reporting by the operator or from contracts or other documents. We expect you to hold information about indirect costs paid to related parties. You should also consider any legal obligations you have that may require you to obtain information about

indirect costs: see, for example, s52(2)(b) of the SIS Act. For more information on interposed vehicles, see RG 97.291–0. For more information on making reasonable estimates, see RG 97.396–RG 97.406.

~~RG 97.286~~ **RG 97.15** If your investment in an interposed vehicle accounts for only a portion of the total investments in that vehicle, the indirect costs for the product or option should only include the portion of the costs attributable to your investment.

~~RG 97.287~~ **RG 97.16** Indirect costs also include amounts paid by a third party under arrangements where the third party meets the costs of the product or option and recoups those costs through paying lower returns to the product or option: see cl 101A(1)(a)(ii) of Sch 10.

~~RG 97.288~~ **RG 97.17** You should make sure you apply each element of the tests in cl 101A of Sch 10 when determining if an amount is an indirect cost.

~~RG 97.289~~ **RG 97.18** For information on calculating indirect costs, see RG 97.102–RG 97.107 (for superannuation products) and RG 97.213–RG 97.218 (for managed investment products).

~~RG 97.290~~ **RG 97.19** Indirect costs also include certain over-the-counter (OTC) derivative costs: for more information, see RG 97.345–RG 97.359.

7.5 Explanation of an interposed vehicle

Definition of an interposed vehicle

~~RG 97.291~~ **RG 97.20** Superannuation entities and managed investment schemes often invest in underlying entities (including series or chains of underlying entities) to gain exposure to investments and assets that will produce a return for the product or option. These underlying entities can be Australian or foreign and can include a wide variety of structures such as companies, listed and unlisted trusts, and partnerships.

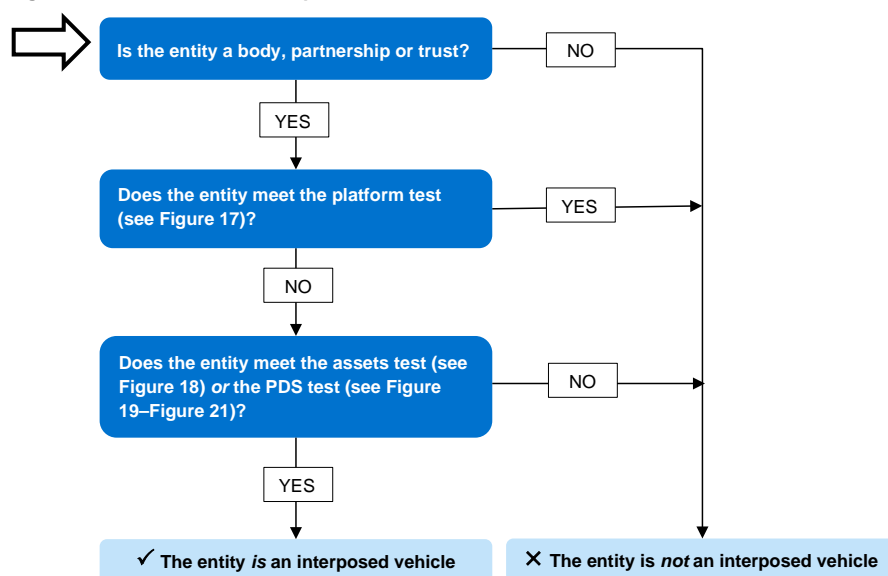
~~RG 97.292~~ **RG 97.21** Superannuation entities and managed investment schemes may incur fees and costs relating to each underlying entity they invest in or through (such as management fees or performance fees). These fees and costs, especially when combined over a number of underlying entities, can significantly affect the final return of the product or option.

~~RG 97.293~~ **RG 97.22** Under the fees and costs disclosure requirements, you must disclose the fees and costs of investing in an underlying entity where it is an interposed vehicle. These fees and costs are generally disclosed as indirect costs: see cl 101A(1)(a)(i)(B) of Sch 10. However, costs incurred by an interposed vehicle that would be transaction costs if they had been incurred by the superannuation entity or managed investment scheme are disclosed as transaction costs: see cl 103(1)(g) of Sch 10 and RG 97.333–RG 97.340.

[RG 97.294](#)[RG 97.23](#) As shown in Figure 15, an interposed vehicle is a body, partnership or trust that:

- (a) is not excluded under the platform test (see [RG 97.299–RG 97.305](#)); and
- (b) meets the assets test (see [RG 97.306–RG 97.317](#)) or the PDS test (see [RG 97.318–RG 97.326](#)).

Figure 15: Definition of an interposed vehicle



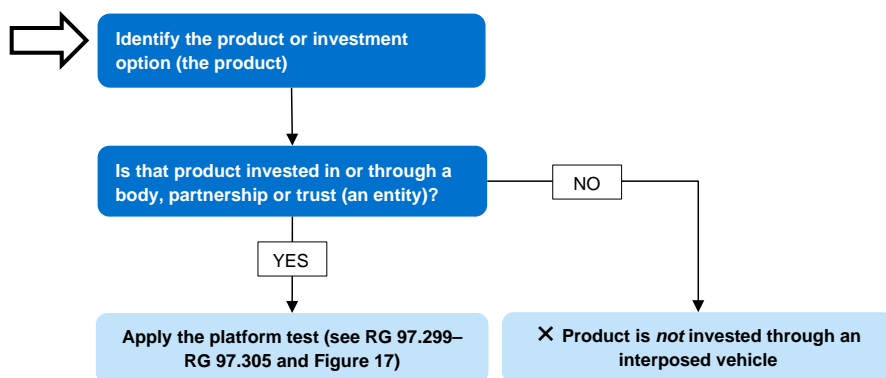
Note: The information in this figure is described in [RG 97.294](#) (accessible version).
Tests for determining interposed vehicles

[RG 97.295](#)[RG 97.24](#) The tests in Figure 15 are defined in cl 101B of Sch 10.

[RG 97.296](#)[RG 97.25](#) As shown in Figure 16, a product or investment option will not be invested in or through an interposed vehicle if it is not invested in or through a body, partnership or trust (an entity).

[RG 97.297](#)[RG 97.26](#) We expect you to document and retain records of your decision about whether an entity is an interposed vehicle.

[RG 97.298](#)[RG 97.27](#) We have included examples of entities that would and entities that would not be considered interposed vehicles in Appendix 1.

Figure 16: Determining whether a product or investment option is invested through an entity

Note: The information in this figure is described in RG 97.296 (accessible version).

Platform test

[RG 97.299](#) [RG 97.28](#) The platform test is described in cl 101B(5) of Sch 10.

[RG 97.300](#) [RG 97.29](#) If an entity satisfies the platform test, it is not an interposed vehicle.

[RG 97.301](#) [RG 97.30](#) Apply the platform test by looking at the PDS for the product or option together with its list of accessible investments.

[RG 97.302](#) [RG 97.31](#) An entity will satisfy the platform test if:

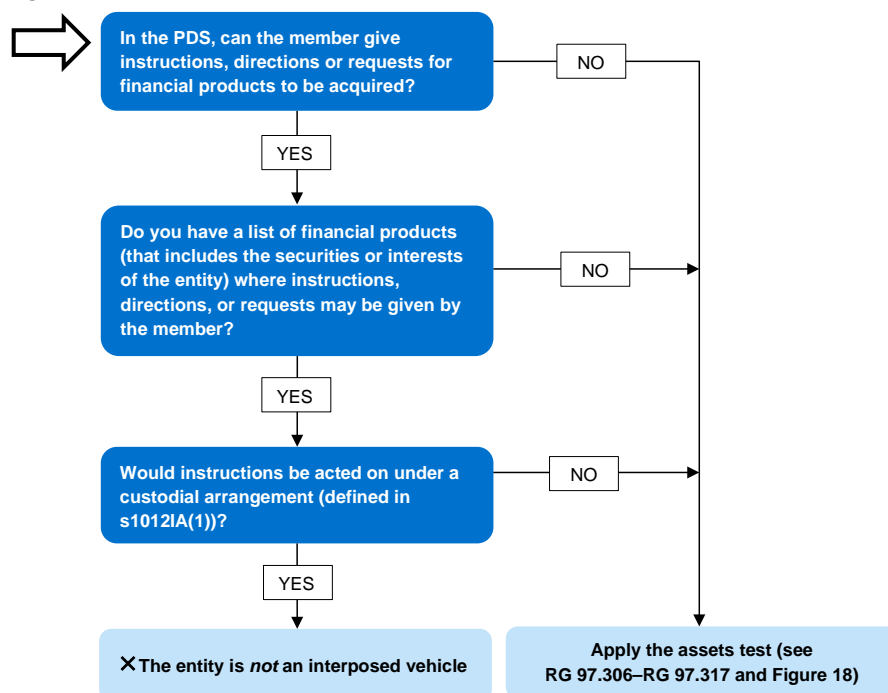
- the PDS for the product or investment option states that financial products may be acquired on the instruction, direction or request of the member;
- the issuer of the PDS has published a list of financial products the member may choose from and the list includes a security or interest in the entity; and
- the arrangement under which instructions would be acted on is a custodial arrangement (within the meaning of s1012IA(1)).

[RG 97.303](#) [RG 97.32](#) If a superannuation entity invests in a managed investment scheme via a platform, to meet the platform test the PDS for the entity would have to provide that members could direct the investments of the entity. If the PDS does not specify this, the managed investment scheme would be considered to be an interposed vehicle.

[RG 97.304](#) [RG 97.33](#) For further information about the disclosure requirements for platforms, refer to Section F of this guide.

[RG 97.305](#) [RG 97.34](#) Figure 17 outlines the process for determining whether an entity satisfies the platform test.

Figure 17: Platform test



Note: The information in this figure is described in RG 97.299–RG 97.305 (accessible version).

Assets test

[RG 97.306](#) [RG 97.35](#) The assets test is described in cls 101B(1)–(3) of Sch 10.

[RG 97.307](#) [RG 97.36](#) If an entity satisfies the assets test, it is an interposed vehicle.

[RG 97.308](#) [RG 97.37](#) The assets test is based on what you believe or have reasonable grounds to believe.

[RG 97.309](#) [RG 97.38](#) The assets test is satisfied if you believe or have reasonable grounds to believe that the entity has more than 70% of its assets, by value, invested in securities or other financial products: see cl 101B(1)(b) of Sch 10 (other than certain types of securities or financial products: see RG 97.310).

[RG 97.310](#) [RG 97.39](#) When determining the percentage of an entity's assets, by value, that are invested in securities or other financial products, ignore the following:

- (a) *controlling interest*: securities or other financial products that confer control of another entity, unless you have reasonable grounds to believe the controlled entity has more than 70% of its assets, by value, invested in securities or other financial products (see cl 101B(2)(b) of Sch 10). To determine whether this entity has 70% of its assets invested in securities or other financial products, apply the test set out in RG 97.308–RG 97.310 (see cl 101B(3) of Sch 10); and
- (b) *investments in real property or infrastructure*: financial products that are reasonably regarded as a means by which the entity invests in real property or an infrastructure entity, as defined in cl 101B(6) of Sch 10) (see cl 101B(2)(a) of Sch 10).

Commented [LK21]: It's not clear how this is intended to apply. An example would help.

[RG 97.311](#) [RG 97.40](#) When formulating the test, we chose a 70% limit as we believe this indicates that the entity's principal business or activity is investing.

[RG 97.312](#) [RG 97.41](#) We excluded securities or other financial products that confer control of another entity. This ensures that entities holding securities or financial products in other entities for operational reasons (such as being in a corporate group structure), rather than because they are an investment business, are not inadvertently captured by the assets test.

[RG 97.313](#) [RG 97.42](#) We also excluded financial products that are reasonably regarded as a means by which the entity invests in real property or an infrastructure entity. In formulating the assets test, we identified that certain real property and infrastructure investments would satisfy the assets test due to the way these types of investments are normally structured (i.e. where a managed investment scheme invests in shares in an entity or series of entities that hold land or infrastructure). We determined that the PDS test (see RG 97.318–RG 97.326) would be more appropriate for establishing whether the entity was the *end investment* or the *means* by which the managed investment scheme gained exposure to the end investment (i.e. the real property or infrastructure asset).

[RG 97.314](#) [RG 97.43](#) Identifying whether an entity is an interposed vehicle under the assets test is based on what you believe or have reasonable grounds to believe. 'Having reasonable grounds to believe' is more than a mere reason to suspect. In *George v Rockett* (1990) 170 CLR 104, the High Court held at 112 that:

When a statute prescribes that there must be 'reasonable grounds' for a state of mind including suspicion and belief it requires the existence of facts which are sufficient to induce that state of mind in a reasonable person.

[RG 97.315](#) [RG 97.44](#) As part of properly performing your duties as a superannuation trustee or responsible entity, you may have information that may give you reasonable grounds to believe that an entity meets the assets test. This

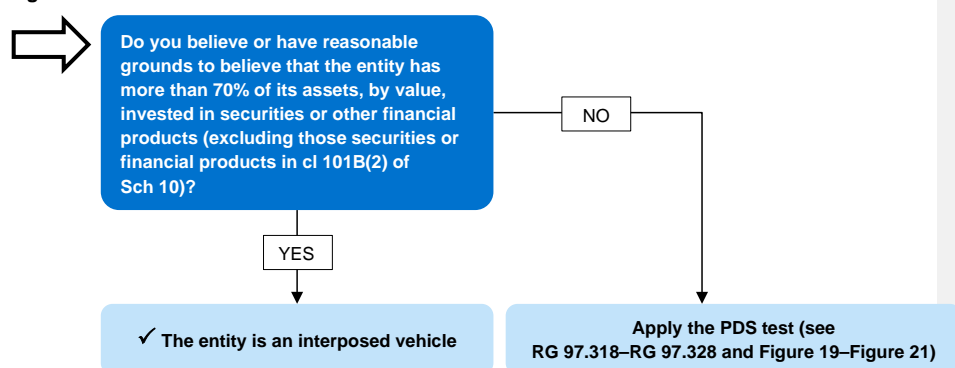
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information might be information about the entity or about its investment strategy.

[RG 97.316](#)[RG 97.45](#) You are not explicitly required to make outside inquiries when applying the assets test. However, if you are uncertain about whether an entity is an interposed vehicle and this would have a material effect on the amount of fees and costs you disclose, you should make further reasonable inquiries to determine whether it is.

[RG 97.317](#)[RG 97.46](#) Figure 18 outlines the process for determining whether an entity satisfies the assets test.

Figure 18: Assets test



Note: The information in this figure is described in RG 97.306–RG 97.317 (accessible version).

PDS test

[RG 97.318](#)[RG 97.47](#) The PDS test is described in cls 101B(4)–(4D) of Sch 10.

[RG 97.319](#)[RG 97.48](#) If an entity satisfies the PDS test, it is an interposed vehicle.

[RG 97.320](#)[RG 97.49](#) Apply the PDS test by looking at the disclosures in the PDS and other information you have prepared (such as promotional material). The structure of an investment does not affect the outcome of the PDS test.

[RG 97.321](#)[RG 97.50](#) The PDS test has three limbs, which are described in RG 97.322–RG 97.326.

First limb: see cl 101B(4) of Sch 10

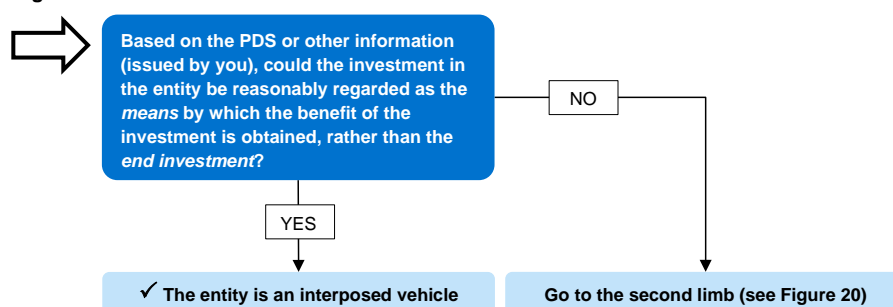
[RG 97.322](#)[RG 97.51](#) An entity will be an interposed vehicle for a product or option if, based on the PDS for the product or option and any other information issued by you, a security or interest in the entity could reasonably be regarded (by retail clients who may be expected to be given the PDS or other

information) as the *means* by which the benefit of the investment is obtained, rather than the *end investment*.

More information

Often, a listed entity will not be an interposed vehicle. Generally, a listed entity is part of an equities portfolio, which seeks returns from increases in the entity's market price and from income paid to members, rather than through increases in the value of the assets of the entity.

Figure 19: PDS test—First limb



Note: The information in this figure is described in RG 97.322 (accessible version).

Second limb: see cls 101B(4A) and (4B) of Sch 10

[RG 97.323](#) [RG 97.52](#) An entity is also an interposed vehicle in relation to a product or option if:

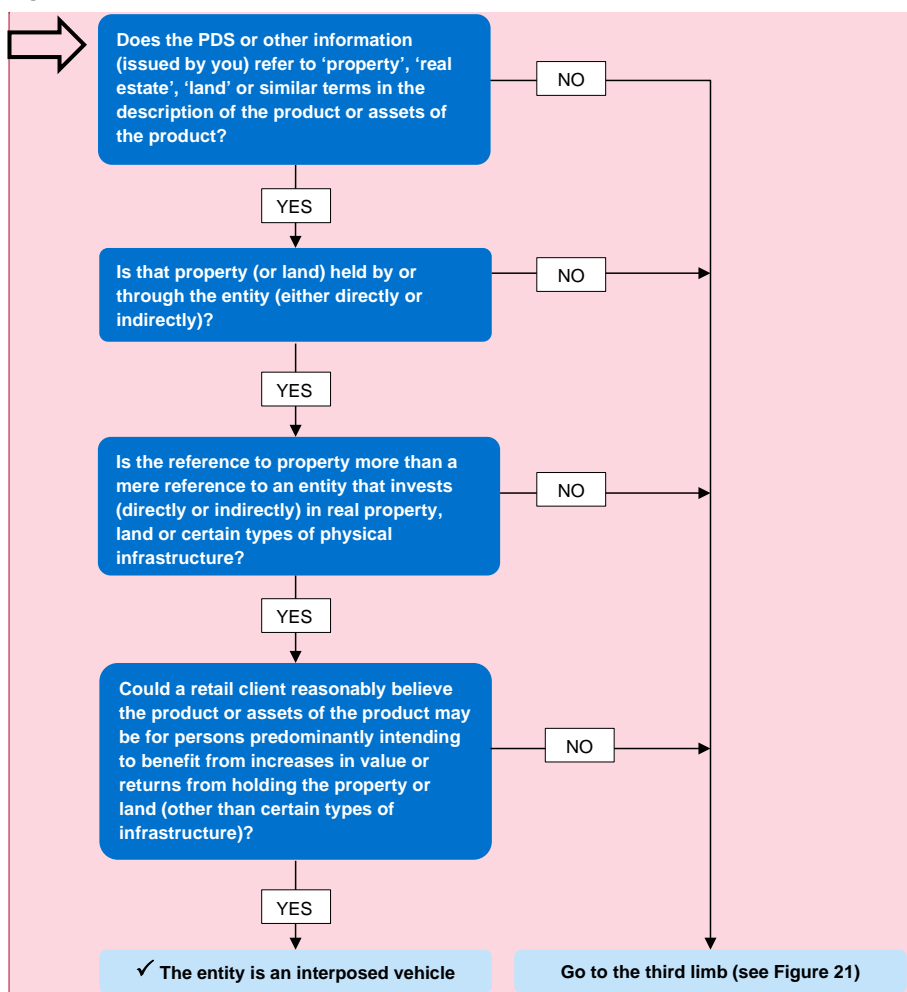
- (a) the PDS and any other information you issued (that has been given to retail clients, or may reasonably be expected to be given to them) refers to 'property', 'real estate' or 'land' (or similar terms):
 - (i) in the description of the product or investment option; or
 - (ii) as one of the assets of the product or investment option; and
- (b) real property or an interest in land is held by or through the entity (directly or indirectly).

[RG 97.324](#) [RG 97.53](#) However, under the second limb, an entity is not an interposed vehicle (but may be under the first or third limb) if:

- (a) the reference in the PDS or other information is merely part of a reference to an entity (whether specified or not) that invests (directly or indirectly) in real property, interests in land or certain types of physical infrastructure (see cls 101B(6)(a)–(j) of Sch 10); and
- (b) a retail client who has read the PDS or other information could not reasonably believe that the product, investment option or asset may be intended for people predominantly intending to benefit from

increases in the value of, or returns from, real property or an interest in land (other than certain types of physical infrastructure).

Figure 20: PDS test—Second limb



Note: The information in this figure is described in RG 97.323–RG 97.324 (accessible version).

Third limb: see cls 101B(4C) and (4D) of Sch 10

[RG 97.325](#) [RG 97.54](#) An entity is also an interposed vehicle if the PDS for the relevant product or option (and any other information you issued) refers to the product or investment option as being directly or indirectly invested in, or through, the entity (whether specified or not) and the reference relates to the entity.

Commented [LK22]: This flowchart doesn't seem consistent with Sch 10 cl 101B(4B) which requires that *both* (a) and (b) be satisfied before it is determined that an entity is not an interposed vehicle. The way it's depicted in this flowchart you would effectively stop at (a) if the answer were "No".

It's also not clear what is meant by the question "Is the reference to property more than a mere reference to an entity that invests (directly or indirectly) in real property, land or certain types of physical infrastructure?"

~~RG 97.326~~ **RG 97.55** However, under the third limb, an entity will not be an interposed vehicle (but may be under the first or second limb) if:

- (a) you believe the entity invests the majority of its assets in certain types of physical infrastructure (see cls 101B(6)(a)–(j) of Sch 10); or
- (b) all of the following are satisfied:
 - (i) the entity is listed or will be listed;
 - (ii) the securities or financial products of the entity are held under an investment strategy that relates to, or is publicly measured by, a widely used index of listed assets;
 - (iii) the investment strategy is to invest in listed assets;
 - (iv) the listed assets represent at least 80%, by value, of the net assets attributable to the investment strategy; and
 - (v) the value of all the securities or financial products of the entity that are in the same class as the securities or financial products held under the investment strategy does not exceed 30% of the value of the index.

Commented [LK23]: It's not clear what this means.

Marketing material and comparisons must not be misleading

~~RG 97.327~~ **RG 97.56** If you have determined that an entity is the *end investment* and not an interposed vehicle under the PDS test, your marketing material and any comparisons you make in it will need to be consistent with that view. Otherwise, your marketing material and any comparisons made will be misleading.

~~RG 97.328~~ **RG 97.57** For example, a product holding securities in a listed Australian real estate investment trust (AREIT) under an option that is described as an equities portfolio should not be included in a comparison of an option that holds direct commercial property.

