



**ASIC**  
Australian Securities &  
Investments Commission

# Questions and answers: Fees and costs disclosure – superannuation and managed investment products

## About these questions and answers

The transitional version of [Regulatory Guide 97 \*Disclosing fees and costs in PDSs and periodic statements\*](#) (PDF 1.08 MB) and these questions and answers apply to:

- Product Disclosure Statements (PDSs) issued before 30 September 2020
- periodic statements (ongoing or on exit) for reporting periods that commence before 1 July 2021.

The transitional version of RG 97 is the March 2017 version of RG 97. It applies until the commencement of [ASIC Corporations \(Disclosure of Fees and Costs\) Instrument 2019/1070](#).

These questions and answers were last updated in **April 2019** and previously appeared on our website as a webpage. This PDF version was created in January 2020 to help entities comply with their obligations during the transitional period. Except for some formatting changes and correction of minor typographical errors, the content has not been changed. References to RG 97 are to the transitional version (issued March 2017).

ASIC has concluded its consultation seeking feedback on ASIC's proposals to make changes to the fees and costs disclosure regime. The proposals are set out in [Consultation Paper 308 \*Review of RG 97 Disclosing fees and costs in PDSs and periodic statements\*](#). The consultation follows the release of [Report 581 \*Review of ASIC Regulatory Guide 97: Disclosing fees and costs in PDSs and periodic statements\*](#) (REP 581). ASIC expects to release its response to submissions on the consultation paper in the second half of 2019. For more information, please see [RG 97 review and consultation](#).

We have also extended our current approach to compliance with the fees and costs disclosure requirements and extended the time period for compliance with certain aspects of ASIC [Class Order \[CO 14/1252\]](#) (see questions [1A–1D](#) below).

As part of the consultation, ASIC has prepared a draft updated version of RG 97. Trustees and responsible entities should continue to use the current version of [RG 97](#)

which was published in March 2017 for guidance on how to disclose fees and costs (see question [1D](#) below).

We have also extended our current approach to compliance with the fees and costs disclosure requirements and extended the time period for compliance with certain aspects of ASIC Class Order [CO 14/1252] (see questions [1A–1D](#) below).

As part of the consultation, ASIC has prepared a draft updated version of RG 97. Trustees and responsible entities should continue to use the current version of [RG 97](#) which was published in March 2017 for guidance on how to disclose fees and costs (see question [1D](#) below).

It is essential that these questions and answers are read in conjunction with [Regulatory Guide 97 \*Disclosing fees and costs in PDSs and periodic statements\*](#) (RG 97) which explicitly answers a number of these questions, which are nevertheless included as an alternative reference.

In considering the relevant requirements, superannuation trustees and responsible entities should give effect to the principles of transparency, comparability and ease of retail clients' understanding underlying Schedule 10 of the Corporations Regulations.

In relation to assessing fees and costs of investment in the asset of a superannuation fund, or identifying what fees and costs would be incurred by the investor if they had invested in the asset themselves for managed investment products, the principle is to identify that asset that a retail investor would think the superannuation fund or registered scheme was providing them with exposure to.

[General](#)

[Periodic statements \(annual and exit statements\)](#)

[Indirect costs](#)

[Performance fees](#)

[Interposed vehicles](#)

[Transactional and operational costs](#)

## General

### 1A. What is the external expert review of the fees and costs disclosure requirements?

On 1 November 2017, in response to feedback from across industry around challenges with the implementation of ASIC Class Order [CO 14/1252] (CO 14/1252) and RG 97, ASIC announced that it would work with an external expert to conduct a review of the fees and costs disclosure regime to ensure that it is best meeting in practice the objective of greater transparency for consumers. On 28 November 2017, Darren McShane was appointed as the external expert.

The review has now concluded and [Mr McShane's report is available here](#). For more information on the review and the report, please see [RG 97 review and consultation](#).

## 1B. What approach will ASIC take to fee and cost disclosure now the review has concluded and ASIC has commenced consultation on the expert's recommendations?

ASIC's current compliance approach to fees and costs disclosure requirements will continue.

ASIC has decided to extend its current compliance approach to the fees and costs disclosure requirements until ASIC's consultation process is completed and any changes to the fees and costs disclosure requirements are finalised and in force. This compliance approach had previously applied during the review and extended transition period for [CO 14/1252] (i.e. prior to 30 September 2017).

This means that ASIC will not look to take action against a trustee or responsible entity if they are making reasonable endeavours to comply with the fees and costs disclosure requirements in [CO 14/1252], RG 97, the Corporations Act and the Corporations Regulations and not mislead consumers about fees and costs.

ASIC expects that superannuation funds and managed investment schemes will:

- endeavour to comply with the current legislative requirements in good faith and not mislead customers about fees and costs;
- be as transparent as possible and not make disclosures that give a false impression about fees and costs;
- not make any changes to existing PDSs that render the fee and cost disclosure less compliant; and
- accurately categorise and disclose fees and costs, particularly in relation to direct costs as the data for this disclosure should be readily available to the trustee or responsible entity.

ASIC will continue to monitor disclosure to consumers and advertising by trustees and responsible entities.

Any strong claims about low fees in promotional material that are misleading will be treated very seriously and ASIC has intervened and will continue to intervene to improve disclosure while this approach to fees and costs disclosure has been in place.

## 1C. What changes have been made since the review was announced?

ASIC has extended the time periods for compliance with certain aspects of ASIC Class Order [CO 14/1252] (CO 14/1252) in relation to periodic statements and superannuation PDSs to dates in 2020.

ASIC previously extended the dates by one (1) year following a written request to ASIC from a number of industry bodies representing a range of sectors in the superannuation and managed investments industry on 21 December 2017.

ASIC appreciates that the consultation process following the external expert review means that some aspects of the fees and costs disclosure regime are

uncertain. CO 14/1252 previously provided for certain disclosure obligations in relation to periodic statements for both superannuation funds and managed investment schemes for reporting periods prior to 30 June 2018 to operate differently to the disclosure obligations applying on or after 30 June 2018. Similarly, CO 14/1242 also permitted superannuation trustees to deal with property operating costs in PDSs given before 30 September 2018 by disclosing these in the 'Additional explanation of fees and costs' section rather than including these as part of the investment fee.

These staggered start dates were intended to be interim arrangements, in recognition of the need for trustees and responsible entities to change internal systems and to allow additional time for discussions with industry about how to calculate property operating costs.

The effect of these latest modifications is to preserve the status quo at law for a longer period for superannuation PDSs and periodic statements (for both superannuation funds and managed investment schemes). This is so that industry need not incur additional time and expense where ASIC is consulting on proposals that could, for example, change the treatment of property operating costs. After we have considered the feedback obtained through the consultation process, ASIC will communicate what fees and costs disclosure obligations will apply going forward.

