



ASIC
Australian Securities &
Investments Commission

RG 97: Disclosing fees and costs in PDSs and periodic statements

**Presented in Sydney, Melbourne and
Brisbane**

February 2020





Introduction

- The legislative framework for fees and costs disclosure is prescriptive and we have exercised our modification powers to clarify the legislative framework. Within the scope of our powers we have sought to:
 - ensure consumers and market professionals have useful information; and
 - ensure the regime is practical for you to implement and comply with
- The updated RG 97 follows public consultation after an external expert review of the regulatory guide as well as consumer testing of proposed changes to the presentation of fees and costs.
- We consulted with Treasury and APRA throughout the process
- Opportunity to hear us describe the changes to the fees and costs disclosure regime and to ask us any questions you may have.



Overview

- What is this regime about?
- In brief
- Key improvements
- Changes for fees and costs disclosure for PDSs
- Changes for fees and costs disclosure in periodic statements
- Transition
- Next steps
- Key takeaways
- Opportunity for questions



What is this regime about?

- Capturing the cost of the product
- Investors should receive fees and costs information in both PDS and periodic statements
- Disclosures should encompass both direct and indirect costs
- Comparability between products



In brief

- The updated RG 97:
 - provides greater clarity on the fees and costs disclosure obligations for industry and this will help improve consistency, comparability and compliance
 - takes into consideration the recommendations from REP 581, industry's submissions in response to CP 308, consumer testing undertaken by ASIC and other reforms
- Some issues remain: platforms and consequential amendments

Key improvements





Key improvements – Presentation for consumers

- **Ongoing vs non-ongoing fees and costs:** grouping of these in fees and costs summary to more clearly show fees and costs that are ongoing and those that are member-activity based
- **Simplification in PDS:** on-going fees and costs into three groups – Administrative, Investment and Transaction
- **New information:** including a single ‘Cost of Product’ figure in a PDS, and
- **Simplification in periodic statement:** how fees and costs are presented in periodic statements.



Key improvements – Guidance and Data Inputs

- RG 97 has separate sections dealing with **superannuation** and **managed investment products**
- Modification of the legislation has been done by way of a legislative instrument that includes a **consolidated version of Schedule 10** of the Corporations Regulations 2001, and
- The **costs categories** that need to be counted in the disclosed amounts have been clarified, including confirming that some categories that are hard to accurately measure consistently and have limited value for users, need not be included (eg implicit market costs).



Other changes or clarified guidance

- **Costs met from other sources:**
 - Reserves: Costs met through reserves are to be included in *administration fees and costs* or *investment fees and costs* and the double counting issue is addressed.
 - Third parties: Amounts paid by third parties must be counted in the relevant category
- **Tax:**
 - Confirm fees and costs must be disclosed on a gross of tax basis. The existence of the benefit of any tax deduction should be disclosed under the *Additional explanation of fees and costs*

Product disclosure statements



Superannuation-PDS

Super – Fees and cost summary

- Renamed 'Fees and costs summary'
- Single line items for administration fees & costs and investment fees & costs. Investment fees & costs includes performance fees & indirect costs.
- Intrafund advice costs to be included in total administration fees and costs
- Ongoing and member-initiated fees & costs grouped separately
- References to exit fees removed due to PYSP.

Super - Cost of product information

- Single cost of product figure to be included in PDS for each superannuation product or investment option
- To be based on a \$50,000 balance
- No additional \$5,000 contribution for superannuation
- Included for each investment option of a superannuation fund.

Super - Performance fees

- Performance fees to include all product/option level performance fees and performance fees charged by interposed vehicles
- To be calculated based on a 5 year historical average
- Negative performance fees handled by way of explanation in 'See additional explanation of fees and costs' to avoid confusion and misleading statements.

Super - Transaction costs

- Transaction costs to be a separate line item in the fee template (shown net of amounts recovered by the buy-sell spread)
- Property operating costs, borrowing costs and implicit transaction costs to be excluded
- Counterparty spreads will not be included
- Treatment of derivatives – status quo maintained - handled differently from MIS' due to PYSP.