Determining whether other entities in the investment chain are interposed vehicles

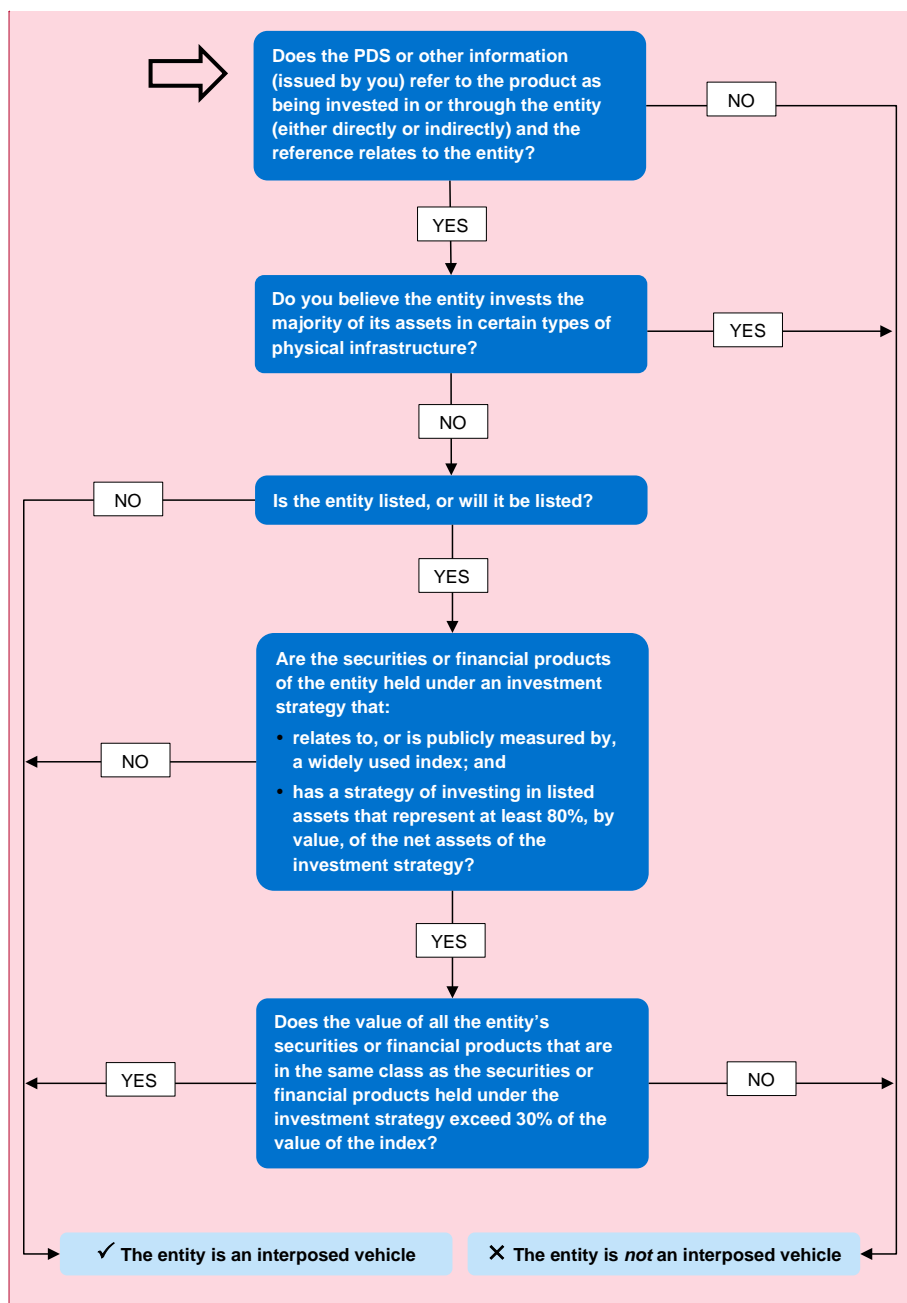
~~RG 97.329~~ **RG 97.58** If you have determined that an entity is an interposed vehicle, you must then establish whether it forms part of a chain of entities. Where it is part of a chain, you must apply the interposed vehicle tests set out at RG 97.299–RG 97.326 to the next downstream entity in the chain.

~~RG 97.330~~ **RG 97.59** If the next downstream entity is an interposed vehicle, then the costs of that entity must be included when calculating indirect costs: see cl 101A(2) of Sch 10. Transaction costs of the interposed vehicle may also need to be included in the disclosure of transaction costs for the product or option: see cl 103(1)(g) of Sch 10. You must then apply the interposed vehicle test to the next downstream entity in the chain.

~~RG 97.331~~ **RG 97.60** If the downstream entity is not an interposed vehicle, then its costs are not included when calculating indirect costs.

~~RG 97.332~~ RG 97.61 If you have determined that a downstream entity is not an interposed vehicle, further downstream entities in the chain are also not considered to be interposed vehicles.

Figure 21: PDS test—Third limb



Commented [LK24]: It's not clear what the first question means i.e. Does the PDS or other information (issued by you) refer to the product as being invested in or through the entity (either directly or indirectly) and the reference relates to the entity?

Note: The information in this figure is described in RG 97.325–RG 97.326 (accessible version).

7.6 Explanation of transaction costs

~~RG 97.332~~ **RG 97.62** Transaction costs are costs incurred when assets are bought or sold. The type of transaction costs will depend on the type of assets. For example, buying or selling real property would normally incur stamp duty. Buying or selling listed securities may incur brokerage.

~~RG 97.334~~ **RG 97.63** Transaction costs are defined in cl 103(1) of Sch 10 to include:

- (a) brokerage;
- (b) buy–sell spreads (see RG 97.339–RG 97.340);
- (c) settlement costs (including custody costs);
- (d) clearing costs; ~~and~~
- ~~(e)~~ stamp duty;

~~(e)~~ ~~(f)~~ counterparty spreads;

~~RG 97.335~~ Examples of the types of things that may also be included in transaction costs are:

~~(a)~~ ~~(g)~~ due diligence costs (e.g. legal, advisory and professional costs, and any failed bid costs); and

~~(h)~~ sales commissions on property transactions;

~~RG 97.336~~ If the purchase price for an asset is higher because the seller has paid transaction costs the buyer would normally pay, the portion of the higher price that reflects those costs should be disclosed as transaction costs.

RG 97.64 Transaction costs that are capitalised for accounting purposes are still required to be disclosed.

RG 97.65 For certain property, infrastructure and other real asset transactions, transaction costs may be amortised for unit pricing purposes over a specified period (e.g. 5 years). Where this is the case, the amount amortised over the relevant financial year should be disclosed as transaction costs, as this best reflects what investors incurred over the period.

~~(a)~~ legal, advisory and other professional costs; and

~~(b)~~ any failed deal costs.

~~RG 97.337~~ **RG 97.66** For managed investment products, transaction costs also include costs relating to derivative financial products that are used for certain specified purposes: see cls 101A(4) and 103(1)(fa) of Sch 10 and RG 97.345–RG 97.359.

Commented [LK25]: Suggest making this a single list and expanding the definition per section 103 of Schedule 10

Commented [LK26]: In general legal, advisory and professional costs will be associated with due diligence

Commented [LK27]: This is covered at 97.274 but I think is an important point so worth repeating.

Commented [LK28]: There is currently no guidance on the treatment of amortised costs and this is reasonably common, particularly for large transactions.

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~~RG 97.338~~ **RG 97.67** Transaction costs do not include excluded transactional and operational costs (see cl 103(1)(h) of Sch 10 and RG 97.341–RG 97.344) or costs that are charged as other types of fees and costs (see cl 103(1)(i) of Sch 10).

~~RG 97.339~~ **RG 97.68** For information on how to calculate transaction costs, see RG 97.378–RG 97.381.

Buy-sell spread

~~RG 97.340~~ **RG 97.69** Buy-sell spread is specifically included as a transaction cost: see cl 103(1)(b) of Sch 10.

~~RG 97.341~~ **RG 97.70** The buy-sell spread that forms part of the transaction costs is the buy-sell spread you incur in respect of the underlying investments of a superannuation product or managed investment product: see paragraph (c) of the definition of buy-sell spread in cl 101 of Sch 10. For example, the responsible entity of a managed investment scheme may charge a superannuation trustee a buy-sell spread if the superannuation entity invests in or exits the managed investment scheme. This is different to the buy-sell spread that is charged to members on entry and exit from a superannuation product or option or managed investment product or option and which appears in the 'Fees and costs summary': see paragraphs (a) and (b) of the definition of buy-sell spread in cl 101 of Sch 10.

7.7 Explanation of excluded transactional and operational costs

~~RG 97.342~~ **RG 97.71** Some types of costs (called excluded transactional and operational costs) are not included in the disclosure of fees and costs in PDSs and periodic statements.

~~RG 97.343~~ **RG 97.72** These costs are defined in cl 103(2) of Sch 10 and comprise:

- (a) borrowing costs;
- (b) property operating costs (e.g. property management/ leasing fees, council rates, and utilities); and
- ~~(c) — where an asset is acquired other than through a financial market, any part of the acquisition price of the asset that exceeds the price at which the asset could have been disposed of; and~~
- ~~(d)~~ **(c)** where an asset is acquired through a financial market, any part of the acquisition price of the asset that exceeds the bid price in the financial market that would apply without the acquisition having occurred either:
 - (i) immediately following the acquisition; or

- (ii) if the acquisition was part of multiple acquisitions reflecting a single and non-recurring instruction to acquire, after the last acquisition made in accordance with the instruction.

[RG 97.344](#)[RG 97.73](#) Although excluded transactional and operational costs are not disclosed in PDSs and periodic statements, this does not mean these types of costs are not important. We expect you to monitor these costs to ensure that members are receiving the best value for money. See also s52(2)(c) of the SIS Act and s601FC(1)(c) of the Corporations Act, which require superannuation trustees and responsible entities to act in the best interests of members.

[RG 97.345](#)[RG 97.74](#) You should take care to ensure that you properly categorise transaction costs. If you incorrectly characterise a transaction cost as an excluded transactional and operational cost and therefore do not disclose it as part of the fees and costs in a PDS or periodic statement, your PDS or periodic statement will not comply with the fees and costs disclosure requirements and may be misleading.

7.8 Disclosing costs associated with derivative financial products

[RG 97.346](#)[RG 97.75](#) Costs relating to certain kinds of derivative financial products must be included in indirect costs for both superannuation products and managed investment products: see cl 101A(3) of Sch 10.

[RG 97.347](#)[RG 97.76](#) The types of derivative financial products that need to be considered when determining indirect costs under cl 101A(3) of Sch 10 are defined in cl 101(3A) of Sch 10. The definition excludes derivatives that are able to be traded on a financial market but it includes securities, managed investment products or other financial products that have an embedded derivative (such as a deferred purchase agreement). Provided the derivative financial product meets the definition in cl 101(3A) of Sch 10, it does not matter if it has been specifically manufactured between the counterparties.

[RG 97.348](#)[RG 97.77](#) These types of derivative financial products can be used to gain exposure to other assets in functionally the same way as if the superannuation entity or managed investment scheme had invested in an interposed vehicle: for more information on interposed vehicles, see RG 97.291–0. Holding derivative financial products can incur costs, which may affect the amount you receive or must pay in relation to the product. These costs can affect the underlying return of the superannuation entity or managed investment scheme.

[RG 97.349](#)[RG 97.78](#) These costs may be:

- (a) amounts that you have to pay to the counterparty;

- (b) reflected in the difference between how much the counterparty pays (or sets off) and the value of the underlying assets or the index of the derivative financial product; and/or
- (c) charged by the counterparty providing an acquisition price that is higher than the disposal price that would be payable.

~~RG 97.350~~ **RG 97.79** Indirect costs include amounts relating to derivative financial products where the amount is attributable to:

- (a) the product or investment option (see cl 101A(3)(c) of Sch 10); or
- (b) an interposed vehicle through which property attributable to the product or investment option is invested (see cl 101A(3)(d) of Sch 10).

~~RG 97.351~~ **RG 97.80** The costs relating to derivative financial products are generally based on the previous financial year (some exceptions are available where full financial year information is not available): see cls 104(2A) and 104A of Sch 10. Different methods apply for calculations, depending on whether the derivative financial product is an option.

Calculating the costs of derivative financial products

~~RG 97.352~~ **RG 97.81** When calculating the costs of derivative financial products, you need to determine whether the product is an option. For derivative financial products that are not options, see RG 97.353–RG 97.355. For products that are options, see RG 97.356.

~~RG 97.353~~ **RG 97.82** When the counterparty to a derivative financial product is a related body corporate, we expect that you will know or be able to reasonably estimate the indirect costs of the derivative financial product.

Derivative financial products that are not options

~~RG 97.354~~ **RG 97.83** For derivative financial products that are not options, include the following amounts:

- (a) *where you know or reasonably ought to know (or where this is not the case, may reasonably estimate)*—the difference between the underlying return and the actual return for the derivative financial product, where the actual return on the product or option is less than the underlying return on the derivative financial product over the relevant financial year (see cl 101A(3)(a)(i) of Sch 10). For more information on making reasonable estimates, see RG 97.396–RG 97.406; and
- (b) *where you do not know, or do not believe you reasonably ought to know, and are not able to reasonably estimate the amount in RG 97.353(a)*—the greater of:
 - (i) a default amount calculated in accordance with the formula in cl 101A(3)(b)(i)(A) of Sch 10; and

- (ii) the minimum amount that you believe or have reasonable grounds to believe would apply under cl 101A(3)(a)(i) of Sch 10 (see cl 101A(3)(b)(i) of Sch 10).

~~RG 97.355~~ **RG 97.84** The underlying return means the return that has been or would be received, or the loss that would be payable because of the change in value of the ultimate reference assets, taking into account any leverage, offsets or similar adjustments applied to or between the ultimate reference assets under the terms of the relevant derivative financial product over the relevant financial year for which the derivative financial product was held: see cl 101A(3A) of Sch 10.

~~RG 97.356~~ **RG 97.85** The actual return means the return that has been or would be received, or the loss that would be payable in relation to the derivative financial product over the relevant financial year, if it was:

- (a) acquired at the time it was acquired, or if it was not acquired during the relevant financial year, acquired at the commencement of the relevant financial year for the same price at which it would have been disposed at the end of the preceding financial year; and
- (b) disposed of at the time it was disposed of, or if it was not disposed of during the relevant financial year, disposed of at the end of the relevant financial year for the price at which it would have been disposed of at that time (see cl 101A(3A) of Sch 10).

Derivative financial products that are options

~~RG 97.357~~ **RG 97.86** For derivative financial products that are options, include the following amounts:

- (a) *where you know or reasonably ought to know (or where this is not the case, may reasonably estimate)*—any amount by which the cost incurred to acquire the derivative financial product exceeds the amount that would be obtained on its disposal at that time (see cl 101A(3)(a)(ii) of Sch 10). For more information on making reasonable estimates, see RG 97.396–RG 97.406; and
- (b) *where you do not know, or do not believe you reasonably ought to know, and are not able to reasonably estimate the amounts in RG 97.353(a)*—the lesser of:
 - (i) a default amount calculated in accordance with the formula in cl 101A(3)(b)(i)(A) of Sch 10 (as if the exclusion of options from that formula did not apply); and
 - (ii) the premium paid by you or the interposed vehicle for the option (see cl 101A(3)(b)(ii)(B) of Sch 10).

Exception for certain derivative financial products used by managed investment schemes

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~~RG 97.358~~ **RG 97.87** As set out at RG 97.345, costs relating to derivative financial products are indirect costs. For managed investment products, indirect costs form part of management fees and costs: see cl 102(1)(i) of Sch 10. However, where a managed investment scheme holds a derivative financial product for the primary purpose of avoiding or limiting the financial consequences of fluctuations in, or in the value of, receipts or costs of the managed investment scheme (whether or not the receipts or costs arise in or through an interposed vehicle), the costs of this derivative financial product are not indirect costs: see cl 101A(4)(a) of Sch 10. These costs are therefore not management fees and costs: see cl 102(1)(i) of Sch 10. These costs should be disclosed as transaction costs: see cl 103(1)(fa) of Sch 10.

~~RG 97.359~~ **RG 97.88** Examples of the types of derivative financial products that would be excluded as a result of the exception include those used for hedging against changes in interest and exchange rates and negative movements in asset prices. Derivative financial products that are used as a means of achieving the managed investment scheme's investment strategy would not be excluded and so would be counted as indirect costs (and therefore management fees and costs).

~~RG 97.360~~ **RG 97.89** In addition, where the costs of a derivative financial product held by a managed investment scheme reflect transaction costs (or reflect excluded transactional and operational costs) that would arise if the managed investment scheme held the ultimate reference assets, these costs are also not indirect costs (see cl 101A(4)(b) of Sch 10) and therefore are not management fees and costs: see cl 102(1)(i) of Sch 10. Items within these costs that meet the definition in cl 103(1) of Sch 10 should be disclosed as transaction costs: see cls 103(1)(fa) and 103(1)(h) of Sch 10.

7.9 Explanation of performance fees

~~RG 97.361~~ **RG 97.90** A performance fee (also known as carried interest or incentive allocation) is an amount paid or payable that is calculated by reference to the performance of:

- (a) a managed investment product;
- (b) a superannuation product;
- (c) a MySuper product;
- (d) an investment option;
- (e) an interposed vehicle; or
- (f) part of a product, investment option or interposed vehicle (see cl 101C(1) of Sch 10).

~~RG 97.362~~ **RG 97.91** 'Performance' includes:

- (a) income in relation to the assets of, or attributed to, the product, option or interposed vehicle, or part; and
- (b) capital appreciation (realised or unrealised) to the value of the product, option or interposed vehicle, or part (see cl 101C(2) of Sch 10).

~~RG 97.363~~ **RG 97.92** For superannuation products, performance fees form part of investment fees and costs: see paragraph (a) of the definition of investment fees and costs in cl 209A of Sch 10.

~~RG 97.364~~ **RG 97.93** For managed investment products, performance fees form part of management fees and costs: see cl 102(1)(g) of Sch 10.

~~RG 97.365~~ **RG 97.94** Investment fees and costs and management fees and costs are both included as line items in the 'Fees and costs summary': see cls 201–202A of Sch 10. For information on how to calculate and disclose performance fees, see RG 97.385–RG 97.395.

Section 8 Calculating and presenting fees and costs

Key points

This section provides guidance on how to calculate and present fees and costs information for both superannuation and managed investment products.

It includes guidance on:

- collecting and compiling data for fees and costs disclosures (see RG 97.365);
- filling in the 'Fees and costs summary' (see RG 97.366–RG 97.376);
- disclosing fees and costs for multiple investment options (see RG 97.377);
- calculating and disclosing transaction costs (see RG 97.378–RG 97.384);
- calculating and disclosing performance fees (see RG 97.385–RG 97.395);
- making reasonable estimates (see RG 97.396–RG 97.406); and
- the impact of tax on fees and costs disclosures in PDSs (see RG 97.407–RG 97.411).

8.1 Collecting and compiling data for fees and costs disclosures

~~RG 97.366~~ **RG 97.95** To produce accurate outcomes for consumers in fees and costs disclosure, you need to take steps to institute appropriate governance arrangements for collecting and compiling fees and costs information. Compliance with fees and costs obligations will be promoted if you:

- (a) document calculation methodologies and due diligence processes; and
- (b) consider in your arrangements with service providers, people offering investment opportunities and interposed vehicles (see RG 97.291–RG 97.332) how the data that is necessary for fees and costs disclosure for your products will be provided to you.

8.2 Filling in the 'Fees and costs summary'

The preamble

~~RG 97.367~~ **RG 97.96** You should only include material in the preamble to the 'Fees and costs summary' that is relevant to the product: see cl 203 of Sch 10.

Filling in the 'Amount' column

~~RG 97.368~~ **RG 97.97** If it is not possible to determine a single amount or percentage of a fee or cost, you can include a range: see cl 204(3) of Sch 10. For example, if a fee or cost can apply at varying rates over a particular time, you should show a range.

~~RG 97.369~~ **RG 97.98** Where a fee or cost will vary so that a certain maximum applies for a particular period and then another maximum applies, you should disclose these amounts as two separate entries in the 'Fees and costs summary'. If a fee or cost may vary between members, you should include the maximum amount expected to apply to any member in the 'Fees and costs summary'.

~~RG 97.370~~ **RG 97.99** If you do not know the exact amount of fees or costs, you must show a reasonable estimate of the amount attributable to the retail client and clearly identify it as an estimate: see cls 204(4)–(5) of Sch 10. For more information on making reasonable estimates, see RG 97.396–RG 97.406.

~~RG 97.371~~ **RG 97.100** If an amount or cost has several components, you must list the amount of each component separately: see cl 204(6) of Sch 10. We consider 'components' to refer to the structure of the fees and costs charging arrangements adopted by you (such as dollar and percentage amounts). For example, management fees and costs could be disclosed as 1.8% of the member's balance, plus \$70 per year. We do not consider 'components' to refer to the different items that can make up the fees and costs as defined in Sch 10, and which must be disclosed in the 'Fees and costs summary' or 'Example of annual fees and costs' (such as indirect costs that form part of investment fees and costs for superannuation products).

~~RG 97.372~~ **RG 97.101** In considering the fees and costs structures for your products, you should also take into account how easily the components of the structure

can be described in the line items in the 'Fees and costs summary', and whether consumers will understand this. For example, if an amount or cost has a number of components with complex interactions, it may be difficult to describe them in a way that is readily understood by consumers, and is not misleading. This may also make it difficult for consumers and others to compare fees and costs between products.

[RG 97.372](#) [RG 97.102](#) You must include GST (less any reduced input tax credits) and stamp duty (where applicable): see cl 204(7)(a) of Sch 10.

[RG 97.374](#) [RG 97.103](#) If a particular fee or cost is not charged, you must write 'nil', 'zero', '0' or 'not applicable' in the 'How and when paid' column (if it would not be misleading): see cl 204(2) of Sch 10. If a fee or cost is only payable on a contingency, you must still disclose the relevant amount.

Filling in the 'How and when paid' column

[RG 97.375](#) [RG 97.104](#) You must set out in the 'How and when paid' column in the 'Fees and costs summary':

- (a) how the amount is or will be recovered (e.g. deducted from the member's investment balance or from the superannuation entity's or managed investment scheme's assets, contributions or withdrawals);
- (b) the frequency of recovery; and
- (c) the timing of recovery (see cls 207(a)–(c) of Sch 10).

[RG 97.376](#) [RG 97.105](#) If the superannuation entity has more than one option for paying fees or if a managed investment scheme has more than two options, you must set out the number of options in the preamble and include details in the 'Fees and costs summary': see cl 206 of Sch 10.

Negotiable fees

[RG 97.377](#) [RG 97.106](#) You must clearly indicate in the 'Fees and costs summary' which fees and costs are negotiable: see cl 208(1) of Sch 10. You must also include a cross-reference to the 'Fees and costs details': see cl 208(2) of Sch 10. In addition, you must include in the 'Fees and costs details' the contact details of the person or body with whom the fee or cost can be negotiated and the manner of negotiation: see cl 209(g) of Sch 10. For more information on the 'Fees and costs details', see RG 97.73–RG 97.82 (for superannuation products) and RG 97.187–RG 97.194 (for managed investment products).

8.3 Disclosing fees and costs for multiple investment options

[RG 97.378](#) [RG 97.107](#) Where the same fees and costs apply to multiple investment options, you may state in the PDS that the 'Fees and costs summary', the 'Example of annual fees and costs', 'Cost of product information' and the 'Fees and costs details' relate to all relevant options. You do not have to

repeat the same information multiple times. This would be relevant, for example, for 'Cost of product information' in circumstances where the only fees and costs that would be included for an option would be those of the superannuation entity or managed investment scheme itself and not of any interposed vehicles, due to the operation of the platform test: see RG 97.299–RG 97.305.

8.4 Calculating and disclosing transaction costs

Calculating transaction costs

~~RG 97.379~~ **RG 97.108** Transaction costs disclosed in a PDS are generally determined based on the transaction costs incurred in the previous financial year. There are exceptions, however, if the product or option was offered for only some of the previous financial year or if the product or option was not offered at all during the previous financial year.

Table 5: How to calculate transaction costs

If the product or option was:	Issuers must base transaction costs on:	Reference
offered for the entire last financial year	the costs for that last financial year	see cl 209AA(a) of Sch 10
offered from at least 11 months before the end of the last financial year but for less than a full financial year	the costs for that period, adjusted to reflect a 12-month period	see cl 209AA(b) of Sch 10
not offered from at least 11 months before the end of the last financial year and not first offered in the current financial year	their reasonable estimate of the transaction costs for the 12-month period of the current financial year at the time the PDS is prepared	see cl 209AA(c) of Sch 10
first offered in the current financial year	their reasonable estimate of the transaction costs for that part of the current financial year at the time the PDS is prepared, adjusted to reflect a 12-month period	see cl 209AA(d) of Sch 10

~~RG 97.380~~ **RG 97.109** We recognise that to calculate costs (under cls 209AA(a) and 209AA(b) of Sch 10), an estimate may be required if information about costs incurred towards the end of the last financial year is not available.

~~RG 97.381~~ **RG 97.110** Clauses 209AA(c) and 209AA(d) of Sch 10 both require you to make a reasonable estimate of the transaction costs for the current financial year.

~~RG 97.382~~ **RG 97.111** Where you use an estimate, you should specify this in the 'Fees and costs details'. For more information on making reasonable estimates, see RG 97.396–RG 97.406.

Disclosing transaction costs in the 'Fees and costs details'

~~RG 97.383~~ **RG 97.112** Under cl 209(j) of Sch 10, certain information about transaction costs must be included in the 'Fees and costs details' for both superannuation products and managed investment products, to the extent that the information is relevant to the particular product.

~~RG 97.384~~ **RG 97.113** Importantly, this includes the amount of total gross transaction costs, or an estimate if the amount is not known: see cl 209(j)(ia) of Sch 10. This amount must show the gross amount of transaction costs that are attributable to a retail client. Doing so enables a comparison between this amount and the amount of transaction costs (net) in the 'Fees and costs summary': see cl 204A of Sch 10. The latter amount shows the amount of transaction costs net of any amount recovered through the buy-sell spread charged by the superannuation trustee or responsible entity that is attributable to a retail client: see RG 97.44–RG 97.45 (for superannuation products) and RG 97.163–RG 97.165 (for managed investment products).