The modifications were made by ASIC on 7 December 2018 by [ASIC Corporations \(Amendment\) Instrument 2018/1088](#).

A summary of the modifications is set out below:

### Superannuation

| Disclosure document           | Requirement   | Relevant CO 14/1252 reference/s  | Relevant Schedule 10 of the Corporations Regulations reference/s |
|-------------------------------|---|--|--|
| Product disclosure statements | Property operating costs can be included under 'Additional explanation of fees and costs' rather than in the investment fee for a PDS given before 30 September 2020.   | Subparagraphs 6(baa) and 6(e), sub-subparagraph 6(f)(ib) (note) and paragraph 11 | Clause 103(1A), 209(ma) and 209A (definition of investment fee)  |
| Periodic statements           | Where the last date by which the periodic statement is required to be given is on or after 1 January 2018, interim arrangements for buy/sell spread, tax deductions and borrowing costs apply for reporting periods ending on or before 29 June 2020. Interim arrangements also apply in respect of property operating costs for a reporting period ending on or before 29 June 2020 and for period ending after 29 June 2020 and on or before 29 September 2020. | Subparagraphs 6(i), 6(j) and 6(k)  | Clause 301(1B), 301(1C), 301(1D), 301(5), 303(1)(c) and (d)      |

## Managed investment schemes

| Disclosure document | Requirement   | Relevant CO 14/1252 reference | Relevant Corporations Regulations reference |
|---------------------|---|-------------------------------|---|
| Periodic statements | Where the last date by which the periodic statement is required to be given is on or after 1 January 2018, interim arrangements for tax deductions and transactional and operational costs (including buy/sell spread) apply for a reporting period ending on or before 29 June 2020. | Subparagraph 6(j) and 6(l)    | Clauses 301(6) and 303(2)(d)                |

An updated version of CO 14/1252 is available on the [Federal Register of Legislation](#).

You should not assume that by extending the time periods specified in CO 14/1252 that ASIC is making a representation that further changes to the fees and costs disclosure requirements for periodic statements or PDSs will not occur during this period. Further information will be provided following the conclusion of the consultation process.

### 1D. Will ASIC be updating RG 97?

The current version of RG 97 was published in March 2017.

As there have been a number of modifications to CO 14/1252 since that date (including the most recent modifications made on 21 December 2017 and 7 December 2018), we acknowledge that some parts of RG 97 may not reflect the current law. Following completion of the consultation process, an updated version of RG 97 will be released.

Currently, trustees and responsible entities should rely on CO 14/1252 rather than RG 97 or these questions and answers for information concerning compliance dates.

As part of the consultation on proposed changes to the fees and costs disclosure regime, ASIC has prepared a draft updated version of RG 97. For more information on the consultation and to see a copy of the draft updated RG 97, please see [RG 97 review and consultation](#). Trustees and responsible entities should however continue to use the current version of RG 97 for guidance on how to disclose fees and costs.

If you have questions regarding the consultation or the fee and costs disclosure requirements, please email ASIC at [feeandcostdisclosure@asic.gov.au](mailto:feeandcostdisclosure@asic.gov.au).

## 2. Will PDS issuers need to give members a Significant Event Notice (SEN) to notify them of the changes to the fees and costs disclosed in PDSs as a result of complying with disclosure requirements as modified by class order 14/1252?

A PDS issuer considering whether a SEN is required to be issued to existing members in regards to changes in the fees and costs disclosed in the PDS, as a result of the issuer complying with the disclosure requirements as amended by [Class Order 14/1252](#) and the revised [RG 97](#), will need to consider whether the change is material.

We understand that for most issuers that are superannuation trustees the total fees and costs amounts disclosed will increase and in many cases some fees and costs will be re-categorised. The extent of these changes and whether they are merely reclassifications or disclosures of additional amounts will be relevant in assessing whether each change is material. But also in assessing whether the change is material the trustee should also have regard to the extent that the change merely reflects compliance with new requirements that affect the calculation of fees and costs rather than changes in the actual underlying amounts being charged to members.

Generally, changes in the total level of fees and costs that would impact the 'Example of annual fees and costs' may be considered more material than equivalent changes in items that do not. To the extent that information is available to the trustee, it might also be relevant to consider whether additional amounts disclosed would be likely to be significantly higher than other regulated superannuation fund PDSs would include as additional amounts – for example, because previously the disclosed fees and costs did not take into account significant fees and costs in interposed vehicles.

In determining the timing of provision of a SEN, a superannuation trustee can have regard to s1017B(6) which allows the SEN to be provided up to 12 months after a change or event in some circumstances.

An SEN may be issued electronically by posting it on a website after notifying members of this delivery method (i.e. that there is a disclosure and how it can be obtained) with an option to opt-out in accordance with the modified provisions under [ASIC Corporations \(Facilitating Electronic Delivery of Financial Services Disclosure\) Instrument 2015/647](#). We envisage that trustees will be keen to move towards electronic disclosure quickly as this will significantly reduce disclosure costs over time. While there may be a cost to the initial notification of members about the move to electronic disclosure, this cost may be significantly reduced by including the notification with other disclosure to members, such as the next annual statements. Alternatively, the notice establishing the use of the website, as nominated electronic means which can be used to provide disclosure, subject to opt out, could be sent first with the SEN, and then used to avoid the need for a mail-out of a disclosure specified in the notice, such as the periodic statements where members have individual access to secure login to access their statements.

## Periodic statements (annual and exit statements)

### 3. The date for compliance for periodic statements is 1 January 2018. Is the previous calculation methodology permitted

between 1 February 2017 and 1 January 2018 for periodic statements?

The end of the transition period for periodic statements, 1 January 2018, is framed by reference to the outer limit date of the period that the periodic statement needs to be given. In practice the first period for which the new requirements apply is for annual statements for period ending on or after 1 July 2017 and exit statements in relation to superannuation products for periods ending on or after 1 December 2017. For periods prior to these dates, we encourage (but do not require) issuers to adopt the requirements if they are able to update their systems and procedures in time.

To help ensure that members are not misled, trustees or responsible entities may need to state in the section of the annual statement for the period ending or after 30 June 2017 identifying the total fees and costs that the amounts have been calculated on a different basis from the current PDS if that is the case. We encourage issuers to consider including an equivalent statement in or with any periodic statement that covers a period after the PDS is updated to comply with CO 14/1252.

4. The prescribed text for the fees and costs section for periodic statements per [Instrument 2015/876](#) reads:

***'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.'*

How does ASIC anticipate this will work in practice?

