

## **RG97 Industry Working Group PDS Transition Period Extension Guidance Note on Completing ASIC Form**

The Australian Securities and Investments Commission (“ASIC”) has extended the transition period until 30 September 2017 to comply with the updated fee and cost disclosure requirements in relation to Product Disclosure Statements (“PDSs”) contained in ASIC Class Order 14/1252 (as amended).

To be eligible for the extended PDS transition period trustees, responsible entities and IDPS operators must notify ASIC in writing prior to 1 February 2017 that they intend to take advantage of the extension in relation to a PDS and, prior to 1 March 2017, provide certain fees and costs information to ASIC using a form published on the ASIC website.

The RG97 Industry Working Group has prepared this Guidance Notice to assist all trustees of superannuation funds, responsible entities of registered managed investment schemes and IDPS operators in the Australian financial services industry who will provide ASIC with data on fees and costs in order to take advantage of the extended PDS transition period. It provides guidance on how to completing the requisite ASIC form.

To assist with ensuring that uncertainties are dealt with on an industry-wide basis, you are welcome to direct questions to the Industry Working Group. Of course, ASIC is willing to answer any questions that may arise. Trustees, responsible entities and IDPS operators can consider directly contacting ASIC.

### **1 Background**

#### **1.1 What is the RG97 Industry Working Group**

The RG97 Industry Working Group has been established with the encouragement of ASIC to provide a forum for all parts of the financial services industry in Australia impacted by ASIC Class Order 14/1252 to share views, develop solutions to unresolved issues and help develop industry guidance on compliance with ASIC Class Order 14/1252. Participants of the group represent all sectors of the industry, including fund managers, retail and industry superannuation funds and peak industry bodies.

#### **1.2 How to use this Guidance Note**

The Guidance Note contains a best practice approach to completing the ASIC form and is designed to assist in providing consistent information to ASIC.

That said, each trustee, responsible entity and IDPS operator is structured and organised differently and will have different practices and procedures. Accordingly, you must always form a view on how to comply with the ASIC requirements in a manner which achieves the best outcomes for your investors.

A determination not to follow one or more matters set out in this Guidance Note does not mean that the approach is inconsistent with the law. Alternative practices may be equally compliant.

This Guidance Note does not constitute any form of professional advice (including legal advice) and should not be used as a substitute for obtaining your own advice. You should take your own advice and consider your own circumstances.

#### **1.3 Introduction**

The Guidance Note covers a number of matters relating to the ASIC form and instructions, and provides guidance on certain matters which issuers may be uncertain what information, or the extent of that information, is required to effectively complete the form.

ASIC has stated it will generally not take enforcement action based on errors in the information provided on the ASIC form, but it may take action should the issuer intentionally provide information that is non-compliant, or fail to take reasonable care, or is not taking reasonable steps at this time.

The industry should remember that ASIC may ask for information about any other investment option or class of interest and require the information within 6 business days. Accordingly, it would be prudent to have calculated or at least be in a position to readily calculate the information required even for those investment options and classes of interest which are not included in the report.

## 2 Guidance

The ASIC form and instructions are available on ASIC's website: <http://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-97-disclosing-fees-and-costs-in-pdss-and-periodic-statements/>.

### 2.1 When does the PDS transitional period end?

The transitional period ends on 30 September 2017 and all PDSs and IDPS Guides will need to be compliant with ASIC Class Order 14/1252 by that date. A PDS or IDPS Guide given out on 30 September 2017 and afterwards which does not comply with ASIC Class Order 14/1252 will be in breach of the law.

### 2.2 What types of products does the extended PDS transition period cover?

A trustee, responsible entity or IDPS operator can seek an extended PDS transition period for the following types of products:

- standard super products
- defined benefit products
- pension products, other than lifetime, life expectancy and defined pension products
- super wrap products
- registered managed investment schemes which issue a PDS
- IDPSs.

### 2.3 What investment options should a superannuation trustee report to ASIC on?

The test on which investment options to report to ASIC on is determined by reference to all the superannuation funds and products that the person is trustee of. Where a group has two trustee entities, the test must be applied per trustee.

A person who is the trustee of a wide range of superannuation products and superannuation funds should provide information to ASIC on the following:

- (a) each generic MySuper product, so that where there are a number of superannuation funds which each have a generic MySuper product, information on the generic MySuper product in each fund must be provided;
- (b) largest open investment option across all the superannuation products across all the superannuation funds that the person is trustee of; and
- (c) any other open investment option in any super product which has gross assets of more than \$100 million.

For these purposes, trustees should treat an investment option in a superannuation product as being separate from a similar investment option in a pension product.

For example, if there was a single superannuation fund which offered three superannuation products and the largest investment option in product 1 had gross assets of \$150 million, the largest investment option in product 2 had gross assets of \$130 million and the largest investment option in product 3 had gross assets of \$90 million, the trustee should report on the investment option in product 1 on the basis that it is the largest open investment option across all the trustee's superannuation products. It should also report on the investment option in product 2 because it has gross assets of more than \$100 million, however, the trustee should not report on the investment option in product 3.

A person who is the trustee of a defined benefit fund only should provide the following information:

- (a) the investments of the defined benefit assets; and
- (b) in relation to any additional accumulation accounts, the largest investment option and any other open investment option which has gross assets of more than \$100 million.

A person who is the trustee of a super wrap only should provide information on the following:

- (a) largest investment option available on the platform;
- (b) the balanced or other investment option whose information is included in the statutory fee example in the current PDS; and
- (c) any other open investment option on the platform which has gross assets of more than \$100 million.