~~RG 97.385~~ **RG 97.114** You must include the following information about transaction costs in the 'Fees and costs details':

- (a) a statement that the transaction costs shown in the 'Fees and costs summary' is shown net of any amount recovered by the buy-sell spread that is charged by the superannuation trustee or responsible entity (see cl 209(j)(iaa) of Sch 10);
- (b) a description of each cost (see cl 209(j)(i) of Sch 10);
- (c) how and when the costs are recovered (see cl 209(j)(iii) of Sch 10); and
- (d) a statement that the cost is an additional cost to the member where it has not already been recovered by the buy-sell spread charged by the superannuation trustee or responsible entity (see cl 209(j)(iv) of Sch 10).

8.5 Calculating and disclosing performance fees

~~RG 97.386~~ **RG 97.115** Performance fees are generally calculated based on an average of the previous five financial years. In broad terms:

- (a) each performance fee relevant to a product or option is averaged;
- (b) the resulting averages are totalled to give the performance fees for the entire product or option; and
- (c) the total is then added to investment fees and costs (for superannuation products) or management fees and costs (for managed investment products).

Calculating performance fees

~~RG 97.387~~ **RG 97.116** To calculate the total performance fees, you must include the performance fees that accrued in relation to:

- (a) the product or option or part of the product or option; and
- (b) any interposed vehicle referable to that product, option or part of the product or option, with each averaged over the previous five financial years (see cl 101C(3) of Sch 10).

~~RG 97.388~~ **RG 97.117** Where a product, option or interposed vehicle or part was not operating for the previous five financial years, calculate the average by reference to the number of financial years in which it operated: see cl 101C(3)(b) of Sch 10. Where the product, option or interposed vehicle or part did not have a performance fee charging mechanism in place in each of the previous five financial years, calculate the average by reference to the number of financial years in which it had a performance fee charging mechanism in place: see cl 101C(3)(c) of Sch 10.

~~RG 97.389~~ **RG 97.118** Where a product, option or interposed vehicle or part was first offered in the current financial year, calculate the average by referring to your reasonable estimate of the performance fee for the current financial year, adjusted to reflect a 12-month period: see cl 101C(3)(d) of Sch 10. For more information on making reasonable estimates, see RG 97.396–RG 97.406.

~~RG 97.390~~ **RG 97.119** In calculating the total performance fees for each financial year, which are then averaged, you may factor in any ~~clawback (a refund or reduction)~~~~/clawbacks of a performance fee~~ due to poor performance for individual years. However, the calculated average figure for the product, option, interposed vehicle or part must not be negative (see cl 101C(3)(e) of Sch 10) and the ~~reduction or~~ clawback cannot be used to reduce any other fees and costs disclosed.

~~RG 97.391~~ **RG 97.120** This total averaged figure must then be included in either investment fees and costs (for superannuation products, see RG 97.40–RG 97.43) or in management fees and costs (for managed investment products, see RG 97.159–RG 97.162).

Disclosing performance fees

Disclosing performance fees in the 'Fees and costs summary'

~~RG 97.392~~ **RG 97.121** You must insert a footnote in the 'Fees and costs summary' for superannuation products (see cl 201 of Sch 10) and for managed investment products (see cls 202 and 202A of Sch 10) where performance fees are included in investment fees and costs or management fees and costs. You must insert a percentage for performance fees and include a cross-reference to the 'Fees and costs details' where the calculation basis for performance fees is set out: see cl 209(b)(ii) of Sch 10 and RG 97.393.

Disclosing performance fees in the 'Fees and costs details'

~~RG 97.393~~ **RG 97.122** Clause 209(j) of Sch 10 requires you to include certain information about performance fees in the 'Fees and costs details' for both superannuation products and managed investment products, to the extent the information is relevant to the particular product: see cl 209(b) of Sch 10.

~~RG 97.394~~ **RG 97.123** The information required is:

- (a) a statement about how performance fees affect administration fees and costs and investment fees and costs (for a superannuation product) and management fees and costs (for a managed investment product) (see cl 209(b)(i) of Sch 10);
- (b) the method for calculating the total performance fees under cl 101C(3) of Sch 10 (see cl 209(b)(ii) of Sch 10). This is the method for calculating the total performance fees to be included in investment fees and costs or management fees and costs, not the calculation method used for each individual performance fee; and
- (c) the calculated average performance fees for each product, option, interposed vehicle or part under cl 101C(3)(a) of Sch 10 (see cl 209(b)(iii) of Sch 10).

~~RG 97.395~~ **RG 97.124** You may provide a further explanation in the 'Fees and costs details' where you believe the average figure based on the previous five financial years is not representative for the coming period. However, you must still use the average figure based on the previous five financial years in your disclosure.

~~RG 97.396~~ **RG 97.125** You may also include other performance-related information in the 'Fees and costs details' if you wish.

8.6 Making reasonable estimates

~~RG 97.397~~ **RG 97.126** In some circumstances, the fees and costs disclosure requirements specify that you must make a reasonable estimate of a fee or cost if you cannot determine the exact number. We have also set out in this guide other circumstances where we recognise that a reasonable estimate may be required: see, for example, RG 97.263.

~~RG 97.398~~ **RG 97.127** You can use reasonable estimates, if you cannot determine the exact number, for:

- (a) an amount of indirect costs (see cl 101A(1) of Sch 10);
- (b) the indirect costs for a derivative financial product (see cl 101A(3)(a) of Sch 10);

- (c) the amount attributable to a retail client that you will show in the 'Fees and costs summary' (see cl 204(4) of Sch 10); and
- (d) the total gross transaction costs you will show in the 'Fees and costs details' (see cl 209(j)(ia) of Sch 10).

~~RG 97.399~~ **RG 97.128** If you have not previously offered a product or option for a full financial year or the product or option was first offered in the current financial year, you can use reasonable estimates of the:

- (a) costs in administration fees and costs and investment fees and costs for a superannuation product (including indirect costs) (see cls 104(2A)(c)–(d) of Sch 10);
- (b) costs in management fees and costs for a managed investment product (including indirect costs) (see cls 104A(c)–(d) of Sch 10); and
- (c) transaction costs for the product or option (see cl 209AA(c)–(d) of Sch 10).

~~RG 97.400~~ **RG 97.129** Where a product, option or interposed vehicle or part was first offered in the current financial year, you must calculate the average performance fee to be disclosed by reference to your reasonable estimate of the performance fee, adjusted to reflect a 12-month period: see cl 101C(3)(d) of Sch 10.

~~RG 97.401~~ **RG 97.130** To make a reasonable estimate, you must take reasonable steps to obtain what you believe is the best estimate of the relevant amount.

~~RG 97.402~~ **RG 97.131** We believe reasonable steps would include you:

- (a) using reasonable assumptions when making the estimate; and
- (b) taking steps that are within your duties and obligations as a superannuation trustee or responsible entity.

~~RG 97.403~~ **RG 97.132** Whether other steps would be considered reasonable depends on:

- (a) the cost or effort involved in the step; and
- (b) how likely it is that taking the step would result in a material change to the amount that you would otherwise have estimated.

~~RG 97.404~~ **RG 97.133** Examples of steps that you might take to obtain a reasonable estimate are to:

- (a) ask an interposed vehicle for more information;
- (b) use information that has already been provided to you by an interposed vehicle;
- (c) use relevant information that you already have (e.g. information you obtained when buying or selling another asset);
- (d) research the typical fees and costs of similar investments;

- (e) estimate the costs you would incur if you made the relevant investment instead of using a third-party provider; and
- (f) ask a service provider for further information.

~~RG 97.405~~ **RG 97.134** You should document your procedures for making reasonable estimates, including the type of information you may use when making reasonable estimates. This may help to show you have taken reasonable steps. You should also make your procedures available on your website.

~~RG 97.406~~ **RG 97.135** If there are multiple approaches you could have used to make a reasonable estimate, you should consider including an explanation of the approach you have used in the 'Fees and costs details' in your PDS.

~~RG 97.407~~ **RG 97.136** When you estimate costs, what constitutes a reasonable estimate will often be a range. You should be mindful that a low estimate brings more risk of being found later to have not been a reasonable estimate, and therefore your PDS may not be up to date. For more information on updating PDSs, see Section I at RG 97.412–RG 97.425.

8.7 Impact of tax on fees and costs disclosure in PDSs

~~RG 97.408~~ **RG 97.137** You must not reduce the fees and costs disclosed in a PDS to take into account any tax deductions that are available to the superannuation entity, managed investment scheme or interposed vehicle. The fact that a fee or cost may be able to be funded by a tax deduction does not affect its characterisation as a fee or cost. This means that fees and costs in a PDS must be shown gross of tax.

~~RG 97.409~~ **RG 97.138** The Explanatory Statement to Select Legislative Instrument 2005 No. 31 (Corporations Amendment Regulations 2005 (No. 1)) states that:
In a PDS, fees or costs must be shown gross of income tax (including GST and any applicable stamp duty) and net of any applicable reduced input tax credits. Disclosure in this manner is required as the impact of any entity level tax deductions and the extent to which they will be passed on to members or product holders through lower after tax fees or costs is not known at the time of preparing a PDS.

~~RG 97.410~~ **RG 97.139** It is also important you disclose the true cost of operating the superannuation entity or managed investment scheme. To see an example of how fees should be disclosed to take into account tax deductions, see Example 12 in Appendix 1.

~~RG 97.411~~ **RG 97.140** Also, the 'Fees and costs details' must include information about whether the benefit of any tax deduction is passed on to the investor in the form of a reduced fee or cost: see cl 209(d) of Sch 10. For more information on the 'Fees and costs details', see RG 97.73–RG 97.82 (for superannuation products) and RG 97.187–RG 97.194 (for managed investment products).

~~RG 97.412~~ **RG 97.141** For information on the impact of tax on fees and costs disclosed in periodic statements, see RG 97.111–RG 97.141 (for superannuation products) and RG 97.219–RG 97.244 (for managed investment products).

Section 9 Updating fees and costs information

Key points

This section provides guidance on updating fees and costs information, including:

- how to update in PDSs (see RG 97.412–RG 97.419);
- updating requirements at the end of a financial year (see RG 97.420–RG 97.423); and
- updating requirements during the financial year (see RG 97.424–RG 97.425).

It also provides guidance on significant event notices: see RG 97.426–RG 97.432.

9.1 Updating fees and costs information in PDSs

Requirements for updating information in PDSs

~~RG 97.412~~ **RG 97.142** A PDS must be up to date at the time it is given: see s1012J.

~~RG 97.414~~ **RG 97.143** You can update a full PDS by issuing a supplementary PDS: see s1014A(c). You cannot update a shorter PDS by using a supplementary PDS and you must issue a new shorter PDS instead: see regs 7.9.11M and 7.9.11U.

~~RG 97.415~~ **RG 97.144** The relief in [ASIC Corporations \(Updated Product Disclosure Statements\) Instrument 2016/1055](#) provides an alternative method you can use to update a PDS without needing to issue a supplementary PDS or, in the case of a shorter PDS, to issue a new shorter PDS.

~~RG 97.416~~ **RG 97.145** The main requirements you must satisfy to rely on the relief in [ASIC Corporations \(Updated Product Disclosure Statements\) Instrument 2016/1055](#) are that:

- the PDS was up to date at the time it was prepared;
- the updated information does not include any materially adverse information (see RG 97.416);

- (c) the PDS clearly and prominently explains that the information (other than materially adverse information) is subject to change from time to time and may be updated by means described in the PDS, and explains how the updated information can be found at any time; and
- (d) you establish and maintain a means by which a person may find out any updated information. The means must be simple and involve no charge and little inconvenience to the person, given the kinds of persons likely to consider acquiring the financial product under the PDS.

[RG 97.417](#)[RG 97.146](#) Materially adverse information is information that, if it were included in or omitted from a PDS, would render the PDS defective within the meaning of s1021B. This section sets out a number of circumstances where a PDS is defective. These include where it contains a misleading or deceptive statement that is or would be materially adverse from the point of view of a reasonable person considering whether to proceed to acquire the financial product: see s1021B(1).

[RG 97.418](#)[RG 97.147](#) In the context of fees and costs disclosure, the assessment as to whether updated information would be materially adverse focuses on the difference between the fees and costs currently disclosed in the PDS and the fees and costs that would be disclosed in an updated PDS.

[RG 97.419](#)[RG 97.148](#) Typically, we expect that updates made in accordance with [ASIC Corporations \(Updated Product Disclosure Statements\) Instrument 2016/1055](#) be made electronically on a website that investors can access.

[RG 97.420](#)[RG 97.149](#) If you update information in the 'Fees and costs summary', the 'Example of annual fees and costs' or the 'Cost of product information' either in a supplementary PDS or using the relief provided in [ASIC Corporations \(Updated Product Disclosure Statements\) Instrument 2016/1055](#), you should include a complete 'Fees and costs summary', 'Example of annual fees and costs' and/or 'Cost of product information' rather than just updating particular figures. This helps consumers understand the fees and costs without having to look at two documents.

Updating requirements at the end of each financial year

[RG 97.421](#)[RG 97.150](#) Schedule 10 requires that certain costs disclosed in PDSs must be based on the costs for the previous financial year (except where the product was not offered for a full previous financial year or was only offered in the current financial year). This requirement applies in relation to:

- (a) costs in administration fees and costs and investment fees and costs (including indirect costs) for a superannuation product or option(see cl 104(2A) of Sch 10 and RG 97.102–RG 97.107);

- (b) costs in management fees and costs (including indirect costs) for an investment option offered by a managed investment scheme (see cl 104A of Sch 10 and RG 97.213–RG 97.218); and
- (c) transaction costs for both superannuation products and managed investment products (see cl 209AA of Sch 10 and RG 97.378–RG 97.381).

~~RG 97.422~~ **RG 97.151** You will need to consider before the end of each financial year whether the costs for that financial year would change the amounts that are currently disclosed in your PDS. If the costs for that financial year would change the amounts currently disclosed, then you may need to update your PDS, to ensure that it remains up to date and is not misleading. See RG 97.413–RG 97.419 for information on how a PDS can be updated.

~~RG 97.422~~ **RG 97.152** When you are calculating the costs at the end of each financial year to determine whether you need to update your PDS, it may be necessary to make reasonable estimates of some of the costs where information about those costs is not available (e.g. the costs incurred for the last quarter of the current financial year). For information about making reasonable estimates, refer to RG 97.396–RG 97.406.

~~RG 97.424~~ **RG 97.153** In addition, as performance fees are calculated based on an average over the past five financial years (see cl 101C(3) of Sch 10), you will also need to evaluate whether the performance fees incurred for that financial year would change the amount of total performance fees that are included in investment fees and costs (for superannuation products) or management fees and costs (for managed investment products) or disclosed in the footnote to the 'Fees and costs summary'. If the performance fees would change the amounts currently disclosed, then you may need to update your PDS to ensure that it remains up to date and is not misleading. For more information on performance fees, see RG 97.360–RG 97.364 and RG 97.385–RG 97.395.

Updating requirements during a financial year

~~RG 97.425~~ **RG 97.154** You must monitor changes to fees and costs during the financial year. You should have policies and procedures in place to identify when you receive updated fees and costs information so that the impact of this information can be assessed.

~~RG 97.426~~ **RG 97.155** If you become aware of changed circumstances or new information that means that a disclosed fee or cost is no longer correct, you will need to consider whether this new information means that your PDS is not up to date and therefore whether an update is required. This includes where the new information shows that a previously made estimate is no longer a reasonable estimate. See RG 97.413–RG 97.419 for information on how a PDS can be updated.

9.2 Requirements for significant event notices

~~RG 97.427~~ **RG 97.156** Section 1017B requires you to notify members of any material change to a matter, or significant event that affects a matter, being a matter that would have been required to be specified in a PDS prepared on the day before the change or event occurs.

~~RG 97.428~~ **RG 97.157** The significant event notice must give the member the information that is reasonably necessary for them to understand the nature and effect of the change or event: see s1017B(4).

~~RG 000.429~~ **RG 000.158** A significant event notice may be given in writing or electronically: see s1017B(3). For guidance on how a significant event notice may be given electronically, see reg 7.9.75B(1), [ASIC Corporations \(Facilitating Electronic Delivery of Financial Services Disclosure\) Instrument 2015/647](#) and [Regulatory Guide 221](#) *Facilitating digital financial services disclosure* (RG 221).

Requirements for superannuation products

~~RG 97.430~~ **RG 97.159** Generally, members must be notified of a change that is an increase in fees or charges or might result in an increase in fees or charges at least 30 days before the change takes effect: see s1017B(5) and (7).

~~RG 97.431~~ **RG 97.160** However, you must notify beforehand or as soon as practicable afterwards (but not more than three months after), any increase in a fee that results from an increase in costs for a superannuation product. In addition, you may give notice up to 12 months after the change or event if you reasonably believe that the change or event is not adverse to the member's interests and, accordingly, the member would not be expected to be concerned about the delay in receiving the information: see s1017B(5) and (6) (as modified by paragraphs 5B and 5C of [\[CO 14/1252\]](#)).

Requirements for managed investment products

~~RG 97.432~~ **RG 97.161** You must notify members of a change that is an increase in fees or charges or might result in an increase in fees or charges at least 30 days before the change takes effect: see s1017B(5) and (7).

~~RG 97.433~~ **RG 97.162** Issuers of managed investment products that are ED securities (as defined in s111AFA) do not have to issue significant event notices: see s1017B(2). Instead, the continuous disclosure regime in s675–677 applies.

Appendix 1: Examples

9.3 'Fees and costs summary': Multiple fee structure for managed investment products

Example 1: Blank managed investment products 'Fees and costs summary'—multiple fee structure

This section shows fees and other costs that you may be charged. These fees and costs may be deducted from your money, from the returns on your investment or from the assets of the managed investment scheme as a whole.

Taxes are set out in another part of this document.

You have 2 different fee payment options:

- (a) to pay contribution fees upfront, at the time when you make each investment into the managed investment scheme; or
- (b) to pay contribution fees later (for example, on the termination of your investment or by way of other increased fees).

Note: You may pay more in total fees if you choose to pay contribution fees later.

You should read all the information about fees and costs because it is important to understand their impact on your investment.

[If relevant] Fees and costs for particular investment options are set out on page [insert page number].

Fees and Costs Summary

[Name of collective investment product]			
Type of fee or cost	Amount		How and when paid
	Option to pay contribution fees upfront	Option to pay contribution fees later	
Ongoing annual fees and costs			
<i>Management fees and costs</i> ¹ The fees and costs for managing your investment ²			
<i>Transaction costs (net)</i> The costs incurred by the product when buying or selling assets			

Member activity related fees and costs (fees for services or when your money moves in or out of the product)³			
<i>Establishment fee</i> The fee to open your investment			
<i>Contribution fee²</i> The fee on each amount contributed to your investment			
<i>Buy–sell spread</i> An amount deducted from your investment representing costs incurred in transactions by the product			
<i>Withdrawal fee²</i> The fee on each amount you take out of your investment			
<i>Exit fee²</i> The fee to close your investment			
<i>Switching fee</i> The fee for changing investment options			

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".]
2. This fee includes an amount payable to an adviser. (See Division 4, "Adviser remuneration" under the heading "Fees and Costs Details".)
3. [If there are other service fees, such as advice fees or special request fees, include a cross-reference to the "Fees and Costs Details".]

9.4 Interposed vehicles

We have included some examples of entities that would and would not be considered interposed vehicles. These examples are not intended to be an exhaustive list of possibilities, but rather practical examples of when an entity would be considered an interposed vehicle.

Example 2: Investment option in Australian shares

A superannuation entity offers an investment option in Australian shares. The investment option's exposure to Australian shares is gained by the superannuation trustee investing in an unlisted wholesale managed fund that has an investment objective of tracking the S&P/ASX 200 index.

The wholesale managed fund is an interposed vehicle on the basis of the assets test.

The person responsible for preparing the PDS for the superannuation entity has reasonable grounds to believe the wholesale managed fund has more than 70% of its assets in relevant securities—

essentially, securities that are not real property or infrastructure-related securities and do not confer control: see cl 101B(1)–(2) of Sch 10.

As the wholesale managed fund holds financial products of entities, each entity in which the wholesale managed fund invests will need to be assessed against the definition of interposed vehicle.

Example 3: Registered scheme specialising in international shares

A responsible entity operates a registered scheme that is a hedge fund that the PDS discloses specialises in international shares. As part of the scheme's strategy, the responsible entity invests in a number of other unlisted hedge funds that give negatively correlated exposure to a number of offshore markets.

The unlisted hedge funds in which the scheme invests are interposed vehicles on the basis of the PDS test.

Based on the PDS of the scheme, the unlisted hedge funds could be reasonably regarded as the *means* by which the benefit of investment in international shares is obtained rather than the *end investment*: see cl 101B(4) of Sch 10.

Example 4: Balanced investment option

A superannuation trustee with a superannuation product offering a balanced investment option invests in a number of listed investment companies, exchange-traded funds and listed managed investment schemes. The PDS indicates that each of these vehicles provides exposure to securities, financial products or real property that the superannuation trustee considers appropriate as part of offering a balanced investment option.

Some of these vehicles are interposed vehicles on the basis that they meet the assets test.

This is because the issuer would have reasonable grounds to believe that they have more than 70% of their assets invested in financial products: see cl 101B(1) of Sch 10.

If the investment is in a property fund and is not an interposed vehicle on the basis of the assets test then it may still be an interposed vehicle if, based on the PDS of the superannuation product, it appears that the property fund is a *means* of investing in property rather than an *end investment*: see cl 101B(4) of Sch 10. As the PDS indicates that the investment was made to obtain exposure to real property, the property fund is a *means* by which the benefit of an investment in real property is obtained and, therefore, the property fund is an interposed vehicle.

Example 5: Cash investment option

A superannuation trustee offers a cash investment option with the objective of gaining exposure to cash investments, including term deposits and short-term money market securities. The superannuation trustee gains this exposure by investing in a life policy held with a life company that invests in the cash investments and provides an after-tax, after-fees return.

The life company is an interposed vehicle for the purpose of calculating indirect costs if the superannuation trustee has reasonable grounds to believe that it invests more than 70% of its assets in relevant securities: see cl 101B(1) of Sch 10.

However, even if the life company invested less than 70% of its assets by value in relevant securities, it is still an interposed vehicle, based on the PDS of the superannuation product. The life company could be reasonably regarded as the *means* by which the benefit from cash investments is obtained: see cl 101B(4) of Sch 10. This is because the PDS states that investment in the life policy is a cash option.

Example 6: Investment in shares of a listed public company

A superannuation trustee for a MySuper product invests in the shares of a listed public company specialising in operating mines, as part of an investment strategy of holding Australian shares.

This company is not an interposed vehicle because:

- the superannuation trustee has no reasonable grounds to believe and does not believe, based on the information the superannuation trustee has, that the company has more than 70% of its assets invested in relevant securities (its assets are predominantly mineral rights or controlling holdings in entities holding the mineral rights, not relevant securities) (see cl 101B(1) of Sch 10); and
- based on the PDS for the MySuper product, it could only be reasonably regarded as the *end investment* and not as the *means* by which exposure to mining is achieved (see cl 101B(4) of Sch 10).

Example 7: Investment option in infrastructure

A superannuation trustee discloses in the PDS an infrastructure investment option. The PDS states that it currently invests in a named unlisted trust that invests in infrastructure across Australia, and that the return of the investment option is substantially based on the investment in the trust.

This trust is an interposed vehicle under the PDS test because, based on the PDS, the investment in the unlisted trust could reasonably be regarded as a *means* to gain exposure to other assets, namely infrastructure assets, rather than being the *end investment*: see cl 101B(4) of Sch 10.

Example 8: Investment option via special purpose vehicle

A superannuation trustee discloses in the PDS that a mining companies option is available for investment. The superannuation trustee uses a special purpose vehicle to hold its securities in each of the mining companies that make up the investment option.

The special purpose vehicle that holds the securities in the mining companies is an interposed vehicle because the superannuation trustee has reasonable grounds to believe that it holds more than 70% of its assets in relevant securities: see cl 101B(1) of Sch 10.

Example 9: Financial products offered through an IDPS

An IDPS operator offers investors access to a number of financial products that they may select as investments. Before they can select any of them, the IDPS operator gives each investor the PDS for the financial product and a list of the investments. In addition, the arrangement under which

instructions to acquire the financial product would be acted on is a custodial arrangement, as defined in s1012IA(1).

Each of these financial products is not an interposed vehicle under the platform test. Each limb of the platform test under cl 101B(5) of Sch 10 is satisfied.