Managed investment products - PDS

MIS – Fees and cost summary

- Renamed 'Fees and costs summary'
- Management costs to become management fees & costs, include indirect costs and put at the top of the template
- Performance fees new line item
- New line-item for buy-sell spread
- Ongoing and member-initiated fees & costs grouped separately

MIS - Cost of product information

- Single cost of product figure to be included in PDS for each managed investment product investment option
- To be based on a \$50,000 balance
- Plus additional \$5,000 contribution
- Included for each investment option of an MIS.

MIS - Performance fees

- Performance fees to include all product/option level performance fees and performance fees charged by interposed vehicles
- To be calculated based on a 5 year historical average
- Negative performance fees handled by way of explanation in 'See additional explanation of fees and costs' to avoid confusion and misleading statements.

MIS - Transaction costs

- Transaction costs to be a separate line item in the fee template (shown net of amounts recovered by the buy-sell spread)
- Property operating costs, borrowing costs and implicit transaction costs to be excluded
- Counterparty spreads will not be included
- Treatment of derivatives – status quo maintained.



Common queries - PDS

- **Performance fees:** requirement to disclose at the interposed vehicle level: 209(b)(v)
- **Transition:** transitional arrangements applying to PDSs dated on or after 30 September 2020
- **Derivatives:** no change to the treatment of derivatives
- **Implicit transaction costs and market impact costs:** not required to be disclosed
- **Interposed vehicle test:** no change to the test
- **Significant event notices:** no change to ASIC policy
- **No specific category?:** still needs to be disclosed

Periodic statements





Periodic statements

- Periodic statements simplified so they contain:
 - Fees deducted from your account
 - Fees and costs deducted from your investment
 - Total fees and costs you paid



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Transitional arrangements





Transition dates

- PDS dated **on or after 30 September 2020** is required to comply. There is no early opt-in
- Periodic statements for reporting periods that commence **on or after 1 July 2021** are required to comply.
- Issuers may 'opt-in' to the updated periodic statement requirements if the periodic statement is for a reporting period that:
 - commences on or after 1 July 2020, or
 - ends on a day that is on or after 1 July 2020 if the reporting period ends on the exit date because the holder of the product ceased to hold the product on the exit date.



Transition for Superannuation

- Amounts will be rolled in the 'fees and costs summary'
- No requirement for property operating, borrowing costs or implicit transaction costs to be disclosed anywhere
- Costs met from reserves to be disclosed
- Relief in periodic statements that excludes the buy-sell spread in the amount disclosed no longer exists. This must be included in the 'Fees and costs deducted from your investment'.



Transition for MIS

- Amounts will be rolled in the 'fees and costs summary'
- No more property operating costs, borrowing costs or implicit transaction costs
- Performance fee disclosed in 'fees and costs summary'

Next steps



Legislative instrument and RG

- Considering technical refinements to LI 2019/1070 in relation to give effect to intention:
 - address PDS transitional issue by referring to the date of the PDS
 - effect of implicit cost exclusion on treatment of derivatives in indirect costs
 - ensuring performance fees cannot be part of transaction costs
 - consequential amendments to other class orders
- Considering other issues being raised by industry
- We are not intending on issuing FAQs as we have in the past but are maintaining 'transitional guidance' on our website. This is because the updated RG includes all the relevant information and FAQs become outdated quickly.



Surveillance and monitoring

- ASIC will undertake surveillance
- We expect issuers to transition to the new requirements in a timely manner
- We will also be monitoring 'best execution' practices going forward given our decision to carve out counterparty spreads. We expect you to have policies regarding best execution.



Platforms

- Current status: Maintain existing guidance see Section F of RG 97
- Proposed consultation: ASIC will respond to the recommendations in REP 581 on platforms through a consultation paper expected to be issued in Q2 of 2020. We will engage with industry throughout the process.
- Revised guidance: Expect to issue revised guidance in Q2 of 2021 with a transition timetable.

Summing up



Key takeaways

- This review is complete
- Amending instrument for consequential amendments and to address concerns raised post release
- Compliance with the new regime
- Platforms
- Questions? Fees and costs mailbox: feeandcostdisclosure@asic.gov.au

**The following are
questions raised at
the roundtable
sessions in Sydney,
Melbourne and
Brisbane**



Common Questions and Answers - Product Disclosure Statements – Updating issues

- Q: Do all PDSs need to be reissued on 30 September 2020?

A: No, but we expect you to update in a timely manner, and if for any other reason you are updating your PDS because of a material change then we will expect that your PDS will meet the new requirements. We will monitor the transition to the new regime and consider action where we find PDSs that are out of date. See Table 3 in RG 97.