This amendment was made to Schedule 10 to clarify how fees that are not deducted as transactions from members' accounts, but rather as a reduction in the unit price or crediting rate, should be reported on periodic statements. The amendment was necessary to address the incorrect practice that some trustees have which was to report these 'indirectly charged fees' as part of the indirect costs. The amendment is consistent with the PDS requirement as it ensures that the reporting of fees and costs on the periodic statement aligns with the PDS by:

- making it clear that indirect costs disclosed should reflect indirect costs under the PDS;
- reporting fees and costs separately and consistently with the PDS; and
- explaining how these fees and costs are charged and deducted.

We encourage a breakdown within 'Other fees of your investment' between types of fees such as investment fees and administration fees, although this is not required.



5. What is ASIC's expectation for exit statements considering these need to be issued within a month of a member leaving the fund?

Our expectation is the same for exit statements as annual statements (see above). We recognise that there may be a greater need to make reasonable estimates of fees and costs when preparing exit statements. So, for example, if a member exits on 1 August 2018 and an exit statement is provided on 31 August, to the extent that fees or costs relate to the period from 1 July 2018 to 1 August 2018, there may be less information reasonably available to base an estimation. It may be reasonable to base an estimate on fee and cost experience in the financial year ending 30 June 2018, if there is no reason to believe that the experience in July 2018 will materially differ from that over 2017/2018 to the extent the trustee or responsible entity does not have actual information.

6. How should superannuation trustees, responsible entities and IDPS operators make it clear in a periodic statement that there are additional fees and costs in managed funds in which the fund, scheme or IDPS invests for those managed funds that are not interposed vehicles because of the platform test?

A periodic statement must not be misleading. A periodic statement for a superannuation product or managed investment product must contain disclosures to ensure that the information the member or former member needs to understand their investment is included as required by s1017D(4). The information about fees and costs that Schedule 10 states must be disclosed in a PDS does not take into account fees and costs incurred in or in relation to investments in vehicles that are excluded from being interposed vehicles because of the platform test. It is important that the member understands the additional costs that apply in those vehicles.

If it is reasonably practicable to effectively demonstrate the effect of those additional fees and costs, this should be achieved by including separate and additional items as the 'Total costs' with a note indicating that this includes the costs of products held on client instructions. This amount would need to include an estimate of all costs as if the entities excluded under the platform test were interposed vehicles, and be calculated based on the actual holdings of the member in the relevant period. This item should be included after the 'Total fees you paid' section. We suggest an additional item be included between 'Total fees you paid' and 'Total cost' for 'Other Costs'.

We expect trustees, responsible entities and IDPS operators to take reasonable steps to address any limitations in their existing systems to ensure they will be able to provide that total cost information. Industry has recognised the importance of these disclosures and we support industry developing guidelines around when all providers should be able to provide the disclosures. While this is not currently practicable for an issuer, periodic statements should state that the costs in any underlying products to which the platform test applies are not included and provide an example as indicated in [RG 97](#) to demonstrate what is included in the amount of disclosed fees and costs. We also think it would be appropriate to provide a link in periodic statements to additional information relevant to understanding the costs of underlying products

calculated as if they were interposed vehicles that is made available as we indicated in RG 97.

The amounts taken into account when stating total costs should be based on what the trustee, responsible entity or IDPS operator reasonably estimates. This may be informed by review of the PDS for underlying products, direct information provided by the issuer of the underlying product if it is held or it is reasonable to seek it and other information held or that it would be reasonable to seek about what are typically the fees and costs for certain kinds of products.

## Indirect costs

**7. Should the Indirect Cost Ratios (ICR) be calculated based on indirect costs paid in the previous financial year (i.e. as at last 30 June) rather than the most recent available costs?**

Schedule 10 prescribes that the ICR and fees that are costs disclosed in the PDS, other than for new products, needs to be calculated based on the costs incurred the previous financial year. In making this calculation, it may be necessary for issuers to make reasonable estimates of some of the costs – for instance, the costs for the last quarter of the financial year. Where reasonable estimates are made and new information is received by the issuer after the PDS is issued – for example, actual costs for the last quarter – there may be a need for the issuer to consider whether the ICR or fees disclosed in the PDS continues to be a reasonable estimate. If it is no longer a reasonable estimate taking into account costs incurred last financial year then the issuer will need to update the PDS or, if the change to the indirect cost is considered to be not materially adverse from the point of view of investors, the issuer may make the update by relying on Class Order 03/237 subject to the conditions in that Class Order. Please refer to [RG 97](#) guidance on cost calculation and updating the PDS.

A trustee or responsible entity will need to estimate relevant costs before the end of a financial year so it is in a position to assess whether the PDS will need to be updated at the commencement of a new financial year. Reasonable steps must be taken to estimate any amounts that are not known, but what would be regarded as reasonable is affected by the timing. It would be reasonable to conduct structured enquiries of fees and costs in interposed vehicles, for example, near the end of the financial year. Depending on the circumstances information based on previous years costs or part year estimates may be used and if there is reason to believe they may be materially inaccurate some further enquiries, perhaps of an informal or specific nature may be reasonable.

As time passes in the new financial year, information may become available that indicates that the initial estimate would no longer be a reasonable estimate, and at that time again, an assessment will be needed as to whether the PDS must be updated.

**8. What does a reasonable estimate mean?**

A reasonable estimate is an estimate that is made after taking reasonable steps. The estimate will involve using the information that the issuer has, or would have if it took reasonable steps to obtain the information and making reasonable assumptions having

regard to the information. What steps are reasonable depends on the circumstances, including the likely materiality of the information in light of the importance of fee disclosure in promoting transparency and comparability and the cost of seeking it. The information can include information obtained from the operator of an interposed vehicle about the investment and the fees and costs. It could also include information obtained from other sources.

What constitutes a reasonable estimate will often be in a range. We recommend that issuers take a conservative approach to making a reasonable estimate of the fees or costs by estimating on the higher end of what is reasonable. This will reduce the risk of the estimate being no longer reasonable if new information is received by the issuer about the estimated fees or costs.

## 9. RG 97 provides:

*'Costs that are not payable out of the superannuation entity and that would otherwise be part of investment fees or administration fees (such as cost paid by the operator of an interposed vehicle in which the superannuation entity invests) may be instead treated as indirect costs if the superannuation fund trustee has elected in writing to treat those costs as indirect costs. The election may be made generally or for a particular kind of cost.'*

## Is the 'election in writing' to treat these costs as indirect costs a Board decision and/or Policy?

The requirement to make the election in writing does not prescribe the manner in which the election may be made. It is open to the trustee to make this election in its policy or by a Board decision. If no decision is made then all fees and costs relating to investment in the assets in interposed vehicles must be included as fees for a superannuation product.

## Performance fees

10. RG 97 indicates performance fees should be disclosed on a prospective basis, but may be based on previous financial years. However, it does suggest that it may not always be appropriate to rely on previous year estimates and some assessment of future performance fees should be conducted. How much can issuers rely on past years performance fee information?