Example 10: ASX-listed AREITs

As part of an investment strategy of tracking the S&P/ASX 200 index, a superannuation trustee invests in ASX-listed AREITs, with each AREIT investing in direct property or property securities.

The AREITs are not interposed vehicles because the superannuation trustee does not believe, or have reasonable grounds to believe, that the AREITs have more than 70% of their assets in relevant securities. The AREITs may hold substantial interests in other registered schemes that are reasonably regarded as a means of investing in real property, but those interests are not relevant securities: see cl 101B(1) and (2)(a) of Sch 10.

The PDS test is not met. Based on the PDS and other information issued by the superannuation trustee, the interests in the AREIT must be regarded as the *end investment* and not the *means* by which the *end investment* in property is obtained.

Example 11: Pooled superannuation trust

A PDS for a superannuation entity explains that the entity offers exposure to a high-growth equities portfolio and that the superannuation trustee gains this exposure by investing in a pooled superannuation trust.

The pooled superannuation trust is an interposed vehicle under the assets test because it invests more than 70% of its assets in relevant securities: see cl 101B(1) of Sch 10.

Even if the pooled superannuation trust is not an interposed vehicle based on the assets test, it will be an interposed vehicle based on the PDS test. Based on the PDS and other information issued by the superannuation trustee, the pooled superannuation trust should be reasonably regarded as the *means* by which the benefit of the investment is obtained rather than being the *end investment*: see cl 101B(4) of Sch 10.

9.5 Impact of tax on fees and costs disclosure

Example 12: Impact of tax on fees and costs disclosure

Two superannuation entities charge administration fees and costs of \$1 per week and the overall operating costs of both entities are the same (\$1 per week).

Superannuation Entity A discloses its administration fees and costs in the PDS as \$1, without reducing it by the benefit of any tax deduction that it may claim. Separately, it passes on the benefit of the tax deduction directly to the member's account.

Superannuation Entity B discloses its administration fees and costs in the PDS as \$0.85. This sum is net of the benefit of any tax deduction it may pass on to the member if it is entitled to claim a tax

Commented [LK29]: We have proposed some amendments to this example in our response to C6Q2 on page 15 of our feedback paper

deduction. Superannuation Entity B is using the benefit of the tax deduction to pay some of the administration fees and costs.

The final overall effect of the two arrangements on the member is identical as the member is, ultimately, still bearing the \$1 per week cost.

Superannuation Entity A's approach is correct and Superannuation Entity B's approach is potentially misleading, as it does not disclose the true cost of the superannuation entity.

DRAFT FOR FEEDBACK

Key terms

Term	Meaning in this document
accessible financial product	A financial product acquired pursuant to an instruction under a custodial arrangement as defined in s1012IA
Additional explanation of fees and costs	<p>The information required under cl 209 of the current version of Sch 10</p> <p>Note: This definition will be deleted if the proposal to change the name of 'Additional explanation of fees and costs' to 'Fees and costs details' is implemented: see proposal C1 in Consultation Paper 308 Review of RG 97 Disclosing fees and costs in PDSs and periodic statements (CP 308).</p>
advice fee	Has the meaning given in cl 101 of the draft amendments to Sch 10
AREIT	Australian real estate investment trust
ASIC	Australian Securities and Investments Commission
assets test	The test for determining whether an entity is an interposed vehicle based on the assets of the entity: see cl 101B(1) of the draft amendments to Sch 10 and RG 97.306–RG 97.317
ATO	Australian Taxation Office
Australian passport fund	A registered scheme that is also registered as a passport fund under Pt 8A.3 of the Corporations Act
balanced investment option	An investment option in which the ratio of investment in growth assets, such as shares or property, to the investment in defensive assets, such as cash or bonds, is as close as practicable to 70:30: see cl 101 of the draft amendments to Sch 10, as incorporated by cl 7(5) of Sch 10D and cl 7(4) of Sch 10E
borrowing costs	Has the meaning given in cl 101 of the draft amendments to Sch 10
buy–sell spread	Has the meaning given in cl 101 of the draft amendments to Sch 10
certain types of physical infrastructure	The types of physical infrastructure defined in cls 101B(6)(a)–(j) of the draft amendments to Sch 10
CCIV Bill	Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill 2018
Choice product	A superannuation product that is not a MySuper product
[CO 14/1252] (for example)	<p>An ASIC class order (in this example numbered 14/1252)</p> <p>Note: Legislative instruments made from 2015 are referred to as ASIC instruments.</p>

Term	Meaning in this document
collective investment product	Has the meaning given in cl 101 of the draft amendments to Sch 10
conflicted remuneration	<p>A benefit given to an Australian financial services (AFS) licensee, or a representative of a licensee, who provides financial product advice to clients that, because of the nature of the benefit or the circumstances in which it is given, could reasonably be expected to influence:</p> <ul style="list-style-type: none"> the choice of financial product recommended to clients by the licensee or its representative; or the financial product advice given to clients by the licensee or its representative. <p>In addition, the benefit must not be excluded from being conflicted remuneration by the Corporations Act or Corporations Regulations</p>
Consumer advisory warning	The consumer advisory warning required by Div 7 of the draft amendments to Sch 10
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
Cost of product information	The 'Cost of product information' required by Div 6A of the draft amendments to Sch 10
CP 308 (for example)	An ASIC consultation paper (in this example numbered 308)
defined benefit member	A superannuation entity member who is entitled to benefits defined solely by reference to the factors in paragraphs (a) and/or (b) of the definition of 'defined benefit member' in reg 1.03(1) of the SIS Regulations
defined benefit superannuation entity	Has the same meaning as 'defined benefit fund' in reg 1.03(1) of the SIS Regulations
derivative financial product	<p>Either an OTC derivative or a security or managed investment product that embeds a derivative</p> <p>Note: The exact definition is in cl 101(3A) of the draft amendments to Sch 10.</p>
Div 6 (for example)	A division of the Corporations Act (in this example numbered 6), unless otherwise specified
entity	A body, trust or partnership
Example of annual fees and costs	The example of annual fees and costs required by Div 5 of the draft amendments to Sch 10

Term	Meaning in this document
excluded transactional and operational costs	Has the meaning given in cl 103(2) of the draft amendments to Sch 10
explicit transaction costs	Transaction costs as defined in cl 103 of the draft amendments to Sch 10 Note: This definition will be deleted if proposals B5–B7 in CP 308 are implemented and the definition of 'transaction costs' will be used instead.
Fees and costs details	The information required to be included under cl 209 of the draft amendments to Sch 10
fees and costs disclosure requirements	The requirements relating to fees and costs set out in the Corporations Act and in the Corporations Regulations (including Schs 10, 10D and 10E to the Corporations Regulations)
Fees and costs summary	The fees and costs summary set out in Divs 1 and 2 of Pt 2 of the draft amendments to Sch 10
Fees and costs template	The fees and costs template set out in Divs 1 and 2 of Pt 2 of the current version of Sch 10 Note: This definition will be deleted if the proposal to change 'Fees and costs template' to 'Fees and costs summary' is implemented: see proposal B1, B2 and C1 in CP 308 .
financial market	Has the meaning given in s767A of the Corporations Act, and includes a facility through which offers to acquire or dispose of financial products are regularly made or accepted
financial product	A facility through which, or through the acquisition of which, a person does one or more of the following: <ul style="list-style-type: none"> • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D). Note: This definition is contained in s763A of the Corporations Act: see also s763B–765A.
financial product advice	A recommendation or a statement of opinion, or a report of either of these things, that: <ul style="list-style-type: none"> • is intended to influence a person or persons in making a decision about a particular financial product or class of financial product, or an interest in a particular financial product or class of financial product; or • could reasonably be regarded as being intended to have such an influence. This does not include anything in an exempt document or statement Note: This definition is contained in s766B of the Corporations Act.
GST	Goods and services tax

Term	Meaning in this document
IDPS	An investor directed portfolio service as defined in Class Order [CO 13/763] <i>Investor directed portfolio services</i> or any instrument that amends or replaces that class order
IDPS Guide	A document provided by an IDPS operator instead of a PDS to help retail clients decide whether they should use the IDPS
IDPS-like scheme	An investor-directed-portfolio-service-like scheme as defined in Class Order [CO 13/762] <i>Investor directed portfolio services</i> provided through a registered managed investment scheme, or any instrument that amends or replaces that class order
implicit transaction costs	Cost impacts that are generally not objectively observable that are usually embedded in the price paid for an asset. These costs can include bid–ask spreads, market impact costs and implementation shortfall (the difference in price between the decision to trade and the execution of the trade) Note: This definition will be deleted if proposal B6 in CP 308 is implemented.
incorporated by reference	Information available in a document other than a PDS but incorporated by reference into a shorter PDS in accordance with regs 7.9.11P and 7.9.11X, or into a full PDS in accordance with reg 7.9.15DA
indirect cost	Has the meaning given in cl 101A of the draft amendments to Sch 10
indirect cost ratio	Has the meaning given in cls 104(1) and 104(1A) of the current version of Sch 10 Note: This definition will be deleted if the proposals to merge indirect costs with investment fees and administration fees and to remove the concept of indirect cost ratio are implemented: see proposals B1 and E1 in CP 308 .
infrastructure entity	Has the meaning given in cl 101B(6) of the draft amendments to Sch 10
interposed vehicle	The investment vehicle through which a superannuation entity or managed investment scheme might directly or indirectly invest to obtain access to the underlying product or asset Note: See cl 101B of the draft amendments to Sch 10 for the exact definition.
intrafund advice costs	Costs incurred by a superannuation trustee (other than costs incurred as advice fees) in making available to all members investing in a particular MySuper product or investment option, financial product advice by the superannuation trustee or another person acting as an employee of or under an arrangement with the trustee: see cl 101 of the draft amendments to Sch 10

Term	Meaning in this document
issuer	The person who makes the relevant superannuation product or managed investment product available. For a superannuation product, this is a superannuation trustee. For an interest in a registered scheme, this is the responsible entity
MDA	A managed discretionary account
MDA service	Some or all of the services and functions involved in providing an MDA
managed investment product	An interest in a registered scheme, a legal or equitable right in such an interest, or an option to acquire by way of issue such an interest or right
managed investment scheme	Has the meaning given in s9 of the Corporations Act
member	A member of a superannuation entity or managed investment scheme, including a prospective member
MySuper product	A default superannuation product provided under Pt 2C of the SIS Act
OTC	Over the counter
PDS	A Product Disclosure Statement—a document that must be given to a retail client for the offer or issue of a financial product, in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s761A for the exact definition.
PDS test	The test for determining whether an entity is an interposed vehicle based on whether the entity could reasonably be regarded as the means by which the benefit of an investment is obtained rather than the end investment: see cls 101B(4)–(4D) of the draft amendments to Sch 10 and RG 97.318–RG 97.328
performance fee	Has the meaning given in cl 101C(1) of the draft amendments to Sch 10
periodic statement	A statement required to be sent to certain persons who acquired financial products as a retail client under s1017D on at least an annual basis and on ceasing to hold the financial product

Term	Meaning in this document
personal advice	Financial product advice given or directed to a person (including by electronic means) in circumstances where: <ul style="list-style-type: none"> the person giving the advice has considered one or more of the person's objectives, financial situation and needs; or a reasonable person might expect the person giving the advice to have considered one or more of these matters <p>Note: This definition is contained in s766B(3) of the Corporations Act.</p>
platform	A superannuation platform, an IDPS-like scheme or an IDPS
platform operator	The superannuation trustee of a superannuation platform, the responsible entity of an IDPS-like scheme or the IDPS operator of an IDPS
platform test	The test for determining whether an entity is an interposed vehicle on the basis that it is an investment obtained through a custodial arrangement: see cl 101B(5) of the draft amendments to Sch 10 and RG 97.299–RG 97.305
property operating costs	Has the meaning given in cl 101 of the draft amendments to Sch 10
Pt 7.9 (for example)	A part of the Corporations Act (in this example numbered 7.9), unless otherwise specified
PYSP Bill	Treasury Laws Amendment (Protecting Your Super Package) Bill 2018
reg 7.9.16N (for example)	A regulation of the Corporations Regulations (in this example numbered 7.9.16N), unless otherwise specified
registered scheme	A managed investment scheme that is registered under s601EB of the Corporations Act
REP 581 (for example)	An ASIC report (in this example numbered 581)
responsible entity	A responsible entity of a registered scheme as defined in s9 of the Corporations Act
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations
Review	The external expert review into RG 97 reported in Report 581 Review of ASIC Regulatory Guide 97: Disclosing fees and costs in PDSs and periodic statements
RG 179 (for example)	An ASIC regulatory guide (in this example numbered 179)
RIS	Regulation Impact Statement
s1013C (for example)	A section of the Corporations Act (in this example numbered 1013C), unless otherwise specified

Term	Meaning in this document
Sch 10 (for example)	A schedule to the Corporations Regulations (in this example numbered 10), unless otherwise specified
shorter PDS	A PDS that is required to comply with the shorter PDS regime
shorter PDS regime	The requirements set out in Div 3A of Pt 7.9 of the Corporations Act as modified by Subdivs 4.2B–4.2C and Schs 10D and 10E to the Corporations Regulations, which prescribe the content and length of the PDS for certain superannuation products and simple managed investment schemes
simple managed investment scheme	A registered scheme that invests at least 80% of its assets in a bank account where funds can be withdrawn within three months, or in arrangements where the responsible entity can reasonably expect to realise the investment at market value within 10 days: see reg 1.0.2 of the Corporations Regulations
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
SIS Regulations	Superannuation Industry (Supervision) Regulations 1994
SMSF	A self-managed superannuation fund
superannuation entity	Has the meaning given in s10(1) of the SIS Act
superannuation platform	A superannuation entity that offers a choice of investment strategies to members where accessible financial products will be acquired under the member's choice of investment strategy
superannuation product	A superannuation interest within the meaning of the SIS Act: see s764A(1)(g)
superannuation trustee	A person or group of persons licensed by the Australian Prudential Regulation Authority under s29D of the SIS Act to operate a registrable superannuation entity (e.g. superannuation fund) (also known as an 'RSE licensee')
transaction costs	Has the meaning given in cl 103 of Sch 10 in the draft amendments to Sch 10
transactional and operational costs	Has the meaning given in cl 103 of the current version of Sch 10 Note: This definition will be deleted and the definition 'transaction costs' used instead if proposals B5–B7 in CP 308 are implemented.
ultimate reference asset	The financial product (which includes securities) or other asset or assets from which the returns from the derivative financial product are ultimately determined Note: See cl 101A(3A) of the draft amendments to Sch 10 for the exact definition.

Related information

Headnotes

costs, fees, fees and costs disclosure requirements, IDPS, indirect costs, insurance products, interposed vehicle, managed investment products, management fees and costs, MDA services, PDSs, performance fee, periodic statements, platform operators, Product Disclosure Statements, responsible entities, shorter PDS regime, simple managed investment scheme, superannuation products, superannuation trustees, transaction costs

Legislative instruments

[\[CO 12/749\]](#) *Relief from the shorter PDS regime*

[\[CO 13/762\]](#) *Investor directed portfolio services provided through a registered managed investment scheme*

[\[CO 13/763\]](#) *Investor directed portfolio services*

[\[CO 13/1200\]](#) *Periodic statements relief for AQUA quoted and listed managed investment scheme manager*

[\[CO 14/1252\]](#) *Technical modifications to Schedule 10 of the Corporations Regulations*

[ASIC Corporations \(Facilitating Electronic Delivery of Financial Services Disclosure\) Instrument 2015/647](#)

[ASIC Corporations \(Superannuation: Investment Strategies\) Instrument 2016/65](#)

[ASIC Corporations \(Disclosure in Dollars\) Instrument 2016/767](#)

[ASIC Corporations \(Managed Discretionary Account Services\) Instrument 2016/968](#)

[ASIC Corporations \(Updated Product Disclosure Statements\) Instrument 2016/1055](#)

Regulatory guides

[RG 45](#) *Mortgage schemes: Improving disclosure for retail investors*

[RG 94](#) *Unit pricing: Guide to good practice*

[RG 148](#) *Platforms that are managed investment schemes and nominee and custody services*

[RG 168](#) *Disclosure: Product Disclosure Statements (and other disclosure obligations)*

[RG 179](#) *Managed discretionary account services*

[RG 182](#) *Dollar disclosure*

[RG 184](#) *Superannuation: Delivery of product disclosure for investment strategies*

[RG 221](#) *Facilitating digital financial services disclosure*

[RG 240](#) *Hedge funds: Improving disclosure*

Information sheets

[INFO 133](#) *Shorter PDS regime: Superannuation managed investment schemes and margin lending*

[INFO 155](#) *Shorter PDSs: Complying with requirements for superannuation products and simple managed investment schemes*

Legislation

Corporations Act, Pt 7.9, Divs 2 and Div 3A, Pt 8A.3; s9, 601EB, 601FC(1)(c), 675, 676, 677, 761A, 761G, 761G(1), 761G(5), 761G(6), 761G(7), 761GA, 763A, 763B, 763C, 763D, 764A, 764A(1)(g), 765A, 766B, 766B(3), 767A, 912AD, 912AD(5)(e), 912AEA, 1012IA(1), 1012J, 1013C(3), 1014A(c), 1017B, 1017B(2), 1017B(4), 1017B(5), 1017B(6), 1017B(7), 1017D, 1017D(2), 1017D(3), 1017D(3A), 1017D(3AA), 1017D(3AB), 1017D(4), 1017D(5), 1017D(5)(c), 1017DA, 1020E, 1021B, 1021B(1)

Corporations Regulations, Pt 7.1, Div 2, Pt 7.9, Subdivs 4.2B, 4.2C, 4.2C.3, 5.2, 5AA and 8; regs 1.0.02, 7.9.11K, 7.9.11M, 7.9.11O(2), 7.9.11P, 7.9.11S, 7.9.11S(4), 7.9.11U, 7.9.11W(2), 7.9.11X, 7.9.15DA, 7.9.16N, 7.9.16N(2)(a), 7.9.16N(2)(b), 7.9.16N(2)(c), 7.9.16O, 7.9.19(g), 7.9.20(1)(a), 7.9.20(1)(b), 7.9.20(1)(d), 7.9.20(1)(kb), 7.9.60B(2), 7.9.60B(3), 7.9.60B(5), 7.9.60B(6), 7.9.60B(7), 7.9.75(1)(a), 7.9.75(1)(b), 7.9.75(1)(e), 7.9.75(2), 7.9.75B(1); Schs 10, 10A, 10D and 10E

SIS Act, s10(1), 29D, 52(2)(b), 52(2)(c), 62

SIS Regulations, regs 1.03(1), 1.06(2), 1.06(6), 1.06(7)

Cases

George v Rockett (1990) 170 CLR 104

Reports

[REP 398](#) *Fees and cost disclosure: Superannuation and managed investment products*

[REP 581](#) *Review of ASIC Regulatory Guide 97: Disclosing fees and costs in PDSs and periodic statements*

Media and other releases

[14-158MR](#) *ASIC reports on fee disclosure practices for super and managed investments* (8 July 2014)

[17-369MR](#) *ASIC updates work on fee transparency for super and managed investment schemes* (1 November 2017)

[17-409MR](#) *ASIC appoints expert to review fees and costs disclosure settings* (28 November 2017)

[18-217MR](#) *External report on fees and costs disclosure welcomed by ASIC* (24 July 2018)

[18-372MR](#) *ASIC extends transition period for some fees and costs disclosures* (11 December 2018)

Attachment 2: Schedule 10 with First State Super Mark Ups

Corporations Regulations Schedule 10 — Disclosure of fees and other costs

As amended by [CO 14/1252] (and [CO 14/1252] has itself been amended by ASIC instruments 2015/876, 2016/1224, 2017/65, 2017/664, 2017/1138, 2018/697 and 2018/1088)

(regulations 7.9.16K, 7.9.16M and 7.9.16N)

Part 1—Interpretation

101 Definitions

In this Schedule:

activity fee, for a superannuation product, has the meaning given by ~~clause 209A~~subsection 29V(7) of the SIS Act.

administration fees and costs has the meaning given by clause 209A.

advice fee

(a) for a superannuation product—~~has the meaning given by subsection 29V(8) of the SIS Act~~is a fee that relates directly to costs (other than intrafund advice costs) incurred by the trustee, or the trustees, of a superannuation entity because of the provision of financial product advice to a member by:

(i) a trustee of the entity; or

(ii) another person acting as an employee of, or under an arrangement with, a trustee or trustees of the entity; and

those costs are not otherwise charged as administration fees or costs, investment fees or costs, transaction costs, a switching fee, an exit fee, an activity fee or an insurance fee; and

(b) for a collective investment product—means an amount that is:

(i) paid or payable to a financial adviser for financial product advice to a retail client or product holder about an investment; and

(ii) not included in a contribution fee, withdrawal fee, exit fee, establishment fee, ~~or~~ management fees and costs or transaction costs.

balanced investment option means an investment option in which the ratio of investment in growth assets, such as shares or property, to investment in defensive assets, such as cash or bonds, is as close as practicable to 70:30.

borrowing costs means costs, including costs in an interposed vehicle, relating to a credit facility within the meaning of regulation 7.1.06 relating to the provision of credit within the meaning of subregulation 7.1.06(3). Such costs may include:

(a) Loan establishment fees;

(b) Commitment fees;

(c) Drawdown fees;

(d) Settlement costs;

- (e) Discharge costs;
- (f) Legal costs;
- (g) Interest amounts paid; and
- (h) Prime brokerage.

~~to:~~

- ~~(a) a trustee of a superannuation entity; or~~
- ~~(b) an interposed vehicle, or a trustee of an interposed vehicle, in or through which the property of a superannuation fund is invested.~~

brokerage means an amount paid or payable to a broker for undertaking a transaction for the acquisition or disposal of a financial product.

buy-sell spread:

- (a) for a superannuation product—has the meaning given by ~~clause 209A~~subsection 29V(4) of the SIS Act; or
- (b) for a collective investment product—means an amount, deducted from the value of a financial product of a product holder, that represents an apportionment, among product holders, of the actual or estimated ~~transaction~~ costs incurred in transactions by the managed investment scheme; and
- (c) despite paragraphs (a) and (b), in clause 103(1) and 209(j) (unless otherwise specified)—means an amount that is:
 - (i) deducted from the value of an investment that represents an apportionment, among investors, of the actual or estimated costs incurred in transactions by the investment; and
 - (ii) incurred by a superannuation trustee, responsible entity or operator of a notified foreign passport fund.

collective investment product means a managed investment product or a foreign passport fund product.

contribution fee means an amount paid or payable against the initial, and any subsequent, contributions made into a product by or for a retail client for the product.

Note: A contribution may be made by an employer on behalf of the product holder or retail client.

counterparty spread means the difference between the bid-ask spread that is applicable to derivative financial products and other securities that are traded on regulated, organised and interbank markets (but not quoted markets). ~~For further information, see proposal B7 of Consultation Paper 308 Review of RG 97 Disclosing fees and costs in PDSs and periodic statements (CP 308).~~

distribution costs means the costs or amounts paid or payable for the marketing, offer or sale of a product.

Note: This includes any related adviser remuneration component other than an advice fee.

establishment fee means an amount paid or payable for the establishment of a client's interest in a product.

Note: This does not include contribution fees paid or payable against the initial contribution into the product.

excluded transactional and operational costs has the meaning given by clause 103(2).

exit fee:

- (a) for a superannuation product—has the meaning given by clause 209A~~subsection 29V(6) of the SIS Act~~; and
- (b) for a collective investment product—means an amount paid or payable on the disposal of all interests held in the product.

financial year means:

- (a) in relation to a collective investment product—a financial year of the registered scheme or notified foreign passport fund to which the managed investment product or foreign passport fund product relates; and
- (b) in relation to a superannuation product—a period of 12 months ending at the end of a fund reporting period determined under regulation 7.9.32 for holders of the superannuation product.

incidental fees means costs or amounts, other than costs or fees defined in this clause, that are:

- (a) paid or payable in relation to the product; and
- (b) not material to a retail client's decision to acquire, hold or dispose of his or her interest in the product.

Example: Cheque dishonour fees.

indirect cost has the meaning given by clause 101A.

insurance fee, for a superannuation product means a fee~~has the meaning given by subsection 29V(9) of the SIS Act~~.

