

ASIC Briefing on Regulatory Guide 97

(Fees and Costs Disclosure)

On 20 March 2017, ASIC held a forum with Deloitte's clients as part of assisting industry in its implementation of updated fees and costs disclosure requirements.

ASIC updated their fees and costs disclosure regulatory requirements and guidance for superannuation and managed investment products in Regulatory Guide 97 (RG 97) in November 2015. There is a transition period for these updated requirements that ends from 30 September 2017 if issuers met certain conditions, including providing data about their fees and costs to ASIC before 1 March 2017.

This document summarises some of the questions answered by ASIC during the forum. ASIC also directed superannuation funds and managed investment product providers to consult the list of "Questions and answers" published on their website.

How many providers opted-in to the updated requirements?

ASIC noted that not all providers opted in to the extended transition period and therefore they do not have data from all superannuation funds and managed investment products. They are in the process of reconciling those who had provided notifications for the extension period and those who had provided data against all known providers.

ASIC advised that approximately 90 superannuation trustees and about 93 responsible entities had met the conditions for the extension of the transition period to 30 September 2017. Generally if an issuer has not met the conditions, the transition period has technically ended and the current PDS should be compliant with the updated requirements.

What are the trends that ASIC has seen from the data received?

ASIC are still in the process of analysing and cleansing the data received, but shared some early indicative numbers in the forum. Average fees and costs calculated for the fee example in the PDS under the updated requirements is 1.36% for MySuper, up from 1.05%. For the balanced option, the total fees and costs have increased from 1.37% to 1.54%, and the total fees and costs have increased from 1.31% to 1.56% for the growth option.

ASIC expects there would be some increase in fees and costs disclosed, particularly for superannuation funds, because under Stronger Super most transaction costs must be disclosed as part of investment fee or indirect costs. They will follow up any outliers where fees and costs have not changed or even reduced.

ASIC has seen a significant increase in 'transactional and operational costs' reported, with average figures in the order of 25 to 30 basis points being disclosed, which is unsurprising as very little has been included under that heading historically. However, ASIC noted that they have seen considerable variation across providers.

Up to 30 September 2017 ASIC will take a facilitative approach should errors be identified in compliance with the requirements, provided the issuer has acted in good faith to attempt to comply. Compliance reviews will commence after 30 September 2017.

How are borrowing costs to be disclosed?

Borrowing costs include costs incurred directly such as investment through a geared investment vehicle. As those borrowing costs could be significant for geared investments, ASIC considered that including borrowing costs in indirect costs could have a distortive effect on that disclosure and hence make it less meaningful for investors. Accordingly ASIC have modified the requirements effective from 30 September 2017 such that borrowing costs are disclosed separately under the 'Additional Information' section in a new category, not within transaction costs.



In the case of extraordinary or atypical costs being incurred, such as on transition of investments, can one-off costs be excluded?

The requirements for disclosure are based on costs incurred in the previous financial year. There is no provision in the terms of the regulations that allow for some costs, such as transition to a new manager, to be defined as extraordinary or atypical. It is open to a trustee or responsible entity to make an application to ASIC for an exception or modification per ASIC's existing policies under RG 51 and RG 169. However, ASIC is concerned about transparency and consistency of rules across virtually all superannuation funds and managed investment schemes, and therefore they would expect the provider would need to make significant grounds in order for an exception to be granted.

ASIC acknowledges the concern that the retrospective disclosure of extraordinary costs may not truly represent the ongoing costs. However they also noted that, once you introduce some flexibility and less prescription, the disclosure requirements become more onerous, such as having to update the estimates in the PDS more frequently. For this reason, industry had generally agreed during the consultation process that the current requirement under RG 97 is the better position as, while not perfect, it is less onerous (only requiring updates once a year).

ASIC encourages the trustee or responsible entity to consider including explanatory material on fees and costs under 'Additional Information' such as that the fees and costs of the previous financial year may not reflect ongoing costs because they were affected by an extraordinary event.

Is there any discretion to average performance fees over time?

There is no discretion for providers to average performance fees over time. The requirements for disclosure are based on fees and costs incurred in the last financial year.

How should buy-sell spreads be estimated for disclosure purposes?

Conceptually ASIC consider that if you pay more for an asset than you can sell it for, that difference can be considered a transaction cost.

ASIC discussed a listed equities example. If you have a bid and an ask, and you have to cross that to buy an investment, then the bid-ask spread is to be treated as a transaction cost for that purpose. However, if you are sitting in the market with a bid and someone meets your price, then there is no transaction cost for you assuming there are other bids in the market at that price.