In the fees and costs template for a managed investment product, information must be given on the basis of the performance fee payable to the responsible entity. It is not necessary to include a dollar amount for the fee in the template.

Performance fees that meet the definition of performance fees in Schedule 10 need to be taken into account in the 'Example of annual fees and costs'. For the Example, if the fee is charged directly to members' accounts the figures used should be on a prospective basis – that is, the performance fee that the issuer expects members to be

charged on a typical ongoing basis. Otherwise, except for new schemes, they should be based on the outcomes for the last financial year.

A prospective estimate of the performance fee should be used in making disclosure under 'Additional explanation of fees and costs' and we think this can be on a typical ongoing basis.

The responsible entity can have regard to last year's performance fee in estimating the typical ongoing performance fee to the extent that last year's performance fee may be regarded as within the range of what may be considered typical. This may not always be the case. For example, if last year's performance fee was very low due to poor performance, which the issuer does not expect to be repeated in the current year, then it is unlikely that it would be used to estimate typical ongoing performance fees.

Note that fees relating to performance – that do not relate to the performance of the entire fund or investment option – do not meet the definition of performance fees in Schedule 10. Fees relating to performance incurred by a superannuation trustee and paid from the superannuation fund that do not meet the performance fee definition must be disclosed as investment fees. Fees relating to performance paid indirectly through interposed vehicles are also costs that are disclosed as investment fees unless the trustee elects in writing to disclose them as indirect costs. The disclosed amounts will be calculated based on what was incurred last financial year, other than for new products, not an average amount over other years. We encourage inclusion of brief information about material costs relating to performance under 'Additional explanation of fees and costs', but this does not replace the need to take into account those costs in investment fees, or where permitted the ICR.

Generally, to be aligned with periodic statements, and for consistency with appropriate unit pricing where applicable, the performance fee or performance related fee should be treated as incurred when an amount is reflected in reduced net asset value (NAV) used for unit pricing or disclosed termination value. For managed investment schemes or superannuation funds that do not use unit pricing, the amount which may be said to be incurred should be determined by the responsible entity or trustee in accordance with a documented policy which has regard to disclosure reflecting what is needed to help members understand their investment.

In relation to when performance fees would be recognised, [Regulatory Guide 94 Unit pricing: Guide to good practice](#) (RG 94) states on page 40:

"You need to carefully design and test your performance fee model. You also need to review its operation and how it relates to the unit price calculation. Periodically you need to check that the basis of the model continues to be relevant.

"Where an accrual can be estimated on a sound basis, this is likely to provide a more equitable outcome. This will depend on factors including the fee model, whether there is a fund of fund structure and the particular circumstances of the fund. Whatever approach you take, you need to develop it on a reasonable basis.

'You will need to disclose your approach, including the effect on investors, the frequency of calculating the fee and any limitations on entering and exiting the fund relating to the timing of performance fee calculation.'

These statements are also relevant to fees relating to performance.

The disclosure need not be in the PDS.

## 11. Can the performance fee disclosed or performance related fee disclosed as part of indirect cost or investment fee be reduced by any 'clawback' of performance fee or performance related fee?

Clawback is a refund or a reduction of performance fee or performance related fee by the investment manager due to poor performance. Clawback may be used to reduce the amount of performance fee or performance related fee disclosed as part of the indirect cost or investment fee for the relevant financial year. However, the amount cannot be negative in respect of any particular manager or interposed vehicle to whom fees are being paid. For example, if the investment fee, including performance related fee, relating to interposed vehicle A is 1.0% and the clawback due to poor performance in the previous period is 0.2%, then the investment fee, including any performance related fee, that is calculated and disclosed as part of indirect costs or investment fees for interposed vehicle A is 0.80%. Clawback obtained from one manager engaged to provide services to the superannuation fund or managed investment scheme or from an interposed vehicle cannot be used to reduce the disclosed amount of fees or costs incurred through another manager or interposed vehicle. It is possible to take into account a clawback from an entity which is stapled to the entity that was paid the fee.

The clawback also cannot be used to reduce any other fees or costs disclosed. For example, if the cost of performance fee is included in the ICR, and there is a clawback that can be taken into account, that would reduce the amount of the ICR, but the clawback could not be used to reduce the amount disclosed as an investment fee.

## 12. Can the disclosed costs be reduced by any income sharing or other reduction in benefits?

No, when any income or other benefits are derived from property held by the superannuation trustee or responsible entity (or a custodian), or held by an interposed vehicle that is retained by the issuer, its service provider or interposed vehicle operator for its services, including any 'carried interest', it is a fee or indirect cost and must be included when calculating relevant amounts for PDS disclosure.

However, not all benefits received by a service provider or interposed vehicle would be a benefit provided for services that is a cost that needs to be disclosed by a superannuation trustee or responsible entity. In some cases, the operator of the interposed vehicle or its associates pays a material amount to acquire equity interests in the investment (e.g. co-investment amounts) and those interests receive a return or value primarily based on the amount invested. If the operator of an interposed vehicle, such as the general partner of a limited partnership, has an interest in the investment for which it has paid an arms-length price that would apply to other investors, there is no relevant benefit that is a cost that must be disclosed by those investors who are trustees of a superannuation fund or a responsible entity of a managed investment scheme. This also applies if the interest has terms of issue that do not apply to other investors, such as not receiving distributions until distributions to other investors reach a certain amount, as long that the amount paid for that interest is no less than what would be an arm's-length price for the interest. We do not consider those returns as a fee or indirect cost for other investors in the interposed vehicle. Such amounts therefore do not need to be disclosed.

On the other hand, where the operator of the interposed vehicle receives, as a form of remuneration for their role, an interest in the investment they are managing for the investors, this interest is a cost that must be disclosed by investors who are superannuation trustees and responsible entities.

Where an interest is provided for some payment but at more favourable terms than what is available to other investors, the value of any discount on the arm's-length market value for such an interest is a cost that must be counted at the time of its issue.

These principles apply to rights that are conferred by a derivative, security or interest in a managed investment scheme or similar rights.

In any case, the income the operator receives on its interest in the investment in future years will not be a fee or a cost for other investors.

If, for example, an investor invests \$1 million through a limited partnership that is an interposed vehicle, and the general partner is entitled to a 20% share of the partnership profits for contributing their management services, when the partnership disposes of its portfolio for, say, \$2 million, the investor is entitled to assets worth \$1.8 million. The value of the general partner's share (\$200,000) is a cost that must be included as an investment fee or where permitted in the ICR for a superannuation product or included as a management cost for a managed investment product. This is an example of paying for an asset an amount that includes what would ordinarily be a cost of the buyer (i.e. the investor) where the cost is the cost of the investment management services provided by the general partner. As discussed in [RG 97](#), such amounts need to be treated as costs.