- (a) that relates directly to either or both of the following:
 - (i) insurance premiums paid by the trustee, or the trustees, of a superannuation entity in relation to a member or members of the entity;
 - (ii) costs incurred by the trustee, or the trustees, of a superannuation entity in relation to the provision of insurance for a member or members of the entity; and
- (b) that does not relate to any part of a premium paid or cost incurred in relation to a life policy or a contract of insurance that relates to a benefit to the member that is based on the performance of an investment rather than the realisation of a risk; and
- (c) where the premiums and costs to which the fee relates are not otherwise charged as administration fees and costs, investment fees and costs, transaction costs, a switching fee, an exit fee, an activity fee or an advice fee.

interposed vehicle has the meaning given by clause 101B.

intrafund advice costs means, for a superannuation product, costs incurred by the trustee of the superannuation entity (other than costs charged as advice fees) in making available to all members investing in a particular MySuper product or investment option financial product advice by:

- (a) a trustee of the entity; or
- (b) another person acting as an employee of, or under an arrangement with, the trustee of the entity.

investment fees and costs has the meaning given by clause 209A.

lifecycle MySuper product has the meaning given by regulation 7.9.07N.

lifecycle stage has the meaning given by regulation 7.9.07N.

management fees and costs has the meaning given by clause 102.

performance, of a collective investment product, a superannuation product, a MySuper product, or an investment option includes:

- (a) income in relation to the assets of, or attributed to, the collective investment product, the superannuation product, the MySuper product or the investment option; and
- (b) capital appreciation (realised or unrealised) to the value of the collective investment product, product, the superannuation product, the MySuper product or the investment option.

performance fee has the meaning given in clause 101C. means an amount paid or payable, calculated by reference to the performance of a collective investment product, a superannuation product, a MySuper product, or an investment option.

property operating costs means amounts that are paid or payable in relation to the holding of real property or an interest in real property, other than investment-related fees and costs. Examples of amounts considered property operating costs include:

- (a) Property management/ leasing fees;
- (b) Council and water rates;
- (a) Utilities costs, but do not include any of the following:
 - (a) borrowing costs;
 - (b) amounts that are paid or payable relating to the acquisition or disposal of real property or an interest in real property;
 - (c) an amount that is otherwise charged as any of the following:
 - (i) an administration fee;
 - (ii) a buy-sell spread;
 - (iii) a switching fee;
 - (iv) an exit fee;
 - (v) an activity fee;
 - (vi) an advice fee;
 - (vii) an insurance fee.

responsible person means the person who, or on whose behalf, a Product Disclosure Statement for a financial product is required to be prepared.

service fees means advice fees, special request fees and switching fees.

special request fees includes fees paid or deducted from a product holder's collective investment product for a request made to the managed investment scheme.

Example: This applies to a fee for a request for additional information from a managed investment scheme.

switching fee:

- (a) for a MySuper product—has the meaning given by clause 209A ~~subsection 29V(5) of the SIS Act~~; or
- (b) for a superannuation product other than a MySuper product—means a fee to recover the costs of switching all or part of a member's interest in the superannuation entity from one investment option or product in the entity to another; or

Commented [LK1]: Without this clarification the definition is so broad that it makes it sound as if not even management fees paid to property managers need to be disclosed.

Commented [LK2]: ASIC has not provided guidance on how property management/leasing fees should be treated. I believe they fit into the 'property operating cost' category. However, ASIC should clarify so that there is consistency in treatment across product issuers.

- (c) for a collective investment product—means an amount paid or payable when a product holder transfers all or part of the product holder's interest in the collective investment product from one investment option to another.

transaction costs has the meaning given by clause 103(1).

withdrawal fee means an amount, other than an exit fee, paid or payable in respect of:

- (a) a withdrawal; or
(b) the disposal of an interest in a product.

101A Indirect costs

- (1) Despite subsection 1013C(2) of the Act, the indirect cost of a MySuper product, an investment option offered within a superannuation product other than a MySuper product, collective investment product or investment option offered by a managed investment scheme means any amount that:

- (a) either:
- (i) a responsible person knows, or reasonably ought to know or, where this is not the case, may reasonably estimate has reduced or will reduce (as applicable) whether directly or indirectly the return on the product or option that is paid from or reduces the amount or value of:
 - (A) the income of or the property attributable to the product or option; or
 - (B) the income of or the property attributable to an interposed vehicle in or through which the property attributable to the product or option is invested; or
 - (ii) satisfies both the following:
 - (A) the amount is paid or payable by or on behalf of a person who may make payments that form part of the return on, or the value of, the product or option whether directly or through an interposed vehicle; ~~and~~
 - (B) payment of the amount is a benefit that increases the returns or value of the product or option or provides a benefit to the issuer in relation to the product or option that is retained by the issuer; ~~and~~

~~(b) for a MySuper product or an investment option offered within a superannuation product other than a MySuper product, is not charged to a member as a fee; and~~

~~(c) is not a fee as defined in clause 209A or an insurance fee; and~~

~~(d) subject to subsection (3), would, if the amount had been paid as a cost out of a superannuation entity, be an investment fee or administration fee for the superannuation product or, if the amount had been paid out of the scheme property of a registered scheme or assets of a notified foreign passport fund, be a management cost of the collective investment product.~~

- (2) For the purposes of subclause (1):

- (a) property is invested in or through an interposed vehicle even if:
 - (i) the property is in turn invested in or through one or more other interposed vehicles; or
 - (ii) the property was invested in the first mentioned interposed vehicle through or by another interposed vehicle; and
 - (b) property is not invested in or through an interposed vehicle if the property is invested in the vehicle by a body, trust or partnership that:
 - (i) is not an interposed vehicle; and
 - (ii) is not the trustee or responsible entity.
- (3) Without limiting subclause (1), the indirect costs of a product or investment option referred to in subclause (1) include:
- (a) the following amounts where the responsible person knows, or reasonably ought to know or, where this is not the case, may reasonably estimate those amounts:
 - (i) in relation to any derivative financial product that ~~does not commonly trade on a regulated, organised or interbank market (i.e. a bespoke arrangement between two parties)~~ is not an option to acquire or dispose of a financial product—the amount that is the difference between the underlying return and the actual return for the derivative financial product, where the actual return on the product or option is less than the underlying return on the derivative financial product over the relevant financial year; or
 - (ii) in relation to a derivative financial product that is an option to acquire or dispose of a financial product or a derivative financial product or other security that is commonly traded on a regulated, organised or interbank market and priced using a counterparty spread —50% on acquisition or disposal of any amount by which the cost incurred to acquire the option, derivative financial product or other security exceeds the amount that would be obtained on its disposal at that time (the bid-ask spread); or
 - (b) where the responsible person does not know, does not believe they reasonably ought to know, and is not able to reasonably estimate without taking steps that the responsible person considers unreasonable, the amount in paragraph (a) (as applicable) in relation to a derivative financial product—the following amounts in relation to the derivative financial product:
 - (i) in relation to a derivative financial product that satisfies cl 103A(3)(a)(i)~~is not an option to acquire or dispose of a financial product~~—the greater of:
 - (A) the amount calculated using the following formula:

$$\text{relevant percentage} \times \text{value} \times (n/365)$$
 where:

n means the number of days that the derivative financial product was held by the responsible person or interposed vehicle during the relevant financial year;

relevant percentage means 0.1%—; **and**

value, in relation to a derivative financial product, means the value of the ultimate reference assets, in each case taking into account any leverage, offsets or similar adjustments applied to or between the ultimate reference assets under the terms of the derivative financial product; and

- (B) the minimum amount that the responsible person believes or has reasonable grounds to believe would apply under paragraph (a);
- (ii) in relation to a derivative financial product that **satisfies cl 103A(3)(a)(ii) and** is an option to acquire or dispose of a financial product—the lesser of:
 - (A) the amount that would apply under subparagraph (i) if the exclusion from that subparagraph (i) of options did not apply; and
 - (B) the premium paid by the responsible person or interposed vehicle for the option,

where the amount referred to in paragraph (a) or (b) is attributable to:

- (c) the product or investment option; or
- (d) an interposed vehicle through which the property attributable to the product or investment option is invested.

(3A) In subclause (3) **and (4):**

actual return means the return that has been or would be received (as applicable), or loss that would be payable, by the responsible entity, **operator of a notified foreign passport fund**, trustee or interposed vehicle in relation to the derivative financial product over the relevant financial year if the derivative financial product was:

- (a) acquired at the time the derivative financial product was acquired, or, if the derivative financial product was not acquired during the relevant financial year, acquired at the commencement of the relevant financial year for the same price at which it would have been disposed at the end of the preceding financial year; and
- (b) disposed of at the time the derivative financial product was disposed of, or, if the derivative financial product was not disposed of during the relevant financial year, disposed of at the end of the relevant financial year for the price at which it would have been disposed of at that time.

derivative financial product means a financial product that:

- (a) is:
 - (i) a derivative; or
 - (ii) either:
 - (A) a security other than a share in a body or a debenture of a body; or
 - (B) a collective investment product or financial product referred to in paragraph 764A(1)(ba) of the Act other than an interest in a managed investment scheme,

under which:

- (C) financial products (**delivery products**) will be delivered or an amount paid at a specified time (**maturity**) in the future; and
- (D) the value of the delivery products to be delivered at maturity or the amount to be paid is ultimately determined, derived from or varies by reference to the value or amount of one or more of the following (each, a **reference asset**):
 - (I) financial products other than the delivery products;
 - (II) an asset other than a financial product;
 - (III) a rate (including an interest rate or exchange rate);
 - (IV) an index;

provided that the reference asset is not related to the value of:

- (V) a share in a body or debenture of a body to which the delivery products relate; or
- (VI) the assets of the managed investment scheme to which the delivery products relate; or
- (VII) the assets attributable to a class of interests in the managed investment scheme to which the delivery products relate; and

- (b) is not able to be traded on **an exchange-traded financial market** at the time it is acquired.

Commented [CS3]: Does this work for options on futures contracts or should this sentence be removed altogether?

reference asset:

- (a) in relation to a derivative financial product that is a derivative—means the something else that the amount of the consideration, or the value of the arrangement, is ultimately determined, derived from, or varies by reference to and, if the something else is a rate of interest or inflation, the amount on which that rate is applied under the derivative financial product in determining the amount to be paid or received; **and**
- (b) in relation to a derivative financial product that is a security, collective investment product or financial product referred to in paragraph 764A(1)(ba) of the Act other than an interest in a managed investment scheme—has the meaning given by clause 101A(3A)(a)(ii)(D).

relevant financial year means the financial year for which responsible person is calculating indirect costs.

ultimate reference asset, in relation to a derivative financial product and each reference asset for the derivative financial product, means:

- (a) to the extent that the reference asset is:
 - (i) a derivative financial product; or
 - (ii) rights in an entity that would be an interposed vehicle if it were held by the superannuation entity or scheme; or

- (iii) an index that includes a derivative financial product referred to in sub-paragraph (i) or rights in an entity referred to in sub-paragraph (ii),

the asset or assets from which the returns from the derivative financial product or rights in the entity are determined, or any asset or assets that are held in or through any other derivative financial products or entities that would be an interposed vehicle if they were held as part of the superannuation entity or scheme; and

- (b) to the extent that the reference asset is not covered by any of the subparagraphs in paragraph (a)—the reference asset.

underlying return, in relation to a derivative financial product, means the return that has been or would be received (as applicable), or loss that would be payable, because of the change in the value of the ultimate reference assets taking into account any leverage, offsets or similar adjustments applied to or between the ultimate reference assets under the terms of each relevant derivative financial product or interest in an interposed vehicle over the relevant financial year for which the derivative financial product was held.

~~(4) Despite subclause (1) and (3), indirect costs of a collective investment product or an investment option of a managed investment scheme do not include amounts referred to in subclause (3):~~

- (a) ~~where the derivative financial product referred to in subclause (3) is acquired or disposed of for the primary purpose of avoiding or limiting the financial consequences of fluctuations in, or in the value of, receipts or costs of the managed investment scheme whether or not the receipts or costs arise in or through an interposed vehicle; and~~
- (b) ~~where the indirect costs were calculated under paragraph (3)(a), to the extent that the difference would result from the incurring of transaction costs and excluded transactional or and operational costs in relation to the ultimate reference assets.~~

~~Note: Costs excluded under subparagraph (4) are likely to be transaction costs under clause 102. Indirect costs for superannuation products generally include transaction costs.~~

Commented [CS4]: Why does this distinction remain for MIS – essentially a carve out for hedging which Super funds doesn't get. I think this section 4 should be deleted and this distinction removed

101B Interposed vehicle

- (1) A body, partnership or trust (each an **entity**) is an **interposed vehicle** in relation to a product or investment option if both of the following are satisfied:
 - (a) property attributable to the product or investment option to which the Product Disclosure Statement relates is invested in or through the entity;
 - (b) the responsible person for the Product Disclosure Statement believes or has reasonable grounds to believe that the entity has more than 70% of its assets by value invested in securities or other financial products.
- (2) For the purposes of subclause (1) and subject to subclause (3), in determining whether an entity (the **first entity**) has more than 70% of its assets by value invested in securities or other financial products, disregard for the numerator, securities or other financial products that:
 - (a) are reasonably regarded as a means by which the first entity makes an investment in real property or an infrastructure entity; or
 - (b) confer on the first entity control of another entity (the **second entity**), unless the responsible person for the Product Disclosure Statement has reasonable grounds to

believe that the second entity has more than 70% of its assets by value invested in securities or other financial products.

- (3) For the purposes of paragraph (2)(b), in determining whether the second entity has more than 70% of its assets by value invested in securities or other financial products, apply subclause (2) to the second entity as if the second entity was the first entity referred to in that subclause.
- (4) An entity is also an **interposed vehicle** in relation to a product or investment option if, having regard to the Product Disclosure Statement for the product or investment option and any other information issued by the responsible person, a security or interest in the entity could be reasonably regarded, by retail clients who may be expected to be given the Product Disclosure Statement or other information, as the means by which the benefit of investments by or through the entity is obtained, rather than the investment of the superannuation entity, registered scheme or notified foreign passport fund to which the product or investment option relates.
- (4A) Subject to subclause (4B), an entity is also an **interposed vehicle** in relation to a product or investment option if:
 - (a) the Product Disclosure Statement for the product or investment option or any other information issued by the responsible person relating to the product or investment option issued by the responsible person that has been given or may ~~be~~ reasonably be expected to be given to retail clients refers to “property”, “real estate” or “land” or similar terms in the description of the product or investment option or as one of the assets (**relevant asset**) in which investment may be made under the product or investment option; and
 - (b) real property or an interest in land to which the reference relates is directly or indirectly held by or through the entity.
- (4B) An entity is not an **interposed vehicle in relation to a product or investment option** because of subclause (4A) if both the following are satisfied:
 - (a) the reference in the Product Disclosure Statement or other information is merely part of a reference to an entity (whether specified or not) that directly or indirectly invests in real property or interests in land or to physical infrastructure referred to in paragraphs (a) to (j) of the definition of **infrastructure entity** in subclause (6); and
 - (b) a retail client who has read the **Product Disclosure** Statement or other information could not reasonably believe that the product or investment option or the relevant asset may be intended for persons predominantly intending to benefit from increases in the value of, or returns from holding, real property or an interest in land other than physical infrastructure referred to in paragraphs (a) to (j) of the definition of **infrastructure entity** in subclause (6).
- (4C) Subject to subclause (4D), an entity is also an **interposed vehicle** in relation to a product or investment option if:
 - (a) the Product Disclosure Statement for the product or investment option or any other information issued by the responsible person relating to the product or investment option that has been given or may be reasonably expected to be given to retail clients refers to the product or option as being directly or indirectly invested in or through an entity (whether specified or not) other than an infrastructure entity which the responsible person believes has a majority of its assets invested in physical infrastructure referred to in paragraphs (a) to (j) of the definition of **infrastructure entity** in subclause (6); and
 - (b) the reference relates to the entity.

(4D) An entity is not an *interposed vehicle* because of subclause (4C) if:

- (a) either of the following is satisfied:
 - (i) the entity is admitted to the official list of a prescribed financial market or a financial market operated outside of this jurisdiction that is regulated by a foreign government or an agency of a foreign government;
 - (ii) the issuer of the securities or financial products of the entity has applied, or stated in a regulated disclosure that they will apply, for such admission; and
- (b) the securities or financial products of the entity are, or are to be, held under an investment strategy for the product or investment option that:
 - (i) relates to, or is publicly measured by the responsible person by reference to, a widely used index (*reference index*) of securities or financial products of entities that satisfy subparagraph (a)(i); and
 - (ii) is a strategy of holding directly or indirectly securities or financial products:
 - (A) of entities that satisfy paragraph (a); and
 - (B) that represent at least 80% by value of the net assets attributable to the investment strategy; and
- (c) the value of all the securities or financial products of the entity that are in the same class as the securities or financial products held under the investment strategy does not exceed 30% of the value of the reference index.

Note: If paragraphs (a) to (c) are satisfied in relation to an entity, the entity may still be an *interposed vehicle* because of provisions of clause 101B other than subclause (4C).

(5) Despite anything in subclauses (1) to (4D), an entity will not be an *interposed vehicle* in relation to a product or investment option if all of the following apply:

- (a) the Product Disclosure Statement for the product or an investment option states that a holder of the product may give instructions, directions or requests for financial products to be acquired;
- (b) the responsible person for the Product Disclosure Statement has published a list of financial products in relation to which the instructions, directions or requests may be given that includes a security or interest in the entity;
- (c) the arrangement under which the instructions would be acted on is a custodial arrangement as defined in subsection 1012IA(1) of the Act.

(6) In this clause:

infrastructure entity means an entity that provides a return to its shareholders or members mainly from owning or operating any of the following:

- (a) airports;
- (b) electricity generation, transmission or distribution facilities;
- (c) gas transmission or distribution facilities;

- (d) hospitals;
- (e) ports;
- (f) railways;
- (g) roads;
- (h) sewerage facilities;
- (i) telecommunication facilities;
- (j) water supply facilities; or
- (k) other physical infrastructure.

101C Performance fees

- (1) Performance fee (also known as carried interest or incentive allocation) means an amount paid or payable, calculated by reference to the performance of a collective investment product, a superannuation product, a MySuper product, or an investment option or an interposed vehicle, or of part of such a product, option or vehicle.
- (2) In subclause (1) performance, of a collective investment product, a superannuation product, a MySuper product, or an investment option or an interposed vehicle, or of part of such a product, option or interposed vehicle, includes:
 - (a) income in relation to the assets of, or attributed to, the product, option or interposed vehicle, or part; and
 - (b) capital appreciation (realised or unrealised) to the value of the product, option or interposed vehicle, or part.
- (3) For the purposes of calculating the total performance fees to be included in investment fees and costs and management fees and costs:
 - (a) include the performance fees that ~~accrued~~ were incurred in relation to:
 - (i) the product or option or part of such product or option; and
 - (ii) any interposed vehicles referable to that product or option or part of such product or option,
each averaged over the previous 5 financial years;
 - (b) where a product, option or interposed vehicle or part was not in operation for the previous 5 financial years, calculate the average by reference to the number of financial years in which the product, option, interposed vehicle or part has operated;
 - (c) where a product, option or interposed vehicle or part did not have a performance fee charging mechanism in place in each of the previous 5 financial years, calculate the average by reference to the number of financial years in which the product, option, interposed vehicle or part had a performance fee charging mechanism in place;

- (d) where a product, option or interposed vehicle or part was first offered in the current financial year, calculate the average by reference to the responsible person's reasonable estimate of the performance fee for the current financial year adjusted to reflect a 12 month period; and
- (e) the averaged performance fees for a product, option or interposed vehicle or part must not be negative.

102 Management fees and costs

- (1) **Management fees and costs**, for a collective investment product, means any of the following:
 - (a) an amount payable for administering the managed investment scheme;
 - (b) for a custodial arrangement—the cost involved, or amount paid or payable, for gaining access to, or participating in, the arrangement;
 - (c) distribution costs;
 - (d) other expenses and reimbursements in relation to the managed investment scheme;
 - (e) amounts paid or payable for investing in the assets of the managed investment scheme;
 - (f) amounts deducted from a common fund by way of fees, costs, charges or expenses, including:
 - (i) amounts retrieved by an external fund manager or a product issuer; and
 - (ii) amounts deducted from returns before allocation to the fund;
 - (g) ~~estimated~~ performance fees;
 - (h) any other investment-related expenses and reimbursements, including any associated with custodial arrangements; and
 - (i) indirect costs.
- (2) The following fees and costs are not management fees and costs for a collective investment product:
 - (a) a contribution fee;
 - (b) transactional costs and operational costs other than those costs under subclause 101A(3);
 - (ba) excluded transactional and operational costs;
 - (c) an additional service fee;
 - (d) an establishment fee;
 - (e) a switching fee;
 - (f) an exit fee;
 - (g) a withdrawal fee;

- (h) costs (related to a specific asset (other than a security or interest in an interposed vehicle or derivative financial product within the meaning of subclause 101A(3A)) or activity to produce income) that an investor would incur if he or she invested directly in the asset;
and
- (i) incidental fees.

103 Transaction costs

(1) **Transaction costs** include any of the following:

- (a) brokerage;
- (b) buy-sell spreads;
- (c) settlement costs (including custody costs);
- (d) clearing costs;
- (e) stamp duty;
- (f) [counterparty spreads—~~for further information see proposal B7 of CP 308~~];
due diligence costs (e.g. legal, advisory and professional costs, and any failed bid costs)
sales commissions
- (fa) derivative costs that satisfy clause 101A(3); ~~for a collective investment product, the costs in relation to the derivative financial products that satisfy paragraphs (a) or (b) of clause 101A(4);~~
- (g) costs incurred in or by an interposed vehicle that would be transaction costs if they had been incurred by the superannuation entity to which the superannuation product or investment option relates or for the registered scheme or notified foreign passport fund to which the collective investment products relate;

but does not include:

- (h) excluded transactional and operational costs; and
- (i) costs that are otherwise charged as administration fees and costs, investment fees and costs or management fees and costs.

(2) **Excluded transactional and operational costs** means any of the following:

- (a) borrowing costs;
- (b) property operating costs;
- ~~(e)~~ where an asset is acquired other than through a financial market, any part of the acquisition price of the asset that exceeds the price at which the asset could have been disposed of;
- ~~(d)~~ where an asset is acquired through a financial market, any part of the acquisition price of the asset that exceeds the bid price in the financial market that would apply without the acquisition having occurred either:

Commented [LK5]: Suggest adding these in as these amounts can be substantial

Commented [LK6]: This is very confusing given the proposal around 'counterparty spreads'. It's not clear what a 'financial market' is (s767A of the Corporations Act is very confusing).

- (i) immediately following the acquisition; or
- (ii) if the acquisition was a part of multiple acquisitions reflecting a single and non-recurring instruction to acquire, after the last acquisition made in accordance with the instruction.

103 Transactional and operational costs

(1) ~~Transactional and operational costs~~ include the following:

- (a) ~~brokerage;~~
- (b) ~~buy-sell spread;~~
- (c) ~~settlement costs (including custody costs);~~
- (d) ~~clearing costs;~~
- (e) ~~stamp duty on an investment transaction;~~
- (ea) ~~where an asset is acquired other than through a financial market, any part of the acquisition price of the asset that exceeds the price at which the asset could have been disposed of;~~
- (eb) ~~where an asset is acquired through a financial market, any part of the acquisition price of the asset that exceeds the bid price in the financial market that would apply without the acquisition having occurred either:~~
 - (i) ~~immediately following the acquisition; or~~
 - (ii) ~~if the acquisition was a part of multiple acquisitions reflecting a single and non-recurring instruction to acquire, after the last acquisition made in accordance with the instruction;~~
- (ec) ~~property operating costs;~~
- (f) ~~costs incurred in or by an interposed vehicle that would be transactional and operational costs if they had been incurred by the superannuation entity to which the superannuation product or investment option relates or for the registered scheme or a notified foreign passport fund to which the collective investment products relate;~~

~~and for a superannuation product does not include borrowing costs or costs that are indirect costs because of subclause 101A(3).~~

(1A) ~~Before 30 September 2020, transactional and operational costs do not include property operating costs for a MySuper product or investment option if details of the property operating costs are disclosed in accordance with paragraph 209(ma).~~

104 Calculating indirect costs in administration fees and costs and investment fees and costs ratio

(1) ~~The *indirect cost ratio (ICR)*, for a MySuper product or an investment option offered by a superannuation entity, is the ratio of the total of the indirect costs for the MySuper product or investment option, to the total average net assets of the superannuation entity attributed to the MySuper product or investment option.~~

Note: — A fee deducted from a member's account or paid out of the superannuation entity is not an indirect cost.

- (1A) The ~~indirect cost ratio (ICR)~~, for an investment option offered by a managed investment scheme, is the ratio of the management costs for the option that are not deducted directly from a product holder's account, to the total average net assets of the managed investment scheme that relates to the investment option.

Note: — A fee deducted directly from a product holder's account is not included in the indirect cost ratio.