- Q: Is there any early opt-in available to update our PDS earlier than 30 September 2020?

A: No there is no early opt-in. See Table 3 in RG 97.

- Q: Are PDSs to be rolled each year?

A: We expect that most issuers will update PDS each year to comply with obligations under Part 7.9 of the Corporations Act 2001. Your PDS must be up to date at all times and cannot be misleading. See RG 97.401-RG 97.414.



Common Questions and Answers - Product Disclosure Statements – Particular disclosure issues

- Q: How should tax rebates that are passed on to members be disclosed to the member?

A: Fees and costs must be disclosed on a gross of tax basis. The 'Additional explanation of fees and costs' can be used to state whether the benefit of any tax deduction is passed on to the member in the form of a reduced fee or cost. See RG 97.75 for superannuation products and RG 97.186 for managed investment products.

- Q: In the context of property funds, can stamp duty be separated out in the disclosure if it is unusually high in one year due to a fund purchase but not in another?

A: No. Stamp duty must be disclosed as a transaction cost. See cl 103(1) of Sch 10. You may use the additional explanation of fees and costs to explain an example like this. See RG 97.71-RG 97.79 for superannuation products and RG 97.185 – RG 97.190 for managed investment products.


Common Questions and Answers - Product Disclosure Statement – Particular Disclosure Issues: Cost of product information

- Q: How should cost of product information for a lifecycle product be disclosed?

A: Cost of product information should be disclosed for each product or option. You may use a range to disclose the fee. We consider each stage/investment option of a lifecycle product to be a separate option. (Industry terminology varies and some may call this a cohort or investment strategy; where there is a common investment exposure for a group of members managed in aggregate the issuer should consider whether it is an investment option for disclosure purposes). See RG 97.65 - RG 97.70 and cl 220A of Sch 10.

- Q: If there are multiple investment options, does the PDS need to include a cost of product for each?

A: Yes. Cost of product information is to be included in the full PDS not the shorter PDS. See RG 97.65 - RG 97.70 and cl 220A of Sch 10 for superannuation products and RG 97.180 – RG 97.184 and cl 220B of Sch 10 for managed investment products.



Common Questions and Answers - Product Disclosure Statement – Particular Disclosure Issues: Cost of product information

- Q: Is there discretion to separate fees and costs when calculating the cost of product information?

A: No. The cost of product information is an abbreviated version of the example of annual fees and costs. The same methodology should be applied. See RG 97.65 - RG 97.70 and cl 220A of Sch 10 for superannuation products and RG 97.180 – RG 97.184 and cl 220B of Sch 10 for managed investment products.

- Q: Does Cost of product include stamp duty?

A: Yes. This is a transaction cost. See cl 103(1) of Schedule 10.

Common Questions and Answers - Product Disclosure Statement – Disclosure issues: performance fees

- Q: If the performance fee changes each year does the disclosure need to be updated?

A: Like any fee or cost amount, if the dollar amount is materially different, then yes. As performance fees are required to be separately disclosed for managed investment products, as performance fees are required to be separately disclosed for these products. See RG 97.401-RG 97.407.

- Q: If performance fees are no longer being charged then how should they be disclosed?

A: Where a product, option or interposed vehicle or part ceases to charge a performance fee the PDS for the first year after the performance fee ceases should include the average performance fee calculated 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 see cl 103(1)(c) of Sch 10. This is because in the first year the performance fee would have been included in the costs of the prior year. You can use the additional explanation of fees and costs section to explain that a performance fee is no longer being charged.



Common Questions and Answers - Product Disclosure Statement – Disclosure issues: performance fees

- Q: If there is a change to the interposed vehicles, then does the performance fee change? Does the 5 year average history of an interposed vehicle need to be disclosed if it has been changed?

A: You are required to disclose the fees and costs of interposed vehicles referable to the product. This means that a change in interposed vehicles will result in the need to calculate a different average history. Please refer to cl 101C(3)(b) of Sch 10 and RG 97.375-RG 97.376.

- Q: If there is a new fund, how should they calculate their performance fee? How should reasonable estimates be used?

A: When a product, investment 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. If you use an estimate, that amount must be clearly designated as an estimate. See RG 97.392-RG 97.397 for the reasonable steps we expect you to take to obtain an estimate.