Not including costs of this kind (which may be fairly regarded as costs of investment in the assets) would be an example of gaming, and ASIC may take action in such cases. This action may include imposing modifications, issuing stop orders or considering taking proceedings. Such conduct may be indicative of a culture which does not genuinely attempt to promote confident and informed investment through transparency, comparability and ease of retail investor understanding that may prompt more general compliance checks.

For calculations based on previous financial years, where otherwise disclosable fees or costs were rebated, offset or otherwise reduced under the terms of the investment in a relevant financial year, the net amount incurred in the relevant financial year in a particular interposed vehicle may be used as the disclosable amount. For estimates of fees for a current or ongoing financial year that are to be based on typical ongoing amounts, such rebates could be taken into account if they were likely to continue. Arrangements that could involve net amounts may include:

- the issuer of a fund agreeing with large superannuation fund trustees to rebate certain fees to the superannuation fund which gives the effect of the fund incurring a lower fee; or
- a private equity fund manager agreeing to reduce its management fee by the amount it (or its associates) receives for providing bona fide services to an investee it manages. However, such amounts received by the manager must not otherwise reduce the value of or return to the investors from the investee. This applies if the fee is paid from a vehicle in which the private equity fund invests

and the amounts paid are no more than would be payable on an arm's-length basis.

## Interposed vehicles

13. Are there circumstances under which a vehicle would not be regarded as an interposed vehicle on the basis that it is listed or unlisted?

No, determining whether a vehicle is an interposed vehicle, under the Asset Test and PDS Test elements of the interposed vehicle definition in [Class Order \[CO 14/1252\]](#) *Technical modifications to Schedule 10 of the Corporations Regulations*, as modified by [ASIC Corporations \(Amendment and Repeal\) Instrument 2015/876](#) issued in November 2015 and [ASIC Corporations \(Amendment\) Instrument 2016/1224](#) issued in December 2016, does not have any regard to whether the vehicle is listed or unlisted.

For example, a vehicle such as a property fund, whether it is a listed A-REIT or an unlisted fund, may be an interposed vehicle if it is invested in as means of gaining exposure to property as part of a balanced option's asset allocation to property.

On the other hand, if the listed A-REIT is invested in as part of an allocation to equities – for example, in an Australian Shares fund – then it would be seen as the end investment by the retail client and therefore not an interposed vehicle. Trustees need to take care that they cannot treat a listed A-REIT as part of its allocation to equities unless this is consistent with the disclosure and any other information issued about their fund or investment option, including marketing material. Trustees should ensure the disclosure reflects their investment strategies and reporting arrangements, rather than attempting to game by seeking to use the PDS or marketing materials to attempt to lead retail investors to characterise the A-REIT as the end investment.

Note: Prior to the modification made to [CO 14/1252] in November 2015, the interposed vehicle definition distinguished between listed and unlisted vehicle. In response to industry submissions, ASIC removed this distinction.

14. [RG 97](#) provides that financial products that confer control of another entity should be excluded when considering whether the entity holds more than 70% of its assets by value in relevant financial products. Subject to the PDS test being satisfied, is a Private Equity (PE) fund which is deemed to 'control' the companies the fund invests in, possibly not an interposed vehicle? If so, what are the implications for the fees and costs disclosure in relation to a holding in the PE fund?

Under the assets test, a trustee of the PE fund does not have control of the shares in companies that operate the businesses being funded in the relevant sense. The definition of control in s50AA does not include control that a person is under a legal

obligation to exercise for the benefit of others, and in this case the trustee of the PE fund will be obliged to act in the best interests of members of that fund.

Under the PDS test, the PE fund is an interposed vehicle if it could be reasonably regarded by retail clients as the means of gaining exposure to other investments, rather than the investment. In general, we would consider that a retail investor would think that they are getting an exposure to the businesses in which the PE fund invests through the PE fund, including when the exposure is gained as part of a balanced portfolio or other pre-mixed option. On this basis, other than exceptionally, the fees and relevant costs in the PE fund must be included as fees or indirect costs of the superannuation product or management costs of the managed investment product.

We do not consider that the costs within the businesses would need to be considered in the calculation. Generally, the PE fund would directly or indirectly acquire the business through a special purpose company (SPC). The costs of establishing the SPC and any other costs in relation to the SPC before it acquires the business and becomes part of it would need to be considered in the calculation of fees and costs of investors in the PE fund. This will be the case even where these costs are later reimbursed to the PE fund by the SPC.

The costs that relate to the business within the SPC do not need to be considered in the calculation of fees and costs of investors in the PE fund. This would include the cost of issuing shares in the SPC to the PE fund operator and costs of listing the SPC on a financial market. It would also include the cost of remuneration of staff and directors of the SPC after it acquires the business to the extent that the remuneration is in relation to the operation of the SPC and its business. These costs do not need to be included even if they are paid to the manager of the PE fund out of the PE fund or the SPC, but so long as the costs are no more than the arm's-length cost for services that are provided for the SPC's business and could be properly incurred by the SPC.

It is likely that if a superannuation fund's PDS discloses that the superannuation fund invests in private equity, the SPC may not be an interposed vehicle where the SPC acquires and operates the business. This is because, due to operating the business, the investment in the SPC would be considered the end investment by retail clients. However, the costs will include any costs even if paid out of the SPC operating the business that relate to acquisition of the shares by the PE fund (rather than issue of the shares by the SPC) and the provision of associated finance provided by the PE Fund that would normally be paid by a person providing finance.

As indicated in [RG 97](#), if the cost of an asset is higher because the seller is bearing costs that are the buyer's acquisition costs, those costs should be treated as costs by the buyer. So if, as may be common with PE investments, the SPC is meeting costs that would normally be costs of acquiring shares, such as the legal costs of the acquirer, those costs should be treated as costs by the superannuation fund.

If any amounts are paid from the SPC for services provided by the PE fund or any associated persons that are not on an arm's-length basis, any excess amount should be treated as a cost, to the extent it affects the returns or value of the investment held by the PE fund and is not rebated. We expect superannuation trustees and responsible entities to take reasonable steps to check whether there are any such payments, having regard to the materiality of the potential amounts to what is disclosed in the PDS.



## Transactional and operational costs

15. How does a superannuation trustee calculate the transactional and operational costs to be disclosed as part of its 'Additional explanation of fees and costs' disclosure?

Consider the following simplified example for illustration:

Superannuation Fund X has as its only asset an investment in Fund Y worth \$1 million.