- (2) — Despite clause 214, the ICR for a Product Disclosure Statement that is available during a particular financial year is to be determined for the previous financial year except that if the product or investment option was not offered from at least 11 months before the end of the previous financial year, the ICR for the Statement is to be determined based on the responsible person's reasonable estimate at the time the Statement is prepared of the ICR that will apply for the current financial year and if the product or investment option was first offered in the current financial year, since the time the product or investment option was first offered, adjusted to reflect a 12 month period.

- (2A) Despite clause 214, the part of administration fees and costs and investment fees and costs for a MySuper product or an investment option offered by a superannuation entity disclosed in a Product Disclosure Statement that is available during a particular financial year that relates to the costs (including indirect costs) incurred by the trustee of the superannuation entity or in an interposed vehicle or derivative financial product, other than a performance fee, is to be determined:

- (a) based on the costs for the previous financial year; or
- (b) if the product or investment option was offered from at least 11 months before the end of the previous financial year but for less than a full financial year – based on the costs for that period and adjusted, to reflect a 12 month period; or
- (c) if the product or investment option was not offered from at least 11 months before the end of the previous financial year and not first offered in the current financial year – based on the responsible person's reasonable estimate of the costs for the current financial year at the time the Product Disclosure Statement is prepared; or
- (d) if the product or investment option was first offered in the current financial year – based on the responsible person's reasonable estimate of the costs for the current financial year at the time the Product Disclosure Statement is prepared, adjusted to reflect a 12 month period.

- (2A) — Despite clause 214, the part of a fee for a MySuper product or an investment option offered by a superannuation entity disclosed in a Product Disclosure Statement that is available during a particular financial year that relates to the costs incurred by the trustee of the superannuation entity or in an interposed vehicle or derivative financial product, is to be determined for the previous financial year except that if the product or investment option was not offered from at least 11 months before the end of the previous financial year, the costs are to be determined based on the responsible person's reasonable estimate at the time the Statement is prepared of those costs that will apply for the current financial year and if the product or investment option was first offered in the current financial year, since the time the product or investment option was first offered, adjusted to reflect a 12 month period.

- (3) — The ICR for a periodic statement is to be determined over the latest reporting period.

104A Calculating costs in management fees and costs

Despite clause 214, the part of the management fees and costs for an investment option offered by a managed investment scheme disclosed in a Product Disclosure Statement that is available during a particular financial year that relates to the costs (including indirect costs) incurred by the responsible entity or the operator of a notified foreign passport fund, or in an interposed vehicle or derivative financial product other than a performance fee, is to be determined:

- (a) based on the costs for the previous financial year; or
- (b) if the investment option was offered from at least 11 months before the end of the previous financial year but for less than a full financial year – based on the costs for that period and adjusted, to reflect a 12 month period; or
- (c) if the investment option was not offered from at least 11 months before the end of the previous financial year and not first offered in the current financial year – based on the responsible person's reasonable estimate of the costs for the current financial year at the time the Product Disclosure Statement is prepared; or
- (d) if the investment option was first offered in the current financial year – based on the responsible person's reasonable estimate of the costs for the current financial year at the time the Product Disclosure Statement is prepared, adjusted to reflect a 12 month period.

104A Costs in management costs

Despite clause 214, the part of the management costs for an investment option offered by a managed investment scheme disclosed in a Product Disclosure Statement that is available during a particular financial year that is not a fee payable to the responsible entity or the operator of a notified foreign passport fund, other than a performance fee, is to be determined for the previous financial year except that if the investment option was not offered from at least 11 months before the end of the previous financial year, that part of the management costs is to be determined based on the responsible person's reasonable estimate at the time the Statement is prepared of those costs that will apply for the current financial year and if the product or investment option was first offered in the current financial year, since the time the product or investment option was first offered, adjusted to reflect a 12 month period.

104B Calculating fees and costs in periodic statements

In periodic statements, fees and costs (including indirect costs) are to be determined over the latest reporting period.

Part 2—Fees and Costs ~~Summary Template~~, eExample of annual fees and costs and Consumer Advisory Warning for Product Disclosure Statements

Division 1—The fees and costs ~~summary template~~ for superannuation products

201 ~~Fees and costs summary Template~~ for superannuation products

Fees and other costs

This ~~section document~~ shows fees and other costs that you may ~~be charged pay~~. These fees and ~~other~~ costs may be deducted from your money, ~~from the returns on your investment or~~ from the assets of the superannuation entity ~~as a whole or an underlying investment vehicle, or from the returns on your investment~~.

Note that the Investment fees and costs and Transaction costs (net) amounts may vary from year to year and cannot be precisely calculated in advance.

Other fees, such as activity fees, advice fees for personal advice and insurance fees, may also be charged, but these will depend on the nature of the activity, advice or insurance chosen by you.

Taxes, ~~and insurance fees and other costs relating to insurance premiums~~ are set out in another part of this document.

You should read all the information about fees and other costs because it is important to understand their impact on your investment.

[If relevant] The fees and other costs for each MySuper product offered by the superannuation entity, and each investment option offered by the entity, are set out on page *[insert page number]*.

Fees and Costs Summary

[Name of superannuation product]

Type of fee or cost	Amount	How and when paid
<u>Ongoing annual fees and costs</u>		
<u>Administration fees and costs</u>		
<u>Investment fees and costs¹</u>		
<u>Transaction costs (net)</u>		
<u>Member activity related fees and costs</u>		
<u>Buy-sell spread</u>		
<u>Switching fee</u>		
<u>Exit fee</u>		
<u>Other fees and costs²</u>		

1. *[If relevant insert a footnote Investment 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".]*

2. *[If there are other fees and costs, such as activity fees, advice fees for personal advice or insurance fees, include a cross-reference to the "Fees and Costs Details".]*

[Name of superannuation product]

Type of fee	Amount	How and when paid
<u>Investment fee</u>		

Commented [LK7]: The word "charged" does not work with respect to costs e.g. costs which form part of the "Investment fees and costs" or "Transaction costs (net)" disclosures. For profit-for-member funds, this is particularly problematic as none (or only a few small portion) of the "Investment fees and costs" amount will not be "charged" to members.

Commented [LK8]: Some funds charge a small fee for administering insurance, which I believe will need to be set out in the "Other fees and costs" section in the table. However, the insurance premiums are elsewhere.

<i>[Name of superannuation product]</i>		
<i>Type of fee</i>	<i>Amount</i>	<i>How and when paid</i>
<i>Administration fee</i>		
<i>Buy-sell spread</i>		
<i>Switching fee</i>		
<i>Exit fee</i>		
<i>Advice fees</i> relating to all members investing in a particular MySuper product or investment option		
<i>Other fees and costs¹</i>		
<i>Indirect cost ratio</i>		

1. *[If there are other fees and costs, such as activity fees, advice fees for personal advice or insurance fees, include a cross-reference to the "Additional Explanation of Fees and Costs".]*

Division 2—The fees and costs ~~summary~~~~template~~ for collective investment products

202 ~~Fees and costs summary~~~~Template~~ for a multiple fee structure—collective investment products

Fees and other costs

This ~~section~~~~document~~ shows fees and other costs that you may be charged. These fees and costs may be deducted from your money, from the returns on your investment or from the assets of the managed investment scheme as a whole.

Taxes are set out in another part of this document.

You have 2 different fee payment options:

- (a) to pay contribution fees upfront, at the time when you make each investment into the managed investment scheme; or
- (b) to pay contribution fees later (for example, on the termination of your investment or by way of other increased fees).

Note: You may pay more in total fees if you choose to pay contribution fees later.

You should read all the information about fees and costs because it is important to understand their impact on your investment.

[If relevant] Fees and costs for particular investment options are set out on page [insert page number].

Fees and Costs Summary

<u>[Name of collective investment product]</u>			
<u>Type of fee or cost</u>	<u>Amount</u>		<u>How and when paid</u>
	<u>Option to pay contribution fees upfront</u>	<u>Option to pay contribution fees later</u>	
<u>Ongoing annual fees and costs</u>			
<u>Management fees and costs¹</u> The fees and costs for managing your investment ²			
<u>Transaction costs (net)</u> The costs incurred by the product when buying or selling assets			
<u>Member activity related fees and costs (fees for services or when your money moves in or out of the product)³</u>			
<u>Establishment fee</u> The fee to open your investment			
<u>Contribution fee²</u> The fee on each amount contributed to your investment			

<i>[Name of collective investment product]</i>			
Type of fee or cost	Amount		How and when paid
	Option to pay contribution fees upfront	Option to pay contribution fees later	
<i>Buy-sell spread</i> An amount deducted from your investment representing costs incurred in transactions by the product			
<i>Withdrawal fee</i> ² The fee on each amount you take out of your investment			
<i>Exit fee</i> ² The fee to close your investment			
<i>Switching fee</i> The fee for changing investment options			

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".]*
2. *This fee includes an amount payable to an adviser. (See Division 4, "Adviser remuneration" under the heading "Fees and Costs Details".)*
3. *[If there are other service fees, such as advice fees or special request fees, include a cross-reference to the "Fees and Costs Details".]*

<i>[Name of collective investment product]</i>			
Type of fee or cost	Amount		How and when paid
	Option to pay contribution fees upfront	Option to pay contribution fees later	
Fees when your money moves in or out of the collective investment product			
<i>Establishment fee</i> The fee to open your investment			
<i>Contribution fee</i> ¹ The fee on each amount contributed to your investment			
<i>Withdrawal fee</i> ¹ The fee on each amount you take out of your investment			
<i>Exit fee</i> ¹ The fee to close your investment			
Management costs			

<i>[Name of collective investment product]</i>			
Type of fee or cost	Amount		How and when paid
	Option to pay contribution fees upfront	Option to pay contribution fees later	
<i>The fees and costs for managing your investment¹</i> The amount you pay for specific investment options is shown at page <i>[insert page number]</i>			
Service fees²			
<i>Switching fee</i> The fee for changing investment options			

1. — This fee includes an amount payable to an adviser. (See Division 4, “Adviser remuneration” under the heading “Additional Explanation of Fees and Costs”.)

2. — *[If there are other service fees, such as advice fees or special request fees, include a cross-reference to the “Additional Explanation of Fees and Costs”.]*

202A **Fees and costs summary**—Template for single fee structure—collective investment products

Fees and other costs

This ~~section~~ document shows fees and other costs that you may be charged. These fees and costs may be deducted from your money, from the returns on your investment or from the assets of the managed investment scheme as a whole.

Taxes are set out in another part of this document.

You should read all the information about fees and costs because it is important to understand their impact on your investment.

[If relevant] Fees and costs for particular investment options are set out on page *[insert page number]*.

Fees and Costs Summary

<i>[Name of collective investment product]</i>		
Type of fee or cost	Amount	How and when paid
<i>Ongoing annual fees and costs</i>		
<i>Management fees and costs¹</i> <i>The fees and costs for managing your investment²</i>		
<i>Transaction costs (net)</i> <i>The costs incurred by the product when buying or selling assets</i>		
<i>Member activity related fees and costs (fees for services or when your money moves in or out of the product)³</i>		
<i>Establishment fee</i> <i>The fee to open your investment</i>		

<i>[Name of collective investment product]</i>		
Type of fee or cost	Amount	How and when paid
<i>Contribution fee²</i> The fee on each amount contributed to your investment		
<i>Buy-sell spread</i> An amount deducted from your investment representing costs incurred in transactions by the product		
<i>Withdrawal fee²</i> The fee on each amount you take out of your investment		
<i>Exit fee²</i> The fee to close your investment		
<i>Switching fee</i> The fee for changing investment options		

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".]*
2. *This fee includes an amount payable to an adviser. (See Division 4, "Adviser remuneration" under the heading "Fees and Costs Details".)*
3. *[If there are other service fees, such as advice fees or special request fees, include a cross-reference to the "Fees and Costs Details".]*

<i>[Name of collective investment product]</i>		
Type of fee or cost	Amount	How and when paid
Fees when your money moves in or out of the collective investment product		
<i>Establishment fee</i> The fee to open your investment		
<i>Contribution fee¹</i> The fee on each amount contributed to your investment		
<i>Withdrawal fee¹</i> The fee on each amount you take out of your investment		
<i>Exit fee¹</i> The fee to close your investment		
Management costs		
<i>The fees and costs for managing your investment¹</i> The amount you pay for specific investment		

<i>[Name of collective investment product]</i>		
Type of fee or cost	Amount	How and when paid
options is shown at page <i>[insert page number]</i>		
Service fees²		
<i>Switching fee</i> The fee for changing investment options		

1. ——— This fee includes an amount payable to an adviser. (See Division 4, “Adviser remuneration” under the heading “Additional Explanation of Fees and Costs”.)
2. ——— *[If there are other service fees, such as advice fees or special request fees, include a cross-reference to the “Additional Explanation of Fees and Costs”.]*

Division 3—How to fill in the summary template

203 The preamble

The material in the preamble to the summary template should only include matters that are relevant to the product.

Example: Insurance costs will generally not be relevant to a collective investment product.

204 Column 2—presentation of amounts

- (1) This clause, clause 205 and clause 206 are subject to regulations 7.9.15A, 7.9.15B and 7.9.15C.
- (2) If a particular fee or cost is not charged, 'nil', 'zero', '0' or 'not applicable' (if it would not be misleading) must be written in column 2 opposite the type of fee or cost.
- (3) If it is not possible to determine a single amount or percentage of a fee or cost, it may be written as a range of fees or costs.
- (4) If the exact amount of a fee or cost paid or payable is not known, an amount that is a reasonable estimate of the amount attributable to the retail client must be shown.
- (5) An amount set out in accordance with subclause (4) must be clearly designated as an estimate.
- (6) If an amount or cost has a number of components, the amount of each component must be listed separately.

Example: Management fees and costs: 1.8% of product holder's balance + \$70 per year.

- (7) A cost or amount paid or payable must include (if applicable):
 - (a) for each collective investment product or superannuation product:
 - (i) GST, after being reduced by any reduced inputs tax credits; and
 - (ii) stamp duty; and
 - (b) for each collective investment product offered by an Australian passport fund or notified foreign passport fund:
 - (i) any indirect taxes equivalent to GST that are payable in another jurisdiction, after being reduced by any applicable tax credits that are available in that jurisdiction; and
 - (ii) any duties equivalent to stamp duty that are payable in another jurisdiction.

204A Column 2—presentation of transaction costs

Transaction costs must be set out net of any amount recovered by the buy-sell spread charged by the trustee, responsible entity or operator of a notified foreign passport fund as defined in paragraphs (a) or (b) (as relevant) of the definitions of buy-sell spread in clause 101.

205 Column 2—include information for each MySuper product or investment option

- (1) The fee information must be set out:
 - (a) for superannuation products—for each MySuper product and each investment option offered by the relevant superannuation entity; and

- (b) for collective investment products—for each investment option offered by the relevant managed investment scheme.
- (2) It may be:
 - (a) set out in the table; or
 - (b) cross-referenced in the table to another section of the Product Disclosure Statement that contains the relevant fee information.

206 Presentation of multiple fee payment options

If a superannuation entity has more than 1 option for the payment of fees or if a managed investment scheme has more than 2 options for the payment of fees:

- (a) the number of fee payment options must be set out in the preamble; and
- (b) details of all fee payment options must be set out in the summarytemplate.

207 Column 3—how and when fees and costs are payable

Column 3 of the summarytemplate must set out:

- (a) how the amountfee is or will be recovered, for example by deduction from:
 - (i) the member's investment balance; or
 - (ii) the assets of the superannuation entity or managed investment scheme; or
 - (iii) contributions; or
 - (iv) withdrawals; and
- (b) the recurrence of the recovery of the amountfee; and
- (c) the timing of the recovery of the amountfee.

208 Other material to be included in the summarytemplate

- (1) The summarytemplate must clearly indicate which fees and costs are negotiable (for example, by stating in column 3 'The amount of this fee can be negotiated.').
- (2) An indication that a fee or cost is negotiable must be cross-referenced to an explanation outside the summarytemplate in the 'Fees and Costs Details, Additional Explanation of Fees and Costs' part of the fees section.

Division 4—~~Fees and costs details~~~~Additional explanation of fees and costs~~

209 Matters to be included as ~~fees and costs details~~~~additional explanation of fees and costs~~

The following information, if relevant to the particular superannuation product or collective investment product, must be included under the heading '~~Fees and Costs Details~~~~Additional Explanation of Fees and Costs~~':

- (a) the explanation of the fees mentioned in footnote ~~21~~ for superannuation products and footnote ~~32~~ for ~~collective investment products~~;
- (b) information on performance fees including:
 - (i) a statement about how performance fees affect ~~administration fees and costs and~~ investment fees ~~and costs~~ for a superannuation product, or management ~~fees and~~ costs for a collective investment product; and
 - (ii) the method for calculating the ~~total performance~~ fees ~~under clause 101C(3)~~; and
 - (iii) the ~~calculated average performance fees for each product or option or interposed vehicle or part under clause 101C(3)(a); amount of the fees, or an estimate of the amount if the amount is not known~~
- (c) for tax—a cross reference to the “Tax” part of the Product Disclosure Statement;
- (ca) for insurance fees and other costs relating to insurance (if relevant)—a cross reference to the “Insurance” part of the Product Disclosure Statement;
- (d) if the product is subject to tax—whether the benefit of any tax deduction is passed on to the investor in the form of a reduced fee or cost;
- (e) an explanation of adviser remuneration that forms part of any fee or cost in the table, including (if known to the product issuer):
 - (i) the method of calculation; and
 - (ii) the amounts of commission or the range of amounts; and
 - (iii) whether the amounts are negotiable or rebatable; and
 - (iv) the way in which amounts may be negotiated or rebated;
- (f) an explanation of advice fees ~~and, for a superannuation product, intrafund advice costs~~;
- (g) for a negotiated fee or cost—contact details of the person or body with whom the fee or cost can be negotiated and the manner of negotiation;
- (h) worked examples (if appropriate);
- (i) additional details of incidental fees (if appropriate);
- (j) details of transactional ~~costs and operational costs~~ such as brokerage and buy-sell spread, including:
 - (ia) ~~the amount of total gross transaction costs, or an estimate if the amount is not known; and~~

Commented [LK9]: Per B10Q2, we can't think of a situation where performance fees would affect administration fees, so we think this can be removed.

~~(iaa) a statement that the transaction costs shown in the fees and costs summary is shown net of any amount recovered by the buy-sell spread charged by the trustee, responsible entity or operator of a notified foreign passport fund as defined in paragraphs (a) or (b) (as relevant) of the definitions of buy-sell spread in clause 101; and~~

(i) a description of ~~each~~the cost; and

~~(ii) the amount, or an estimate if the amount is not known; and~~

(iii) how and when the costs are recovered; and

(iv) a statement that the cost is an additional cost to the investor ~~where it has not already been recovered by the buy-sell spread charged by the trustee, responsible entity or operator of a notified foreign passport fund as defined in paragraph (a) or (b) (as relevant) of the definition of buy-sell spread in clause 101;~~

~~(v) whether any part of the buy-sell spread is paid to the product issuer or an external manager;~~

(k) the following information about fee changes:

(i) if applicable, a statement about the issuer's right to change the amount of fees without the investor's consent;

(ii) any indexation arrangements that apply;

(iii) the period of advance notice required for fee changes;

(iv) any change in fee structure that is dependent on a person's employment;

(l) if the issuer has instituted a flexible charging structure, for each applicable fee, if known:

(i) any maximum, and when it would apply; and

(ii) any waiver, and when it would not apply.;

~~(m) for a superannuation product details of borrowing costs including:~~

~~(i) a description of the cost; and~~

~~(ii) the amount, or an estimate if the amount is not known; and~~

~~(iii) how and when the costs are recovered; and~~

~~(iv) a statement that the cost is an additional cost to the investor;~~

~~(ma) before 30 September 2020, details of property operating costs to the extent those costs are not included in the investment fee or indirect costs for the relevant MySuper product or investment option offered by a superannuation entity, including:~~

~~(i) a description of the cost; and~~

~~(ii) the amount, or an estimate if the amount is not known; and~~

~~(iii) how and when the costs are recovered; and~~

~~(iv) a statement that the cost is an additional cost to the investor.~~

209AA Calculating transaction costs

Despite clause 214, transaction costs for a product, option, interposed vehicle or derivative financial product disclosed in a Product Disclosure Statement that is available during a particular financial year is to be determined:

- (a) based on the transaction costs for the previous financial year; or
- (b) if the product or option was offered from at least 11 months before the end of the previous financial year but for less than a full financial year – based on the transaction costs for that period and adjusted, to reflect a 12 month period; or
- (c) if the product or option was not offered from at least 11 months before the end of the previous financial year and not first offered in the current financial year – based on the responsible person's reasonable estimate of the transaction costs for the current financial year at the time the Product Disclosure Statement is prepared; or
- (d) if the product or option was first offered in the current financial year – based on the responsible person's reasonable estimate of the transaction costs for the current financial year at the time the Product Disclosure Statement is prepared, adjusted to reflect a 12 month period.

209AA Calculating transactional and operational costs

~~For paragraphs 209(j) and (m), information about transactional and operational costs and, for a superannuation product or investment option in a superannuation product, borrowing costs and property operating costs for a product or investment option disclosed in a Product Disclosure Statement that is available during a particular financial year is to be determined for the previous financial year except that if product or investment option was not offered from at least 11 months before the end of the previous financial year, the transactional and operational costs and, for a superannuation product or investment option in a superannuation product, borrowing costs and property operating costs are to be determined based on the responsible person's reasonable estimate at the time the Statement is prepared of those costs that will apply for the current financial year, and if the product or investment option was first offered in the current financial year, since the time the product or investment option was first offered, adjusted to reflect a 12 month period.~~

Division 4A—Defined fees for superannuation products

209A Defined fees for superannuation products

The following definitions must be included for a superannuation product under the heading “Defined fees”, or incorporated by reference:

Activity fees

A fee is an *activity fee* if:

- (a) the fee relates to costs incurred by the trustee *[OR the trustees]* of the superannuation entity that are directly related to an activity of the trustee *[OR the trustees]*:
 - (i) that is engaged in at the request, or with the consent, of a member; or
 - (ii) that relates to a member and is required by law; and
- (b) those costs are not otherwise charged as ~~an~~ administration fees and costs, ~~an~~ investment fees and costs, transaction costs, a buy-sell spread, a switching fee, an exit fee, an advice fee or an insurance fee.

Administration fees and costs

Administration fees and costs are fees and costs. ~~An administration fee is a fee that relates to the administration or operation of the superannuation entity and includes:~~

- (a) costs that relate to that administration or operation met through the use of reserves;
 - (b) indirect costs that relate to that administration or operation; and
 - (c) intrafund advice costs
- ~~but do not include, other than:~~
- (~~da~~) transaction costs and excluded transactional and operational costs ~~borrowed costs~~; and
 - (~~b~~) ~~indirect costs that are not paid out of the superannuation entity that the trustee has elected in writing will be treated as indirect costs and not fees, incurred by the trustee *[OR the trustees]* of the entity or in an interposed vehicle or derivative financial product; and~~
 - (~~ee~~) costs that are otherwise charged as ~~an~~ investment fees and costs, a buy-sell spread, a switching fee, an exit fee, an activity fee, an advice fee or an insurance fee.

Advice fees

A fee is an *advice fee* if:

- (a) ~~the fee relates directly to costs incurred by the trustee *[OR the trustees]* of the superannuation entity because of the provision of financial product advice to a member by:~~
 - (i) ~~a trustee of the entity; or~~
 - (ii) ~~another person acting as an employee of, or under an arrangement with, the trustee *[OR the trustees]* of the entity; and~~

~~(b) those costs are not otherwise charged as an administration fee, an investment fee, a switching fee, an exit fee, an activity fee or an insurance fee.~~

Buy-sell spreads

A **buy-sell spread** is a fee to recover ~~transaction~~ costs incurred **in transactions** by the trustee *[OR the trustees]* of the superannuation entity in relation to the sale and purchase of assets of the entity.

Exit fees

An **exit fee** is a fee to recover the costs of disposing of all or part of members' interests in the superannuation entity.

Indirect cost ratio

The **indirect cost ratio (ICR)**, for a MySuper product or an investment option offered by a superannuation entity, is the ratio of the total of the indirect costs for the MySuper product or investment option, to the total average net assets of the superannuation entity attributed to the MySuper product or investment option.

Note: — A fee deducted from a member's account or paid out of the superannuation entity is not an indirect cost.