In addition, ASIC advised that transactional and operational costs should include the average cost the issuer estimates it would pay to fill a particular order (which may require a series of transactions which can have market impact costs).

Pending any industry guidance, ASIC considers it acceptable compliance if an estimate is formed in good faith on any documented reasonable basis. In particular, these do not need to be calculated on an individual transaction basis, but rather a reasonable estimate based on materiality, and the relative and absolute size of costs.

ASIC recognise that it will be an evolving process of improving the quality of this disclosure. The combination of industry guidance, improvement in practice and comparisons over time should mean that those disclosures will continue to be enhanced.

What are the thresholds for updating a PDS if a provider identifies that the investment costs in the PDS are slightly understated?

The disclosure in the PDS in most cases will be based on a reasonable estimate of some of the costs. The provider would need to consider whether it needs to update the PDS if it has new information that makes it believe that the estimate used in calculating the costs is no longer reasonable. If the change is not materially adverse from the investor's viewpoint, then the update can be made through the website rather than updating the PDS.

ASIC does not define a quantifiable test for what is materially adverse, as considerations may depend on absolute and relative level of change, whether the change is unexpected, whether the change is ongoing or one-off, whether fees and costs tend to be variable or relatively stable each year, or the context of any other changes that may have occurred.



Is there a time period for when a trustee or responsible entity should have considered the costs for the year ended 30 June and then updated the PDS (if appropriate)?

Trustees and responsible entities should always be collecting information and monitoring the level of costs within their fund, as in the context of exit statements there is a need to estimate the costs reported to members.

Also, the reporting is framed such that the costs disclosed are based on the last financial year, which means that the PDS at 1 July must reflect the costs of the year just passed. To facilitate that, ASIC considers it reasonable to consider whether a PDS needs to be updated well before 30 June, based on actual costs for the year to date and estimates for the remainder of the financial year.

As actual numbers for the year ended 30 June become available, the trustee or responsible entity will need to consider whether the PDS needs to be updated again if the latest estimates for the last financial year are materially adverse to an investor compared to the current PDS. From ASIC's perspective the PDS only needs to be updated if the trustee or responsible entity believes the amount disclosed is no longer a reasonable estimate.

Are there any synergies between ASIC's RG 97 requirements and the information APRA collects under SRF 702 and SRF 703?

ASIC has discussed this with APRA and believes that these are currently aligned as APRA updated their forms in 2015 to align with RG 97.

SRF 703 refers to fees and costs as disclosed in the PDS, which aligns with RG 97.

SRF 702 asks about the fees and costs incurred, and ASIC believes that is consistent with RG 97. However, ASIC is keen to hear of examples where this is not the case. For example, some trustees have noted that SRF 702 is based on more accurate numbers than the estimates in PDS, as SRF 702 is prepared within 28 days after end of the quarter.

While the methodology is the same, the timing of the requirements differs, and as a result so does the accuracy of the underlying data (actual data vs estimated data). This may lead trustees to make a conservative estimate of their costs for the purpose of a PDS update at 1 July. For example, the trustee can have difficulty estimating the performance fees for the period up to 30 June as it is dependent on how markets perform.

Under the regulations, ASIC is not able to allow a provider to delay updating the PDS where the provider thinks that the information is incorrect in a materially adverse way and wants additional time to firm up the figures and hence produce the same information as will be disclosed to APRA.

Some trustees are also examining whether there is a slight mismatch between interposed vehicle definition and APRA's look-through requirements which needs to be reconciled, but are generally taking RG 97 as the governing requirement to align to.

Once the implementation has been settled down, is there a process ASIC will use to assess the consumer benefit of the enhanced disclosures?

ASIC has endeavoured to make the regulations work to ensure transparency and comparability in accordance with their terms. They have not sought to consumer test the effectiveness of the disclosure under the regulations, but rather to implement the regulations as they stand.

More broadly, ASIC is active in assessing the effectiveness of disclosure (and its components including fees) flowing from the Financial Systems Inquiry and from initiatives from Treasury, and will continue in this vein.

Is ASIC amenable to a trustee or responsible entity contacting ASIC with queries or to seek guidance on an aspect of RG 97?

ASIC is open to discussions on any matter, although they would not generally endorse or approve a particular approach.

Contacts



Russell Mason | Partner
rmason@deloitte.com.au
+61 2 9322 5347



Ben Facer | Partner
bfacer@deloitte.com.au
+61 2 9322 3493



Diane Somerville | Principal
dsomerville@deloitte.com.au
+61 2 9322 7636

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