Fund Y is an interposed vehicle with \$1 billion in assets, being shares and bonds. Fund Y charges a management fee of 1% of its assets under management and a buy–sell spread of 0.5% each way (i.e. 0.5% for new investments and 0.5% for redemptions).

In the last financial year, Fund Y incurred transaction costs of 2.5% of its assets under management. Of these transaction costs, 0.5% was a cost that reflected the bid–ask spread on its underlying assets (none of which were interposed vehicles). Fund Y also recouped some of its transaction costs (1%). Of these recouped transaction costs, 0.2% reflected the bid–ask spread on its underlying assets. Fund Y made no gain or loss in the last financial year and incurred no other costs or fees.

On the first day of last financial year, Superannuation Fund X invested \$1 million that it had received as a new investment on that day. It previously had no assets, and conducted no other dealings in its assets. Superannuation Fund X charges a buy–sell spread of 0.4% each way.

In calculating what to disclose as investment fees or indirect costs for Superannuation Fund X, the superannuation fund trustee needs to:

- add the 1% management fee charged by Fund Y;
- add the 2% transaction costs in Fund Y (excluding the 0.5% bid–ask on underlying assets: see [RG 97](#));
- add the 0.5% actual buy–sell spread incurred when Superannuation Fund X invested the \$1 million in Fund Y; and
- deduct the 0.8% transaction costs in Fund Y that were recouped from investors through Fund Y's buy–sell spread (excluding the 0.2% that reflected the bid–ask spread on underlying shares and bonds, which is not required to be included in the indirect cost ratio).

This calculation gives a total of 2.7%, and when completing the fee template and the annual example of fees and costs 2.3% investment fees or, if it elects in writing, as indirect costs.

The PDS must show under 'Additional explanation of fees and costs' that Superannuation Fund X paid 2% in transactional and operational costs. The PDS could further explain that this 2% included 1.5% in expenses that were incurred by Fund Y during the year (being 2.5% gross transaction costs less 1% recovery through Fund Y's buy–sell spread) and 0.5% buy–sell spread that was paid by Superannuation Fund X to Fund Y on making the investment.

The PDS will also need to state under 'Additional explanation of fees and costs' that of this 2%, the trustee recouped a portion as a buy–sell spread payable by incoming investors in Superannuation Fund X and the remaining amount has been reflected in reduced returns to the superannuation fund members. We encourage trustees to quantify the amount that was recouped in the relevant financial year as buy–sell spread (i.e. that of the 2% transaction costs, 0.4% was recovered as buy–sell spread and 1.6% reduced the returns of the fund).

**16. Does ASIC consider the 'bid–ask spread' of an asset acquired by a fund a transactional and operational cost for the purpose of the inclusive definition in clause 103 of Schedule 10 of the Corporations Regulations?**

We consider that the difference between the amount paid for the asset and the value of the asset at the time of purchase based on its selling price is a transactional cost for the purposes of disclosure of transactional costs under 'Additional explanation of fees and costs': [RG 97](#). This amount is not necessarily the bid–ask spread as disclosed in a market immediately prior to the transaction. For example, if the purchase involves a seller crossing a pre-existing spread to accept a bid, there may be no transaction cost for the buyer on this basis. In estimating transaction cost it is important to estimate the market impact, where this is material as is more likely for large orders. In placing a large order over a period of time, the bid–ask spread can move. The transaction cost should not be calculated on a transaction by transaction basis based on bid–ask spread, but should reflect what the likely selling price would be after the set of transactions in an order. If heavy bidding leads to the bid going up, but once the buy order is filled the bid will again go down (although not necessarily immediately), it is the bid price after the completion of the transactions that should be estimated.

The same approach should be taken for derivative financial products in a PDS for a managed investment product. However, note that some or all of the transaction costs for those products may in addition be required to be included as an investment fee or indirect cost for a superannuation product or management cost for a managed investment product. If the cost of a derivative financial product is included in calculating investment fees or indirect costs for a superannuation product, it can be excluded from the amount disclosed for transactional and operational costs under 'Additional explanation of fees and costs' for a superannuation product.

**17. 'Buy–sell spread' is listed as a type of transactional and operational cost in clause 103(b), and 'buy–sell spread' (for a managed investment product) is defined in clause 101 as the proportionate cost an investor bears of a fund's transaction costs by deduction from the value of the investors holding. Does ASIC expect the PDS for a managed investment product to include in the 'Additional explanation of fees and costs' section only those fund-level transactional and operational costs**

not satisfied by the charging of a buy–sell spread (i.e. the difference between the two)?

Under 'Additional explanation of fees and costs' for managed investment products, the transactional and operational costs should include all the transaction costs, including those costs that are paid by charging of the buy–sell spread. The 'Additional explanation of fees and costs' should also include an explanation of how the transactional and operational costs are charged. This will mean indicating to what extent those transactional costs are borne in any buy–sell spread charged to persons being issued or redeeming interests and to which extent it is borne by the fund.

18. Should property management costs (e.g. rates, utilities, staff costs) incurred by the trustee when it holds the property on behalf of the superannuation product or when incurred by an interposed vehicle held by a superannuation product be included under Indirect Cost Ratio in the superannuation product PDS fee table, including instances where:

- a. these costs are recovered directly from the tenants of the property as an explicit expense recovery; or
- b. these costs are covered by the rental income generated by the property but do not form part of any explicit expense recovery?

For both superannuation and managed investment products, do the following meet the definition of 'transactional and operational costs' under clause 103 and hence need to be included in the 'Additional explanation of fees and costs' under sub-clause 209(j):

- a. property management costs (e.g. rates, utilities, staff costs) for a property fund;
- b. property development or refurbishment costs for a property fund?

Where a superannuation fund invests in a property, including when the property is held through an interposed vehicle, and costs of operating the property are incurred, including by the interposed vehicle, then these costs will need to be included in the superannuation fund's investment fee or indirect cost. The fact that the costs are recovered from the tenant or the rental income does not mean that these costs don't have to be included. If costs are incurred on behalf of the tenant, such as, for example, arranging on a group basis for shopping trolleys belonging to tenants to be returned to the tenancy or for cleaning services for the benefit of tenants and then tenants provide reimbursement for these costs, the costs reimbursed are costs of the tenant and not costs relating to the investment, and so would not require to be included.

Property management costs also will need to be included in the transactional and operational costs disclosure for superannuation and managed investment products. This applies to management of specific properties that are already held and are to be leased. The provision of services in deciding about which properties to acquire or dispose, or how to use the properties, is a cost of managing the assets that is not a transactional or operational cost. For a managed investment product this cost forms part of management costs and for a superannuation product it forms part of investment fees or where permitted indirect costs.

Property development or refurbishment costs may appropriately be able to be treated as an investment in the property rather than a cost of investment in the property and therefore should not be included in the superannuation or managed investment products' fees or costs disclosure, including as transactional and operational costs.