Investment fees and costs

Investment fees and costs are fees and costs. An **investment fee** is a fee that relates to the investment of the assets of a superannuation entity and includes:

- (a) fees in payment for the exercise of care and expertise in the investment of those assets (including performance fees); and
- (aa) costs that relate to the investment of assets of the entity that are met through the use of reserves;
- (b) indirect costs that relate to the investment of assets of the entity
- ~~(b) costs that relate to the investment of assets of the entity, other than:
 - (i) borrowing costs; and
 - (ii) indirect costs that are not paid out of the superannuation entity that the trustee has elected in writing will be treated as indirect costs and not fees, incurred by the trustee *[OR the trustees]* of the entity or in an interposed vehicle or derivative financial product; and
 - (iii) costs that are otherwise charged as an administration fee, a buy-sell spread, a switching fee, an exit fee, an activity fee, an advice fee or an insurance fee.~~

but do not include:

- (c) transaction costs and excluded transactional and operational costs; and
- (d) costs that are otherwise ~~charged~~ paid as administration fees and costs, a buy-sell spread, a switching fee, an exit fee, an activity fee, an advice fee or an insurance fee.

Note: — The costs referred to in paragraph (b) do not include transactional and operational costs referred to in paragraphs (b), (ea) and (eb) of the definition of **transactional and operational costs**.

Switching fees

[In the case of a MySuper product:]

A **switching fee** for a MySuper product is a fee to recover the costs of switching all or part of a member's interest in a superannuation entity from one class of beneficial interest in the entity to another.

[In the case of a superannuation product that is not a MySuper product:]

A **switching fee** for a superannuation products other than a MySuper product, is a fee to recover the costs of switching all or part of a member's interest in the superannuation entity from one investment option or product in the entity to another.

Note: If a Product Disclosure Statement covers both a MySuper product and another superannuation product, both definitions of **switching fee** must be included.

Transaction costs ~~(net)~~

Transaction costs ~~(net)~~ relate to the costs associated with acquiring or disposing of assets, other than costs that have been recovered by the superannuation entity charging buy-sell spreads.

Division 5—Example of annual fees and costs

210 Example of annual fees and costs

The example of annual fees and costs:

- (a) must contain fees and costs in accordance with the table in clause 211 or 212; and
- (b) must be set out using the headings and the form in clause 211 or 212; and
- (c) must be included in the 'Fees' section of a Product Disclosure Statement, following the fees and costs summary template.

211 Superannuation products—Example of annual fees and costs

This table gives an example of how the ongoing annual fees and costs for the *[insert name of generic MySuper product or other investment option as required by subclause 220(1)]* for this superannuation product can affect your superannuation investment over a 1 year period. You should use this table to compare this superannuation product with other superannuation products. However, you should keep in mind that Investment fees and costs and Transaction costs can vary from year to year and cannot be precisely calculated in advance.

EXAMPLE— <i>[insert name of generic MySuper product or other investment option as required by subclause 220(1)]</i>		BALANCE OF \$50 000 <u>WITH A CONTRIBUTION OF \$5 000 DURING YEAR</u>
<u>Investment fees and costs**</u>	<u>1.6%</u>	For every \$50 000 you have in the superannuation product you will be charged or have deducted from your investment approximately \$1 800 each year
<u>PLUS Administration fees and costs</u>	<u>1.52 (\$1 per week)</u>	<u>And, you will be charged \$1.52 in administration fees and costs regardless of your balance</u>
<u>PLUS Investment fees and costs</u>	<u>1</u>	<u>And, for every \$50 000 you have in the superannuation product you will have approximately \$1 deducted from your investment each year.</u>
<u>PLUS Transaction costs (net)</u>	<u>1</u>	<u>And, you will be charged incur approximately \$1 in transaction costs (net)</u>
<u>PLUS Indirect costs for the superannuation product[†]</u>	<u>1.2%</u>	<u>And, indirect costs of \$600 each year will be deducted from your investment</u>
EQUALS Cost of product		If your balance was \$50 000 <u>at the beginning of the year and you put in an additional \$5000 on the last day of that year</u> , then for that year you <u>will be charged</u> would pay fees and costs of <u>approximately \$1 1452</u> for the superannuation product.

Note: * Additional fees may apply. And for example, if you leave the superannuation entity, you may be charged an exit fee of \$x. In addition and a buy/sell spread which also applies whenever you make a contribution, exit, rollover or investment switch. The buy/sell spread for exiting is y% (this will be equal to \$z for every \$50,000 you withdraw).

Note: † Substitute the relevant exit fee, buy/sell spread and total amount payable you charge for \$x, y% and \$z.

Commented [LK10]: There should be some acknowledgement of the year to year variability.

Commented [LK11]: See response to B3Q3

Commented [LK12]: Only a small number of funds charge only a dollar-based admin fee. For funds charging a percentage-based admin fee (either as a standalone fee or in conjunction with a dollar-based fee), the amount of administration fees a member pays will vary depending on their account balance. Also many funds now have admin fee caps in place which will have an impact on higher balance members. Hence, we are suggesting that the "regardless of your balance" statement be removed. If there is a preference to leave it in, it should be open for product issuers to amend the prescribed wording so as not to be misleading.

212 Collective investment products—Example of annual fees and costs for a balanced investment option or other investment option

Example of annual fees and costs for a balanced investment option or other investment option

This table gives an example of how the ~~ongoing annual~~ fees and costs in the balanced investment option for this product can affect your investment over a 1 year period. You should use this table to compare this product with other products offered by managed investment schemes.

EXAMPLE — <i>[insert name of balanced investment option or other investment option required by subclause 220(2)]</i>		BALANCE OF \$50 000 WITH A CONTRIBUTION OF \$5 000 DURING YEAR
Contribution Fees	[] 4%	For every additional \$5 000 you put in, you will be charged between \$0 and \$ 1200.
PLUS Management Fees and Costs	[] 1.3%	And , for every \$50 000 you have in the <i>[insert name of balanced investment option or other investment option required by subclause 220(2)]</i> you will be charged have approximately \$[1650 deducted from your investment each year.
PLUS Transaction Costs (net)	[]	And , you will be charged incur approximately \$[] in transaction costs (net) .
EQUALS Cost of <i>[insert name of balanced investment option or other investment option required by subclause 220(2)]</i>		If you had an investment of \$50 000 at the beginning of the year and you put in an additional \$5 000 during that year, then for that year you would be charged pay fees and costs of from approximately: \$[1650 to \$[1850* What it costs you will depend on the investment option you choose and the fees you negotiate.

* Additional fees may apply:

Establishment fee—\$[]50 ~~[Add in wording to highlight any contribution fees that apply]~~

And, if you leave the managed investment scheme early, you may also be charged exit fees of between 0 and []5% of your total account balance (between \$0 and \$[12 500 for every \$50 000 you withdraw).

213 Defined benefit funds

An example of fees and costs is not required in a Product Disclosure Statement for a defined benefit fund.

Note: *Defined benefit fund* is defined in subregulation 1.03(1) of the SIS Regulations.

Division 6—How to fill in the example of annual fees and costs

214 Fees and costs must be ongoing amounts

The fees and costs stated in the example must be typical ongoing fees that apply to the MySuper product or investment option.

Note: The example should not be based on “honeymoon rates”. It must be consistent with the statement for an existing member or product holder having the stated balance and level of contributions each year.

214A Example of annual fees and costs for a MySuper product—lifecycle MySuper product

If the example of fees and costs for a MySuper product uses a lifecycle MySuper product, the investment fees and costs quoted in the example must be the highest investment fees and costs for a lifecycle stage of the lifecycle MySuper product.

215 Minimum entry balance rule

If the minimum balance required to enter a superannuation entity or a managed investment scheme is greater than \$50 000, the example of annual fees and costs must be based on an amount that is the lowest multiple of \$50 000 that exceeds the minimum entry balance.

Example: If a superannuation entity or a managed investment scheme has a minimum entry balance of \$65 000, the relevant amount for the example of annual fees and costs is \$100 000.

216 Exit fees

If an exit fee may be charged, it must be described in a footnote to the table, based on:

- (a) a balance of \$50 000; or
- (b) if clause 215 applies—an amount that is a multiple of \$50 000.

217 Contribution fees

- (1) The amounts of contribution fees to be inserted in the example of annual fees and costs for a collective investment product, are applied against a \$5 000 investment.
- (2) If a Product Disclosure Statement relates to a product:
 - (a) that is paid for by a single lump sum amount; and
 - (b) for which no additional contributions can be made;the example of annual fees and costs should be modified by removing references to contributions or contribution fees.
- (3) The example must be based on a balance:
 - (a) of \$50 000; or
 - (b) worked out in accordance with clause 215.

Note: If there is a fee paid for the initial contribution, it should be described as the establishment fee.

218 Administration fees and costs, ~~and~~ investment fees and costs and transaction costs (net) for a superannuation product

Administration fees and costs

- (1) The example of administration fees and costs for a MySuper product or an investment option offered by a superannuation entity is applied to an amount of \$50 000 or an amount that is a multiple of \$50 000 if clause 215 applies.

Note: In calculating the amount, do not include contributions that may be made during the year.

- (2) If there is a range in the amount of administration fees and costs that may be charged for a MySuper product or an investment option offered by a superannuation entity, the example must use the highest administration fees and costs in the range.

Investment fees and costs

- (3) The example of investment fees and costs for a MySuper product or an investment option offered by a superannuation entity is applied to an amount of \$50 000 or an amount that is a multiple of \$50 000 if clause 215 applies.

Note: In calculating the amount, do not include contributions that may be made during the year.

- (4) If there is a range in the amount of investment fees and costs that may be charged for a MySuper product or an investment option offered by a superannuation entity, the example must use the highest investment fees and costs in the range.

Transaction costs (net)

- (4A) The example of transaction costs (net) for a MySuper product or an investment option offered by a superannuation entity is the amount of transaction costs net of any amount recovered by the buy-sell spread, applied to an amount of \$50 000 or an amount that is a multiple of \$50 000 if clause 215 applies.

Note: In calculating the amount, do not include contributions that may be made during the year.

- (4B) If there is a range in the amount of transaction costs (net) that may be charged for a MySuper product or an investment option offered by a superannuation entity, the example must use the highest transaction costs (net) in the range.

Indirect costs for a MySuper product or investment option

- ~~(5) The example of indirect costs for a MySuper product or an investment option offered by a superannuation entity must be worked out by applying the indirect cost ratio for the MySuper product or the investment option to an amount of \$50,000 or an amount that is a multiple of \$50,000 if clause 215 applies.~~

218A Management fees and costs and transaction costs (net) for a collective investment product

Management fees and costs

- (1) The example of management fees and costs for an investment option offered by a managed investment scheme is applied to an amount of \$50 000 or an amount that is a multiple of \$50 000 if clause 215 applies.

Note: In calculating the amount, do not include contributions that may be made during the year.

- (2) If there is a range in the amount of management **fees and** costs that may be charged for an investment option offered by a managed investment scheme, the example must use the highest management **fees and** costs in the range.

~~(3) Management fees and costs that are not deducted directly from a product holder's account must be calculated using the indirect cost ratio for the relevant investment option offered by the managed investment scheme.~~

~~(4) Any percentage based management fees and costs that are deducted directly from a product holder's account should be added to the percentage amount calculated under subclause (3).~~

- (5) Any dollar based management **fees and** costs that are deducted directly from a product holder's account must be shown separately in the management **fees and** costs cell.

Example 1: Management **fees and** costs: 2% deducted directly from your account + 1.6% deducted indirectly.

Example 2: Management **fees and** costs: \$52 per year (\$1 per week) deducted directly from your account + 1.6% deducted indirectly.

Example 3: Management **fees and** costs: \$52 per year (\$1 per week) + 1% deducted directly from your account + 1.6% deducted indirectly.

Transaction costs (net)

~~(6) The example of transaction costs (net) for an investment option offered by a managed investment scheme is the amount of transaction costs net of any amount recovered by the buy-sell spread, applied to an amount of \$50 000 or an amount that is a multiple of \$50 000 if clause 215 applies.~~

~~Note: In calculating the amount, do not include contributions that may be made during the year.~~

~~(7) If there is a range in the amount of transaction costs (net) that may be charged for an investment option offered by a managed investment scheme, the example must use the highest transaction costs (net) in the range.~~

219 Withdrawal fees and exit fees

- (1) The example of a withdrawal fee or an exit fee for a superannuation product or a collective investment product is applied against an amount of \$50 000 or an amount that is a multiple of \$50 000 if clause 215 applies.
- (2) In calculating the amount, do not include contributions that may be made during the year.

220 If there is no generic MySuper product or balanced investment option

Superannuation entities

- (1) If a superannuation entity does not offer a generic MySuper product, the example should be based on:
- (a) where the superannuation entity offers a balanced investment option—the balanced investment option under which most assets of the superannuation entity are invested; and
 - (b) where the superannuation entity does not offer a balanced investment option—the investment option under which most assets of the superannuation entity are invested.

Managed investment schemes

- (2) If a managed investment scheme does not offer a balanced investment option, the example should be based on:
- (a) where the scheme offers a default investment option—that option; and
 - (b) where the scheme does not offer a default investment option—the investment option under which most assets of the scheme are invested.

Division 6A—Cost of product information

220A Superannuation products—Cost of product information

- (1) Cost of product information for each MySuper product offered by the superannuation entity and each investment option offered by the entity:

- (a) must be included in the 'Fees' section of a Product Disclosure Statement, following the example of annual fees and costs;
- (b) must include the following heading and text immediately before the presentation of the first cost of product information:

Cost of product for 1 year

The cost of product gives a summary calculation about how provides an estimate of the ongoing annual fees and costs can affect your superannuation investment over a 1 year period for all superannuation products and investment options. It is calculated in the manner shown in the example of annual fees and costs.

The cost of product information assumes a balance of \$50 000 at the beginning of the year and an additional contribution of \$5 000 on the last day of that year. (Additional fees such as an exit fee or buy-sell spread may apply, refer to the fees and costs summary for the relevant product or option.)

You should use this figure to help compare superannuation products and investment options.

- (c) must be set out as using the following form:

<u>[insert name of product or option]</u>	<u>Cost of product</u>
	<u>\$[]</u>

and

- (d) must be calculated in accordance with the method set out in the example of annual fees and costs in clause 211 and Division 6.

- (2) Cost of product information is not required in a Product Disclosure Statement for a defined benefit fund.

Note: **Defined benefit fund** is defined in subregulation 1.03(1) of the SIS Regulations.

- (3) Cost of product information is not required in a Product Disclosure Statement where the Product Disclosure Statement relates to only one product or option and an example of annual fees and costs has been included in relation to that product or option in accordance with Division 5.

220B Collective investment products—Cost of product information

- (1) Cost of product information for each investment option offered by the managed investment scheme:

Commented [LK13]: I think it should be clear that there will be year to year variability in fees and costs, and the example is an estimate only.

(a) must be included in the 'Fees' section of a Product Disclosure Statement, following the example of annual fees and costs;

(b) must include the following heading and text immediately before the presentation of the first cost of product information:

Cost of product for 1 year

The cost of product gives a summary calculation about how ongoing ~~annual~~ fees and costs can affect your investment over a 1 year period for all investment options. It is calculated in the manner shown in the example of annual fees and costs.

The cost of product assumes a balance of \$50 000 at the beginning of the year with a contribution of \$5 000 during the year. (Additional fees such as an establishment fee, or an exit fee may apply, refer to the fees and costs summary for the relevant option.)

You should use this figure to help compare this product with other products offered by managed investment schemes.

(c) must be set out as using the following form;

<u>[insert name of option]</u>	<u>Cost of product</u>
	<u>\$1</u>

and

(d) must be calculated in accordance with the method set out in the example of annual fees and costs in clause 212 and Division 6.

(2) Cost of product information is not required in a Product Disclosure Statement where the Product Disclosure Statement relates to only one investment option and an example of annual fees and costs has been included in relation to that option in accordance with Division 5.

Division 7—Consumer Advisory Warning

221 Consumer advisory warning

(1) *Superannuation products*

DID YOU KNOW?

Small differences in both investment performance and fees and costs can have a substantial impact on your long term returns.

For example, total annual fees and costs of 2% of your account balance rather than 1% could reduce your final return by up to 20% over a 30 year period (for example reduce it from \$100 000 to \$80 000).

You should consider whether features such as superior investment performance or the provision of better member services justify higher fees and costs.

You or your employer, as applicable, may be able to negotiate to pay lower fees. Ask the fund or your financial adviser.

TO FIND OUT MORE

If you would like to find out more, or see the impact of the fees based on your own circumstances, the Australian Securities and Investments Commission (ASIC) website (www.moneysmart.gov.au) has a superannuation calculator to help you check out different fee options.

(2) *Collective investment products*

DID YOU KNOW?

Small differences in both investment performance and fees and costs can have a substantial impact on your long term returns.

For example, total annual fees and costs of 2% of your account balance rather than 1% could reduce your final return by up to 20% over a 30 year period (for example reduce it from \$100 000 to \$80 000).

You should consider whether features such as superior investment performance or the provision of better member services justify higher fees and costs.

You may be able to negotiate to pay lower ~~contribution fees and management fees where applicable~~. Ask the fund or your financial adviser.

TO FIND OUT MORE

If you would like to find out more, or see the impact of the fees based on your own circumstances, the Australian Securities and Investments Commission (ASIC) website (www.moneysmart.gov.au) has a managed funds fee calculator to help you check out different fee options.

- (3) In the Consumer Advisory Warning in subclause (2) ‘account’ may be replaced with ‘investment’.

222 Where to place the Consumer Advisory Warning

The Consumer Advisory Warning referred to in subclause 221(1) must be located at the beginning of the fees section of the Product Disclosure Statement for superannuation products and the Consumer Advisory Warning referred to in subclause 221(2) must be located at the beginning of the fees section of the Product Disclosure Statement for collective investment products where fees or costs may be deducted from amounts to be held for members of the managed investment scheme.

Part 3—Fees and costs in periodic statements

Division 1—~~Fees and costs~~~~Other Management Costs~~

301 ~~Amounts deducted and other amounts~~~~Indirect costs related to investment and administration of accounts~~

- (1) For a MySuper product or an investment option offered by a superannuation entity, the following text and the appropriate amounts, in dollars, must be inserted after the part of the periodic statement that itemises transactions during the period under the heading “Fees and costs summary”.

Fees deducted directly from your account

This amount has been deducted directly from your account (reflected in the transactions listed on this statement).

Fees and costs deducted from your investment

This approximate amount has been deducted from your investment and covers amounts that have reduced the return on your investment ~~and that~~ but are not reflected as transactions listed on this statement or in the fees and costs details.

~~Indirect costs of your investment~~

~~This approximate amount has been deducted from your investment and covers amounts that have reduced the return on your investment but are not charged as a fee.~~

~~Other fees of your investment~~

~~This approximate amount or amounts have been deducted from your investment and covers fees that are not reflected as transactions on this statement.~~

~~Note:—Other fees may be reported by the type of fees charged.~~

- (1A) For ~~an offer of~~ a collective investment product, the following text and the appropriate amounts, in dollars, must be inserted after the part of the periodic statement that itemises transactions during the period under the heading “Fees and costs summary”.

Fees deducted directly from your account

This amount has been deducted directly from your account (reflected in the transactions listed on this statement).

Fees and costs deducted from your investment

This approximate amount has been deducted from your investment and covers amounts that have reduced the return on your investment ~~and that~~ but are not reflected as transactions listed on this statement or in the fees and costs details.

~~Indirect costs of your investment~~

~~This approximate amount has been deducted from your investment and covers amounts that have reduced the return on your investment but are not charged to you directly as a fee.~~

~~(1C) For a periodic statement for a MySuper product or an investment option offered by a superannuation entity, for a period ending on or before 29 June 2020, the amount disclosed for other fees under subclause (1) may be calculated excluding property operating costs if it is stated in accordance with subclause (1E) that, “The total fees you paid do not include the property operating costs that you incurred during the period.”.~~

~~(1D) For a periodic statement for a MySuper product or an investment option offered by a superannuation entity, for a period ending after 29 June 2020, and on or before 29 September 2020, the amount disclosed for other fees under subclause (1) may be calculated excluding property operating costs if it is stated in accordance with subclause (1E) that, “The total fees you paid do not include the property operating costs that you incurred during the period. An estimate of the amount of property operating costs incurred by the holder during the period is provided in the periodic statement.”.~~

~~(1E) For the purposes of subclauses (1B) to (1D), a statement is stated in accordance with this subclause if the statement and each other statement made for the purposes of subclauses (1B) to (1D) is included:~~

- ~~(a) — immediately under the amount of total fees you paid in the periodic statement; or~~
- ~~(b) — if it is not reasonably practicable to include the statements in that position in the periodic statement — a separate document that accompanies the periodic statement and that includes those statements as consecutive statements.~~

(2) The amount:

- (a) deducted directly from an account is the total of the amounts of fees deducted shown on the transaction list in the periodic statement; and
- (b) deducted from the investment is the apportioned amount of fees and costs for the product or option that are not:
 - (i) excluded transactional and operational costs;
 - (ii) reflected in paragraph (a); and
 - (iii) reflected in clauses 303(1)(a) or 303(2)(a) and (b).

~~(2) The amount inserted must include:~~

- ~~(a) — for a MySuper product or an investment option offered by a superannuation entity — the indirect costs for the MySuper product or investment option; and~~
- ~~(b) — for an investment option offered by a managed investment scheme — all management costs not deducted directly from a product holder’s account during the reporting period.~~

(3) The amounts in subclauses (1) and (1A) must be shown as a single total amount in dollars.

~~(3A) (B)~~ For a periodic statement for a MySuper product or an investment option offered by a superannuation entity, for a period ending on or before 29 June 2020, the amount disclosed for fees and costs deducted from your investment ~~other fees~~ under subclause (1) may be calculated excluding the buy-sell spread if:

- (a) it is stated in accordance with subclause (1E) that, “The total fees you paid do not include the buy-sell spread fee, because it is not reasonably practicable for us to include the buy-sell spread fee that you incurred during the period.”; and

(b) the statement described in paragraph (a) is included:

- (i) immediately after the total fees and costs you paid in the periodic statement;
or
- (ii) if it is not reasonably practicable to include the statement in that position—a
separate document that accompanies the periodic statement and that includes
that statement.

~~(4) The amount for a collective investment product must be calculated by multiplying the indirect cost ratio for the relevant investment option by the product holder's average account balance for the option over the reporting period.~~

(5) For a superannuation product that is subject to tax, for any reporting period ending after 29 June 2020, if a reduced fee or cost is disclosed in the statement because of the benefit of any income tax deduction, the Fees and costs deducted from your investment~~indirect costs, or other fees as appropriate,~~ for the product must include the part of the cost that reduced the disclosed fee or costs.

(6) For a collective investment product that is subject to tax, for any reporting period ending after 29 June 2020, if a reduced fee or cost is disclosed in the statement because of the benefit of any income tax deduction, the Fees and costs deducted from your investments~~indirect costs for the product~~ must include the part of the cost that reduced the disclosed fee or cost.

Division 2—Total fees and costs

302 Total of fees and costs in the periodic statement

(1) The following text and the appropriate amounts, in dollars, must be displayed:

- (a) after the information in clause 301(1) or (1A) at the end of the part of the periodic statement that itemises transactions during the period; or
- (b) in a summary part of the periodic statement.

TOTAL FEES AND COSTS YOU PAID

This approximate amount includes all the fees and costs which affected your investment during the period.

- (2) The total fees and costs you paid are the total of all fees and costs disclosed in the periodic statement, including any fees detailed in paragraphs 303(1)(a) or 303(2)(a) and (b).