Common Questions and Answers - Miscellaneous Product Disclosure Statement Issues - Portfolio Holdings Disclosure

- Q: Has the test for PDS disclosure been considered with respect to Portfolio Holdings Disclosure?

A: ASIC is aware that some funds have disclosed on their websites ultimate investments to provide better transparency about portfolio holdings. In light of the nature of this disclosure, the mere fact of this disclosure is unlikely to result in an investment that is otherwise an interposed vehicle ceasing to be regarded as such under the PDS test set out in cl 101B. The analysis may differ if there are other communications highlighting the ultimate investment (e.g. the ultimate investment forms a part of the marketing strategy that occurs in relation to the product or option).



Common Questions and Answers - Periodic statements

- Q: If issuers have not updated their PDS should they still issue their periodic statement in the old format until a new PDS is issued?

A: There is no requirement to use the old format until a new PDS is issued. Periodic statements are required to be in a new format for reporting periods from 1 July 2021, however you may opt in early for reporting periods from 1 July 2020. See Table 3 in RG 97.

- Q: What is the state of play of the relief under CO 14/1252 that allows for the buy-sell spread to be excluded from the 'other fees of your investment' category; see cl 301(1B) of Sch 10 as modified by CO 14/1252.

A: This relief exists under the transitional RG and CO 14/1252 and only applies to superannuation products not managed investment products. This relief will no longer exist under the new regime and the buy-sell spread will need to be disclosed under 'fees and costs deducted from your investment'. See RG 97.129.



Common Questions and Answers - Periodic statements

- Q: Do amounts in periodic statements need to be disclosed gross or net of tax?

A: If a tax benefit has been passed to the member then the periodic statement must show two transactions: one for the full amount charged and one for the tax benefit that was passed on to the member. See RG 97.121 - 97.124 for superannuation products and RG 97.227 – RG 97.230 for managed investment products.

- Q: Where should costs paid by third parties or from reserves be included in the periodic statement?

A: These amounts should be included in the 'Fees and costs deducted from your investment' category and will also form part of the 'Total fees and costs you paid'. See cl 301 and 302 of Schedule 10.

- Q: When disclosing performance fees in a periodic statement, does the amount cover the past 12 months or the past 5 years?

A: You should include the performance fees for the reporting period to which the statement relates. See cl 101C(4) of Sch 10 and RG 97.380.



Common Questions and Answers - Derivatives

- Q: With regard to the technical change to derivatives, will derivatives have the benefit of being an excluded transaction cost? When will the technical change be made?

A: ASIC did not intend for there to be any change to derivatives which are to be disclosed as an indirect cost or transaction costs. See RG 97.283 – RG 97.299. We will be amending the Instrument shortly to clarify this.



Common Questions and Answers - Reserves

- Q: Can you explain the treatment of costs paid out of reserves that are not administration reserves?

A: Costs met from any reserve that are in excess to the fees that goes into the reserve must also be disclosed. See RG 97.95- RG 97.99.

- Q: Fees are charged on a cash basis and reserve changes are on an accruals basis. Disclosing costs met from reserves may over or understate the actual cash costs.

A: We acknowledge there is potential for this, but we believe we have minimised it in the RG and Instrument. We consider that clarifying that costs paid out of reserves are captured by the fees and costs disclosure requirements will promote product comparability. To address the potential for double counting, issuers of superannuation products must disclose costs debited from reserves that are in excess to amounts credited to the reserves during the period, see RG 97.95 to RG 97.99.



Common Questions and Answers - Significant Event Notices

- Q: Has ASIC changed its policy position on the requirements to give significant event notices?

A: No. Please refer to paragraphs 69 and 70 of the explanatory statement to ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070. If there is an increase in the member level direct fee then the 30 days advanced notice rule applies, and if not then the longer timing rule is applied. Also see RG 97.415- RG 97.421.



Common Questions and Answers - APRA reporting requirements

- Q: Is APRA referring to the updated RG 97 for their standard reporting requirements in terms of synchronicity?

A: Yes we are working with APRA and we appreciate that the fees and costs regime should in future align with APRA's reporting standards as far as possible.

- Q: Will the new fees and costs totals be incorporated into APRA's heatmaps?

A: Yes. ASIC has and is continuing to liaise with APRA in relation to their data uplift for reporting purposes and their heatmaps.