**19. Does the transactional and operational cost component of investment in a derivative financial product (see clause 101A(4)(b)) need to be disclosed in the 'Additional explanation of fees and costs' section (because of clause 209(j))?**

For superannuation products, the OTC derivative financial product costs (including when the derivatives are used for hedging purposes) need to be included in investment fees or the indirect costs. Costs of derivative financial products are not included under transactional and operational costs.

For managed investment products, the transactional and operational costs component of an OTC derivative financial product will affect the amount that needs to be included in management costs to the extent specified in the terms of the modified provisions. A deduction may be made from that amount to the extent the derivative was entered for certain hedging purposes (as defined in the modified provisions). A deduction may also be made from the cost calculated under the modified provisions that needs to be included in management costs (other than the default 0.10% provision) to the extent that the amount reflects transactional and operational costs that would apply on acquiring, holding and disposing of the ultimate reference asset.

For managed investment products the transactional costs related to the derivative financial product, including those excluded from indirect costs under clause 101A(4)(b) and the costs of OTC derivatives used for hedging purposes (see clause 101A(4)(a) and (b) and [RG 97](#)), must in any case be taken into account for disclosure as transactional and operational costs under the 'Additional explanation of fees and costs'.

**20. Where a managed investment product uses a derivative financial product for hedging purposes within the terms of the modified provisions, how is the cost of this derivative to be disclosed in the PDS for that managed investment product?**

When the derivative financial product is acquired for a registered scheme or its interposed vehicle, and the derivative financial product is used for hedging purposes (as defined in the modified provisions), the transaction cost for acquiring or disposing

of the derivative financial product will need to be disclosed in the 'Additional explanation of fees and costs' section.

A superannuation fund that has investments in this managed investment product will need to disclose the entire cost of the OTC derivative financial product under this scenario, as calculated under clause 101(3A) to Schedule 10 as inserted by Class Order [CO 14/1252], as part of its investment fees or indirect costs (without any deduction for transactional and operational costs for the ultimate reference asset). The superannuation trustee will ordinarily need to look beyond the disclosure in a PDS for the managed investment product.

The superannuation fund holding the OTC derivative financial product, directly or through an interposed vehicle, will not need to show any transactional costs from acquiring or disposing of the product in the 'Additional explanation of fees and costs' section.

21. With regard to [RG 97](#), what is the distinction between a management cost embedded in the spread of an OTC derivative and normal market related spreads for OTC derivatives. What is the intent as not all OTC derivatives will necessarily have indirect costs embedded?

OTC derivatives and similar products may economically be used in a similar manner to interposed vehicles – that is, they may be used to provide indirect economic exposure to particular assets to achieve the fund's investment objective. For this reason the costs embedded in OTC derivatives must be included in the calculation of indirect costs, as per the amendments made to Schedule 10 to the Corporations Regulations in Class Order [CO 14/1252] (the CO). The definition of the cost of OTC derivatives as defined in the CO is based on the difference between the return achieved through the exposure to the underlying asset through the OTC derivative and the actual return of the underlying asset (which would be after any related fees). Where this amount is not known the trustee may make a reasonable estimate or, where a reasonable estimate cannot be made, the trustee may use the greater of the default amount of 0.10% per annum of the exposure over the relevant period or the higher minimum amount that the trustee believes reflects the cost. The CO does not distinguish between OTC derivatives that are specifically manufactured between the counterparties; all derivatives are treated in this way unless they are actually acquired on a financial market.

We understand that for many well traded OTC derivatives, the only cost that would affect the actual cash flows relative to the underlying flows is any bid offer spread that the fund must cross to deal. There may not be any other fees or any adjustment to the underlying that reflects the costs or remuneration of the counterparty. The cost, including those captured in a bid-ask spread for OTC derivatives, needs to be included in the investment fee or indirect costs for a superannuation fund.

22. If a superannuation fund chooses to invest in a managed investment through a platform – for example, as part of meeting the investment objective of its MySuper product or Balanced option – can the platform exception apply, so that a

managed investment scheme on the platform's menu would not be an interposed vehicle of the superannuation fund?

No. For the platform exception to apply the PDS for the superannuation fund would have to provide that members of the superannuation fund could direct the investments of the superannuation fund. From the perspective of the member of the superannuation fund the interests in the managed investment scheme may not be the asset they understand they are getting exposure to – for example, because the interests in the managed investment scheme provide exposure to equity or property that form part of the asset allocation for the Balanced option or the MySuper product.

**23. Would it be misleading to compare the fees and costs of platforms with non-platform superannuation funds or registered schemes on the basis of fees and costs?**

Yes, this is likely to be misleading. Fee and costs examples for platforms provide a basis for comparison with other platforms to assess their relative fees and costs. Platforms do not provide the same exposure to assets as non-platform products and the fees and costs should not generally be compared with non-platform products.

If a superannuation platform provides recommended investment selections – that is, pre-determined combinations that may be selected – then it would be appropriate for any comparison of fees and costs to be based on the fees and costs of the platform plus fees and costs that would be included in the investment in the pre-determined combination as if they were a non-platform superannuation fund with non-platform based investment options.

Platform operators should ensure that they do not permit members to be misled and have regard to ASIC's guidance in [RG 97](#). In conducting surveillance ASIC will have a focus on ensuring that PDS disclosure and, also where relevant, marketing materials promote informed investors.

ASIC also expects that persons providing financial product advice such as research houses assist in avoiding any investor confusion by avoiding inappropriate comparisons.

In relation to personal advice, ASIC expects that the Statement of Advice (SOA) will cover the fees and costs associated with the platform and how they relate to other fees and costs, including fees and costs connected with the investments to be acquired through the platform and fees and costs connected with the advice service. See [RG 148.186\(c\)](#).

**24. Does a superannuation trustee need to include the clearing costs for exchange traded derivatives in the total calculation of fees and costs and the additional information sections?**

ASIC has applied particular rules for quantifying costs of OTC derivative financial products that are intended to count certain costs that may be considered to be incurred inside the derivative, as well in acquiring the derivative. These special rules do not apply to exchange traded derivatives.

Exchange traded derivatives should be treated like other financial products and so costs of acquiring or disposing of the derivative such as clearing costs and brokerage borne by the superannuation fund or an interposed vehicle should be treated as an investment fee or where permitted as an indirect cost. Also these costs plus any difference between acquisition cost and the price following acquisition should be included in transactional and operational costs under 'Additional explanation of fees and costs'.