Division 3—~~Fees and costs details~~Additional Explanation of Fees and Costs

303 Matters to be included as ~~fees and costs details~~additional explanation of fees and costs

Superannuation products

- (1) The following information must be included in the periodic statement for a superannuation product under the heading “~~Fees and Costs Details~~Additional Explanation of Fees and Costs”, if it has not been included in another part of the periodic statement:
- (a) details of any activity fees, advice fees and insurance fees that were incurred by the member during the period; ~~and~~
 - (b) for a superannuation product that is subject to tax—whether the benefit of any tax deduction has been passed on to the investor in the form of a reduced fee or cost; ~~and~~
 - ~~(c) for any reporting period ending on or before 29 June 2020:~~
 - ~~(i) the approximate total amount of borrowing costs that affected the investment of the member during the period or that amount combined with the amount required to be disclosed in accordance with subclause 302(1); or~~
 - ~~(ii) details, including the relevant website address, about how to obtain information about borrowing costs for each MySuper product and investment option on the fund’s website; and~~
 - ~~(d) for any reporting period ending after 29 June 2020, the approximate total amount of borrowing costs that affected the investment of the member during the period or that amount combined with the amount required to be disclosed in accordance with subclause 302(1).~~

Collective investment products

- (2) The following information must be included in the periodic statement under the heading “~~Fees and Costs Details~~Additional Explanation of Fees and Costs”, if it has not been included in another part of the periodic statement:
- (a) details of incidental fees, such as cheque dishonour fees, that were incurred by the product holder during the period;
 - (b) details of any service fees that may have been incurred by the product holder; ~~and~~
 - (c) for a collective investment product that is subject to tax—whether the benefit of any tax deduction has been passed on to the investor in the form of a reduced fee or cost; ~~and~~
 - ~~(d) for any reporting period ending after 29 June 2020, the approximate total amount of transactional and operational costs for the collective investment product that affected the investment of the holder during the period or that~~

~~amount combined with the amount required to be disclosed in accordance with paragraph 302(1)(b) excluding costs that are both:~~

- ~~(i) referred to in paragraph (b), (ea) or (eb) of the definition of *transactional or operational costs* and that are a necessary part of the acquisition price of an asset;~~
- ~~(ii) recovered by a buy-sell spread for the collective investment product where the estimated amount of the buy-sell spread that the holder has paid in the period in dollars is disclosed in the periodic statement.~~

Attachment 3: OTC Derivatives Guidance (including counterparty spreads)

OTC derivative costs

ASIC's stated purpose for including OTC derivatives costs as part of a product's overall fee and cost assessment is that such securities can be used to gain economic exposure to assets in a similar way to investing in interposed vehicles and may include imbedded costs akin to management/investment costs. Accordingly, the costs associated with investing in OTC derivatives are required to be treated and disclosed in the same way as those costs associated with investing in an interposed vehicle. Subject to certain provisions, which are described in detail below, costs of obtaining exposure through OTC derivatives should be treated as management costs for managed investment products, or fees or costs for superannuation products.¹ For completeness, it is noted that this treatment is not strictly limited to pure derivatives and can extend to securities and investments in managed investment schemes that have embedded derivatives such as deferred purchase agreements.

Many standard form derivative financial products are traded on regulated, transparent and liquid financial markets. This may include regulated financial markets such as licensed exchanges (for example, ASX Limited) and licensed swap execution facilities (for example, Bloomberg TradeBook and SEC/CFTC regulated SEF's based in the US). Derivative securities which are traded on a financial market are generally non-negotiable securities and are to be treated like other listed securities (i.e. shares) for their RG97 cost assessment².

Calculation of OTC derivative costs

For the purposes of calculating or estimating the costs of OTC derivatives, the approach differs depending on whether or not the derivative is an option. Accordingly, for derivatives which are:

- **not options**, the costs are to be measured as the difference between the underlying return (which may be negative) on the asset or index that the product issuer is gaining exposure to through the derivative and the actual return or loss the product issuer has received over the relevant period.³ The actual and underlying return generally needs to be determined for the previous financial year.
- **options**, the cost that needs to be calculated is the lesser of the premium and the difference between the acquisition price and the price to dispose of the derivative immediately after its acquisition.⁴

In practice, the calculation requirements for derivatives lead to various potential bases for calculating the associated costs. They include:⁵

- a cost charged as an amount payable to the counterparty (for example, comprising a component of an option premium);⁶
- reflected in the difference between how much the counterparty has to pay (or set off) and the value of the underlying asset or index;⁷ and
- by providing a price to acquire the OTC derivative that is higher than would be payable on its disposal.⁸

1 Refer to RG 97.97

2 Refer to RG 97.98

3 Refer to cl 101A(3)(a)(i) of Schedule 10 of the Corporations Regulations as inserted by [CO 14/1252]

4 Refer to cl 101A(3)(a)(ii) of Schedule 10 of the Corporations Regulations as inserted by [CO 14/1252]. See also ASIC's interpretation of this calculation in RG 97.118, which is reflected above

5 Refer to RG 97.104

6 Another example is a component of the swap rate in an interest rate swap

7 For example, a total return swap

8 For example, the ask price on forward

The following guidance details how OTC derivative costs can be calculated for a variety of OTC derivatives.

Options

The cost of an option is the lesser of (i) the premium and (ii) the difference between the acquisition price (i.e., the ask price) and the price to dispose of the option (i.e., the bid price)⁹. The difference between the ask price and the bid price will almost always be lower than the premium.¹⁰

Options include, but are not limited to, options on single stocks, indices, currencies, commodities, bonds, credit default swaps, as well as swaptions, caps and floors.

Entry cost: The cost of entering into an option position is equal to the difference between the true option price and the actual option price that has been transacted. The true option price is generally equal to the mid of the bid and ask option price rates quoted by the derivative counterparty. The cost of entering into an option position is therefore generally equal to 50% times the bid-ask spread quoted by the derivative counterparty.

The entry cost is recognised at the time the option position is opened (whether it be a long position or a short position), irrespective of when the option matures.

Exit cost: Once an option position has been taken, it can be either:

- **held to maturity:** in which case no exit cost is incurred. The total cost of the option position is therefore limited to the entry cost, which is 50% times the bid-ask spread and which was recognised at the time the option position was opened; or
- **exercised prior to maturity:** in which case no exit cost is incurred. The total cost of the option position is again limited to the entry cost, which is 50% times the bid-ask spread and which was recognised at the time the option position was opened; or
- **closed-out prior to maturity by entering into an offsetting transaction:** in which case the cost of entering into the offsetting option transaction is equal to 50% times the bid-ask spread at the time the offsetting option transaction is entered into. The total cost of the option position is therefore equal to 50% times the bid-ask spread recognised at the time the option position was taken, plus 50% times the bid-ask spread recognised at the time the offsetting option position was transacted.

Interest rate swaps

The cost of an interest rate swap includes an assessment of the difference between the bid rate and the ask rate of the swap.

Entry Cost: The cost of entering into an interest rate swap is equal to the difference between the true swap rate and the actual swap rate that has been transacted. The true swap rate for a fixed-for-floating swap is the fixed rate that will result in the swap having a net present value of zero at inception. This is generally equal to the mid of the bid and ask swap rates quoted by a swap counterparty. The cost of entering into an interest rate swap is therefore generally equal to 50% times the bid-ask spread quoted by the swap counterparty.

The entry cost is recognised at the time the interest rate swap is transacted, irrespective of when the swap matures and irrespective of whether the swap has a deferred start. For example, if an interest rate swap is entered into during the current financial year, with a two-year deferred start date and a term of five years, the entry cost is recorded in the current financial year.

Exit Cost: After an interest rate swap has been entered into, it can be either:

⁹ Refer to RG 97.117

¹⁰ The exception might be for deep out-of-the-money options which have a value close to zero

- **held to maturity:** in which case no exit cost is incurred. The total cost of the interest rate swap is therefore limited to the entry cost, which is 50% times the bid-ask spread and which was recognised at the time the interest rate swap was transacted; or
- **terminated prior to maturity:** in which case the exit cost is generally equal to 50% times the bid-ask spread at the time of termination. The total cost of the interest rate swap is therefore equal to 50% times the bid-ask spread recognised at the time the swap was transacted, plus 50% times the bid-ask spread at the time the swap is terminated. Upon termination, any mark-to-market gain or loss on the swap is realised and settled with the counterparty. This realised gain or loss is not recognised as an additional cost of the swap.

Since swap rates are usually quoted as a rate (or as basis points) per annum, the rate (or basis point) spread needs to be converted to a dollar cost. This can be done in one of two ways:

- the spread is multiplied by the PV01¹¹ of the swap. For example, if the bid-ask spread quoted by a counterparty for a 5-year Australian dollar interest rate swap with a notional of \$10,000,000 is 3 basis points per annum (i.e. 0.03% pa), and the PV01 of the interest rate swap is \$4,755, then the entry cost of the interest rate swap recognised at the time it is transacted is equal to:

$$50\% \times 3 \text{ basis points} \times \$4,755 = \$7,132.50$$

- the net present value of the swap is calculated at the bid rate as well as the ask rate. The sum of the two net present values is the cost of the swap. For the example above, the bid and ask net present values calculated by the issuer are:

$$NPV_{\text{Bid}} = -\$7,132.50$$

$$NPV_{\text{Ask}} = -\$7,132.50$$

The total cost of the swap is equal to the sum of the two net present values, which is $-\$7,132.50 - \$7,132.50 = -\$14,265$. The entry cost is $50\% \times -\$14,265 = -\$7,132.50$. Note that the negative sign indicates that the amount is a cost to the product issuer.

Inflation swaps

The cost of an inflation swap is calculated in the same manner as an interest rate swap. That is:

- the entry cost is equal to 50% times the bid-ask spread quoted by the inflation swap counterparty; and
- the exit cost is equal to either (i) if the swap is held to maturity, nil, or (ii) if the swap is terminated prior to maturity, 50% times the bid-ask spread quoted by the inflation swap counterparty.

Credit default swaps

The cost of a credit default swap is calculated in the same manner as an interest rate swap. That is:

- the entry cost is equal to 50% times the bid-ask spread quoted by the credit default swap counterparty; and
- the exit cost is equal to either (i) if the swap is held to maturity, nil, or (ii) if the swap is terminated prior to maturity, 50% times the bid-ask spread quoted by the credit default swap counterparty.

Credit default indices and credit default asset backed indices are treated in the same manner.

¹¹ The present value of a basis point (PV01) is the change in the net present value of the swap for a one basis point move in the swap rate

Forwards

The cost of a forward includes an assessment of the difference between the bid price and the ask price of the forward.

Entry cost: The cost of entering into a forward is equal to the difference between the true forward price and the actual forward price transacted. The true forward price is generally equal to the mid of the bid and ask forward price rates quoted by the derivative counterparty. The cost of entering into a forward is therefore generally equal to 50% times the bid-ask spread quoted by the derivative counterparty.

The entry cost is recognised at the time the forward position is opened (whether it be a long position or a short position), irrespective of when the forward matures. For example, if a 1-month AUDUSD foreign exchange forward is entered into during the current financial year, but matures in the following financial year, the entry cost is recognised in the current financial year.

Exit Cost: Once a forward is entered into, it can be either:

- **held to maturity:** in which case no exit cost is incurred. The total cost of the forward is therefore limited to the entry cost, which is 50% times the bid-ask spread and which was recognised at the time the forward was transacted; or
- **closed-out by entering into an offsetting transaction:** in which case the cost of entering into the offsetting forward is equal to 50% times the bid-ask spread at the time the offsetting forward is entered into. The total cost of the forward position is therefore equal to 50% times the bid-ask spread recognised at the time the forward position was opened, plus 50% times the bid-ask spread recognised at the time the offsetting forward position was transacted.

Commonly traded total return swaps

The cost of a commonly traded total return swap includes an assessment of the difference between the bid rate and the ask rate of the swap.

Entry Cost: The cost of entering into a total return swap is equal to the difference between the true total return swap rate and the actual total return swap rate that has been transacted. The true total return swap rate is generally equal to the mid of the bid and ask total return swap rates quoted by the total return swap counterparty. The cost of entering into a total return swap is therefore generally equal to 50% times the bid-ask spread quoted by the total return swap counterparty.

The entry cost is recognised at the time the total return swap is transacted, irrespective of when the total return swap matures.

Exit Cost: After a total return swap has been entered into, it can be either:

- **held to maturity:** in which case no exit cost is incurred. The total cost of the total return swap is therefore limited to the entry cost, which is 50% times the bid-ask spread and which was recognised at the time the total return swap was transacted; or
- **terminated prior to maturity:** in which case the exit cost is generally equal to 50% times the bid-ask spread at the time of termination. The total cost of the total return swap is therefore equal to 50% times the bid-ask spread recognised at the time the swap was transacted, plus 50% times the bid-ask spread at the time the swap is terminated. Upon termination, any mark-to-market gain or loss on the swap is realised and settled with the counterparty. This realised gain or loss is not recognised as an additional cost of the swap.

Since the difference in the bid and ask rate will usually be in basis points, the basis point spread will need to be converted to a dollar cost. This is done by calculating the net present value of the total return swap

at the bid rate as well as the ask rate. The sum of the two net present values is the total cost of the total return swap.

For example, a total return swap counterparty provides the following quote for a 1-year total return swap on the MSCI All Country World TR Gross Index for a notional amount of USD 10,000,000:

Bid: 3-month LIBOR + 32 basis points

Ask: 3-month LIBOR + 41 basis points

The net present value of the total return swap calculated by the product issuer is:

$$NPV_{\text{Bid}} = \text{USD } +32,175$$

$$NPV_{\text{Ask}} = \text{USD } -41,225$$

The total cost of the total return swap is $\text{USD } -41,225 + \text{USD } 32,175 = \text{USD } -9,050$. The entry cost is equal to $50\% \times \text{USD } -9,050 = \text{USD } -4,525$. Note that the negative sign indicates that the amount is a cost to the product issuer.

Bespoke total return swaps

Bespoke total return swaps, which may include specifically negotiated terms or features, are unlikely to have a cost assessment based on the difference between a bid rate and the ask rate of the swap. Instead the cost assessment is likely to be with consideration to the difference between how much the counterparty has to pay (or set off) and the value of the underlying reference asset of the swap.

Calculating the actual return of an OTC derivative

In calculating the difference between the underlying return (which may be negative) on the asset or index that the product issuer is gaining exposure to through the OTC derivative and the actual return or loss the product issuer has received over the relevant period ¹² the actual return of the OTC derivative is required to be determined with consideration to the return that has been or would be received (as applicable), or loss that would be payable during the period of the current financial year that the OTC derivative was held by the product. For example:¹³

- **OTC derivative is entered in and exited in the current financial year:** Actual return to be assessed from point of entering into the OTC derivative (with consideration to its actual enter value) to point of exiting the OTC derivative (with consideration to its actual exit value).
- **OTC derivative is entered into in current financial year and held at year end:** Actual return to be assessed from point of entering the OTC derivative (with consideration to its actual enter value) to 30 June (with consideration to the exit value of the OTC derivative as at 30 June).
- **OTC derivative held at start of current financial year and exited during the current year:** Actual return to be assessed from 1 July (with consideration to the exit value of the OTC derivative as at 30 June of previous financial year) to point of exiting the OTC derivative (with consideration to its actual exit value).
- **OTC derivative held throughout the entire current financial year:** Actual return to be assessed from 1 July (with consideration to the exit value of the OTC derivative as at 30 June of previous financial year) to 30 June (with consideration to the exit value of the OTC derivative as at 30 June).

The effect of the above requirement is that for all OTC derivatives the exit cost of the OTC derivative is recognised as a cost in the financial year the OTC derivative position is entered into, irrespective of whether the OTC derivative is held:

¹² Refer to CI 101A(3)(a)(i) of Schedule 10 of the Corporations Regulations as inserted by [CO 14/1252]

¹³ Refer to CI 101A(3A)(a)(i) of Schedule 10 of the Corporations Regulations as inserted by [CO 14/1252] and see RG 97.116

- over multiple financial years, in which case the exit cost of the OTC derivative is not realised until a future financial year; or
- held to maturity, in which case no exit cost is ever realised.

With consideration to how OTC derivatives may be valued by a product issuer on an ongoing basis, how OTC derivatives may be traded, including being held to maturity or closed-out before maturity by entering into an offsetting transaction and how such trades may be recorded in a product issuer's trading systems, recognition of OTC derivative returns and costs in accordance with the requirements of Class Order [CO 14/1252] and RG 97 may be materially difficult and may result in unreliable or inaccurate cost assessments being carried out.

It may therefore be appropriate for product issuers to consider an alternative method of assessing OTC derivative returns and costs, where the product issuer reasonably believes such alternative method of assessment is likely to result in a more accurate recognition of OTC derivative costs. Such alternative method may include recognising exit costs of an OTC derivative in the year in which the OTC derivative is actually exited.

Determination of bid-ask spreads

Bid-ask spreads can be determined on an actual basis or they can be estimated.

- **Actual:** The actual bid and ask prices can be obtained from the OTC derivative counterparty at the time the derivative is transacted.
- **Estimated:** Bid-ask spreads can be estimated from observed historical bid and ask prices, or they can be implied from current market data.

Historical bid-ask spreads: Generally, historical bid and ask prices are available for swaps and forwards. For total return swaps and OTC options, however, historical bid and ask prices will generally not be observable.

When downloading historical bid and ask prices from a data provider such as Bloomberg, the historical data may occasionally include erroneous data, for example a bid price that is equal to the ask price; or bid and ask prices that result in an abnormally large spread; or bid and ask prices that result in a negative spread. Therefore, the data should be reviewed and any erroneous data should be corrected or excluded from the estimation of a bid-ask spreads.

One way of estimating the bid-ask spread for an OTC derivative instrument is to:

- i) download the bid and ask prices for each day of the financial year;
- ii) calculate the bid-ask spread for each day; and
- iii) compute a simple average (after removing any erroneous data).

The table below presents a summary of the average historical spread for the financial year ending 30 June 2016 for a variety of United States interest rate swaps. It also includes the PV01 for a notional of USD 1,000,000 for each of these swaps, and the resulting entry cost of the swap in both dollars and as a percentage of notional.

USD Interest Rate Swaps

Ccy	Notional	Term	Historical		Entry Cost		Bloomberg Code
			BPS	PV01	\$	%	
USD	1,000,000	1Y	0.32	99.91	15.99	0.0016%	USSW1 Curncy
USD	1,000,000	2Y	0.33	198.05	32.68	0.0033%	USSW2 Curncy
USD	1,000,000	3Y	0.28	295.14	41.32	0.0041%	USSW3 Curncy
USD	1,000,000	4Y	0.35	391.33	68.48	0.0068%	USSW4 Curncy
USD	1,000,000	5Y	0.31	486.22	75.36	0.0075%	USSW5 Curncy
USD	1,000,000	7Y	0.27	672.07	90.73	0.0091%	USSW7 Curncy
USD	1,000,000	10Y	0.30	937.28	140.59	0.0141%	USSW10 Curncy
USD	1,000,000	15Y	0.28	1,345.69	188.40	0.0188%	USSW15 Curncy
USD	1,000,000	30Y	0.23	2,340.86	269.20	0.0269%	USSW30 Curncy

For example, the historical average spread for the 5-year United States interest rate swap is 0.31 basis points, and the PV01 (for a notional of USD 1,000,000) is USD 486.22. The entry cost of the swap is therefore:

$$50\% \times 0.31 \times \text{USD } 486.22 = \text{USD } 75.36$$

The entry cost, expressed as a percentage of notional is:

$$\text{USD } 75.36 \div \text{USD } 1,000,000 = 0.0075\%$$

To estimate the cost of a 5-year United States interest rate swap for a different notional amount, the cost expressed as a percentage of notional can be utilised. For example, for a 5-year United States interest rate swap for a notional of USD 25,000,000, the estimated cost is:

$$0.0075\% \times \text{USD } 25,000,000 = \text{USD } 1,875$$

Implied bid-ask spreads: Where historical data is not observable (for example for total return swaps and OTC options), the bid and ask prices can be implied from market data using a relevant derivative pricing model.

The table below presents the bid and ask premiums for vanilla at-the-money EURUSD call options for an amount of EUR 1,000,000 and a maturity of 1-month, 2-months, 3-months and 6-months. The Bloomberg OVML function can be utilised to compute the bid and ask premiums.

Vanilla ATM Forward

Vanilla ATM Forward												
					Bid		Ask		Bid		Ask	
Ccy	Amount	Ccy	Term	P/C	Ccy	Premium €	Premium €	Ccy	Premium %	Premium %	Spread €	Spread %
EURUSD	1,000,000	EUR	1M	Call	EUR	10,456	10,931	EUR	1.0456%	1.0931%	475	0.0475%
EURUSD	1,000,000	EUR	2M	Call	EUR	14,756	15,373	EUR	1.4756%	1.5373%	618	0.0618%
EURUSD	1,000,000	EUR	3M	Call	EUR	19,681	20,691	EUR	1.9681%	2.0691%	1,010	0.1010%
EURUSD	1,000,000	EUR	6M	Call	EUR	28,102	29,953	EUR	2.8102%	2.9953%	1,851	0.1851%

For example, at the date of calculation, the bid and ask premiums for a vanilla 3-month at-the-money EURUSD call option were EUR 19,681 and EUR 20,691 respectively. The bid-ask spread is:

$$\text{EUR } 20,691 - \text{EUR } 19,681 = \text{EUR } 1,010$$

Expressed as a percentage, the bid-ask spread is:

$$\text{EUR } 1,010 \div \text{EUR } 1,000,000 = 0.1010\%$$

Foreign currency denominated derivatives: Where a derivative is denominated in a foreign currency (for example, the United States interest rate swap and EURUSD currency option examples above), the bid-ask spread will generally also be denominated in the foreign currency. To calculate the Australian dollar derivative cost, the relevant spot foreign exchange rate should be applied to the bid-ask spread at the time the foreign currency denominated derivative is executed.

Attachment 4: Performance fee calculation methodology

Terminology

Performance fees are also referred to as carried interest (or simply 'carry'), particularly for private equity investments, and may also be referred to by other names such as 'incentive allocation'. Regardless of the terminology, all amounts payable as fees to a fund manager with direct reference to performance should be considered 'performance fees' for disclosure purposes.

Calculation options

One of the key considerations in relation to the disclosure of performance fees is how they should be calculated. There are two possible approaches:

- a) Accounting basis (i.e. taking into account accruals); or
- b) Cash basis (i.e. reflecting only performance amounts that have been paid, or realised, over the period).

Background

It is common for performance fees for certain types of investments (e.g. private equity funds) to only be paid (or 'realised') on exit (i.e. upon the sale of the portfolio companies that make up a fund). This is often referred to as 'whole of fund carry' and it reduces the risk of carry being 'overpaid' to the manager during the course of the fund's life.

A private equity fund's duration is often 7-10 years which means carry may not be payable for many years following the commitment. However, the manager of a private equity fund (known as the 'GP' or general partner) will normally accrue carry based on the latest available valuations of the portfolio companies the fund invests in, and this amount will generally be adjusted up/down throughout the life of the fund as valuations change.

Performance fees in relation to real property and infrastructure investments often treated in a similar way.

For these types of investments, the difference in calculation/disclosure between the two different approaches (i.e. accounting or cash) can be significant. As a result, we think ASIC should provide clear guidance here.

Below are some illustrative examples of each approach.

Accounting basis

Performance fees	Year 1	Year 2	Year 3
Opening accrual balance	\$0	\$5m	\$7m
Closing accrual balance	\$5m	\$7m	\$0m
Δ accrual balance	+\$5m	+\$2m	-\$7m
Paid/Realised amount	\$0	\$0	\$10m
Amount disclosed (Δ accrual balance + paid/realised)	+\$5m	+\$2m	+\$3m (-\$7m + \$10m)

Disclosing fees in this way is most consistent with the way an investment with accrued performance fees is reflected in a fund's NAV/unit price, and therefore the returns an investor receives.

This is because, even though performance fees aren't paid until year 3, the amounts accrued in the first and second years have the effect of reducing the valuation of the investment in these years.

One complexity with this approach is the possibility for performance fees previously accrued to be reduced in the following year as a result of subsequently less favourable valuations. This would need to be reflected in the calculation accordingly. Below is an example.

Performance fees	Year 1	Year 2	Year 3
Opening accrual balance	\$0	\$5m	\$2m
Closing accrual balance	\$5m	\$2m	\$0m
Δ accrual balance	+\$5m	-\$3m	-\$2m
Paid/Realised amount	\$0	\$0	\$3m
Amount disclosed (Δ accrual balance + realised)	+\$5m	-\$3m	+\$1m (-\$2m + \$3m)

Cash/realised basis

Performance fees	Year 1	Year 2	Year 3
Opening accrual balance	\$0	\$5m	\$7m
Closing accrual balance	\$5m	\$7m	\$0m
Δ accrual balance	+\$5m	+\$2m	-\$7m
Paid/Realised amount	\$0	\$0	\$10m
Amount disclosed (Paid/realised only)	+\$0m	+\$0m	+\$10m

Under the second approach, the full amount would be disclosed in the 3rd year at the time it is paid/realised. However, as mentioned above, even though nothing is paid in years 1 and 2, the amounts accrued in these years have an impact on the value at which the fund holds the investment, and this is ultimately reflected in the unit price and the returns investors receive.

If, for example, an investor buys units in a fund with this underlying investment in year 1, and subsequently sells their investment during year 2, even though no performance fees have been paid, the accrued amounts have had an impact on their return over this period and the experience is the same as if the performance fees had been physically paid.

Summary

In conclusion, the accounting approach which takes into account accrued amounts is preferable as it is most aligned with the returns an investor receives.