## 25. How have the disclosed fees and costs changed as a result of the new ASIC requirements and guidelines?

### Background

In December 2016 ASIC conditionally extended the transition period for ASIC [Class Order \[CO14/1252\]](#), which updated fees and costs disclosure requirements, to 29 September 2017. One of the conditions to take advantage of the extension required superannuation trustees and responsible entities to provide ASIC data about the fees and costs in their current PDS and fees and costs calculated in accordance with the updated requirements for their largest product, generic MySuper product and any other options or products with more than \$100m in assets.

ASIC received over 200 confidential submissions from a broad range of super funds and managed investment schemes. One objective for the data request was to industry to demonstrate progress towards compliance with the updated requirements. The data also allowed ASIC a chance to assess the level of change and comparative changes in disclosed fees and costs for super funds and managed funds as a result of industry adopting the clarified disclosure requirements and updated ASIC guidance.

ASIC has completed the analysis of the data. Below are some of the key observations.

### General observations

The data shows that the fees and costs reported on the basis they would meet the updated requirements have generally increased across the industry in comparison to the fees and costs disclosed in current PDSs. This is not unexpected as ASIC's engagement with industry, which we reported on in [Report 398](#), indicated that there is current under-reporting of fees and costs. The updated disclosure requirements and ASIC guidance are intended to help improve the quality of the disclosure. The data shows that this intention is being met.

We included some statistics below based on the average change in fees and costs. However, we expect that the impact of the changed requirements for disclosure will affect different funds differently and so the average figures, while relevant to an understanding of the overall impact on the industry, should not be taken as a guide as to what is required for any particular super fund or managed fund.

### Superannuation funds

The total fees and costs disclosed for super funds increased on average as a result of the new requirements. The level of increase varied between funds and particular products within funds. Some funds reported very little change while others' fees and costs increased by more than 100 bps.

The average increase across all reported superannuation data was about 24 basis points, which equals to \$120 of additional disclosed costs per annum for an investor with a \$50,000 balance. For MySuper, the average increase was about 23 basis points, which equals to \$115 of additional disclosed costs per annum for an investor with a \$50,000 balance. Where the increase was more than 100bps or 1.00%, this equates to more than \$500 of additional disclosed costs per annum.

The level of variability in the level of fees and costs reported across the industry, when comparing fees and costs in current PDS to those numbers calculated in accordance with the updated requirements, did not change significantly.

### **Managed investment products**

For managed investment products the average increase in the total of costs of the product, if one were to add transactional and operational costs and management costs, is about 23 basis points, which is \$115 of additional disclosed costs per annum for an investor with a \$50,000 balance. However, the prescribed example focusses on management costs and excludes transactional and operational costs. Management costs, on average, increased by about 10 basis points, which is \$50 of additional disclosed management costs per annum for an investor with a \$50,000 balance.

Similar to superannuation, the level of variability in the level of fees and costs reported across the managed investments industry, when comparing fees and costs in current PDS to those numbers calculated in accordance with the updated requirements, did not change significantly.

## **26. What are the key changes ASIC announced in August 2017 to Class Order [CO 14/1252]**

1. An amendment will be made to the ASIC Class Order [CO 14/1252] (the Class Order) to exclude real property operational costs from the investment fee (and also as a result indirect costs) when disclosed in a PDS before 30 September 2018 on the condition that the PDS includes an estimate of the amount of those costs under 'Additional explanation of fees and costs'.

A property operational cost is a transactional and operational cost that relates to real property and does not relate to the acquisition or disposal of real property and is not a management cost. This will allow more time for further discussions with industry to address areas where industry has expressed some uncertainty about applicability – for example, about costs that may be regarded as for the benefit of the owner rather than for the benefit of the tenant.

2. An amendment will be made to the Class Order to exclude real property operational costs from investment fee (and also as a result indirect costs) when disclosed in a periodic statement for a period ending on or before 29 June 2018 on the condition that there is a statement that these costs have been excluded. For the period ending on or after 30 June 2018 and before 30 September 2018 the amendments will allow periodic statements to not include these costs in other fees, if an estimated amount that has been borne by the member is included in a separate disclosure in the periodic statement.

3. An amendment will be made to the Class Order to give effect to existing ASIC published positions in RG 97.64 and Q and A 1. This will address the concern that PDS



and other marketing material can be framed by any form of words so as to mean property funds are not interposed vehicles where the investment in these property funds is a means of gaining exposure to real property.

4. To address the risk of non-disclosure in relation to costs included in the price of assets (sometimes referred to as 'implicit costs') an amendment will be made to the Class Order to give effect to existing ASIC published positions at RG 97.22 and Q and A 16. This will expressly require, for example, costs reflected in 'bid-ask spreads' to be included.
5. For periodic statements for any period ending on or before 29 June 2018, under the modified provisions in the Class Order, disclosure will not be required of:
  - a. borrowing costs for superannuation products – subject to requirements for inclusion of details about how to obtain information about borrowing costs for each MySuper product and investment option on the fund's website;
  - b. transactional and operational costs for managed investment products;
  - c. disclosure in the total of other fees of any amounts by which tax deductions have resulted in reduced disclosed fees or costs. This in line with ASIC's view that gross of tax disclosures should be included in the total in RG 97.234; or
  - d. the buy-sell spread for superannuation products – where the periodic statement states that as it is not reasonably practicable for the trustee to include the buy-sell fee that the investor incurred during the period. These amounts for that fee would otherwise have been included in total fees as noted by RG 97.222. We consider that it would be good practice for a trustee relying on this extension to:
    - i. disclose that based on the maximum buy-sell fees charged over the period to the investor (or at their election that may have been charged to any investor), the investor would have incurred up to \$x if they had transactions of \$50,000 during the period and that if there was that level of transactions the total fees and costs the investor may have incurred during the period is equal to (total fees reported + \$x); and
    - ii. inform the investor that if they want more information about the buy-sell fee charged they may contact the trustee on a specified telephone number and email address and the information will be provided.

For periodic statements for periods ending on and after 30 June 2018, the modified provisions of Sch 10 will require this information to be included in the periodic statements.

The rationale for the deferral of the requirement for these disclosures in periodic statements is that it provides for a single timeframe for making changes that industry claim they have not prepared for and provides ample time to enable these changes to be made without unnecessary expense.

ASIC will undertake discussions about the drafting of the amending class order with the industry working group and register the legislative instrument as soon as practicable.

The amendment to the Class Order will also give effect to ASIC's decision to allow responsible entities the option to irrevocably reduce the maximum period in which to provide managed investment scheme exit statements from the current six months to no less than one month so the statements that are to be given to exiting investors in 2017 will not be required to comply with the Class Order.

Note: The dates described in this Question 26 may be incorrect. Please refer to Question 1C above for information on modifications made to CO 14/1252 on 7 December 2018 relating to dates for compliance with the fees and costs disclosure requirements relating to periodic statements (for both managed investment schemes and superannuation funds) and superannuation PDSs.