For these purposes, the trustee should treat both the cash account / cash hub and each accessible product available through the platform as an “investment option”. Further, the thresholds should be determined by reference to the value of the total investment in an accessible product through the super wrap, not by reference to the total funds under management of the accessible product. For example, if a super wrap had an \$80 million investment in a managed fund but the funds in the managed fund totalled \$150 million, the trustee would not need to report to ASIC on the costs related to that managed fund.

Where there are a number of badges for one super wrap product (with separate PDSs for each badge), trustees should determine which investment options to report to ASIC on by reference to the total amount invested across all the badges. It should not treat the investment options for one badge as being separate to the investment options of another badge, even if a badge is closed to new investors and a PDS is no longer on issue for that badge.

A trustee’s determination of which investment options to report on should be based on the amounts at the end of the financial year prior to March 2017.

#### **2.4 What managed funds should a responsible entity report to ASIC on?**

Where a responsible entity offers a range of registered managed investment schemes, some with a number of classes and others with a single class of member, it should provide information to ASIC on:

- (a) the largest class of interest across the registered managed investment schemes offered by the responsible entity which are open to new clients and are offered under a PDS;
- (b) for managed investment schemes with a single class of interest, only the schemes that have gross assets of more than \$100 million which is open to new clients and is offered under a PDS; and
- (c) for managed investment schemes with a number of classes of interest, any class which has gross assets of more than \$100 million which is open to new clients and is offered under a PDS.

In assessing which classes of interest satisfy the rules above, a responsible entity should ignore all classes which are offered only to wholesale clients where no PDS is issued.

For example, say managed fund 1 had two classes of units, class A with \$200 million in gross assets and class B with \$120 million and managed fund 2 had a single class with only \$90 million in gross assets. The responsible entity should report on class A in managed fund 1 because it is the largest class of interest in both managed investment schemes. It should also report on class B in managed fund 1 because it is a class of interest with gross assets of more than \$100 million, however, the responsible entity should not report on managed fund 2.

A responsible entity’s determination of which funds to report on should be based on the amounts at the end of the financial year prior to March 2017.

#### **2.5 What investment options should an IDPS operator report to ASIC on?**

An IDPS operator should consider whether all interests in an IDPS constitute a single class of product. In practice, IDPSs with the same investment structure and the same service

structure are more likely to be a single product class, even if the entitlement of each investor varies because of the different investments selected by or on behalf of the investor.

See Question 2.6 below on what information must be provided for each investment option.

**2.6 What fees and costs information should be reported to ASIC about platform products (super wraps and IDPSs)?**

Some super wrap trustees currently include information on the costs of underlying accessible products as part of the indirect cost ratio, while others may include them as part of the investment fee. Similarly, some IDPS operators currently include information on the costs of underlying accessible products as part of management costs.

For super wraps, Regulatory Guide 184.126 notes the relief given from section 1013D (found in section 1013FB(4)(a) of the *Corporations Act 2001* (Cth), inserted by ASIC Corporations (Superannuation: Investment Strategies) Instrument 2016/65) that where Option 3 is adopted and the trustee provides investors with a copy of the PDS for the underlying accessible product, the super wrap PDS does not have to include the fees and costs template and related additional information for the underlying accessible product.

For IDPSs, Regulatory Guide 148.168 notes the rules found in subsection 912AD(7) of the *Corporations Act 2001* (Cth) (inserted by ASIC Class Order 13/763) that an IDPS Guide does not need to include information in relation to actual or identified accessible investments. ASIC also notes the rules in section 912AD(5)(e) that it considers that costs incurred for underlying accessible products that an investor holds through the IDPS are not management costs of the IDPS.

For example, for a super wrap where the only fees and costs charged at the platform level are administration fees and where the platform exception applies, the form should show for each relevant investment option:

Column in form	"Current PDS" section	"PDS as per fee template" section
Investment fee	Where the super wrap PDS currently discloses the management costs of accessible products as investment fees, the amount of the management costs for the relevant investment option.  Otherwise, nil	Where the super wrap PDS would not disclose the management costs of accessible products as investment fees, nil
Administration Fee	Administration fees as set out in the current PDS	Administration fees as would be set out in a PDS which complies with RG97
Buy-sell spread	Where the super wrap PDS currently discloses the buy/sell spreads of accessible products in the "Buy-sell spread" row of the fees and costs table, the amount of the buy/sell spread for the relevant investment option.  Otherwise, nil	Where the super wrap PDS would not disclose the buy/sell spreads of accessible products in the "Buy-sell spread" row of the fees and costs table, nil
Indirect Cost Ratio	Where the super wrap PDS currently discloses the management costs of	Where the super wrap PDS would not disclose the management costs of

	accessible products as an indirect cost ratio, the amount of the management costs for the relevant investment option. Otherwise, nil	accessible products as an indirect cost ratio, nil
Transactional/Operational Costs	Where the Additional Explanation of Fees and Costs section of the super wrap PDS currently discloses transactional and operational costs of accessible products, the amount for the relevant investment option. Otherwise, nil	Where the super wrap PDS would not disclose the transactional and operational costs of accessible products in the Additional Explanation of Fees and Costs, nil
Total Costs of Product	The dollar amount set out in "Cost of Product" row of the statutory fee example of the current PDS (even if the statutory fee example is for a different investment option and even if it includes investment fees / indirect cost ratio for the accessible product)	Where the trustee would not include costs of accessible products in the statutory fee example, the dollar amount that would be included in the "Cost of Product" row based only on the platform costs

Some super wraps do themselves incur investment-related costs which are allocated to investors. In these structures, the investment-related costs should be reported to ASIC as follows:

- (a) in the "Current PDS" section, in the row where they are disclosed in the current PDS; and
- (b) in the "PDS as per fee template" section, in the Investment Fee row.

Take a second example of an IDPS where the only fees and costs charged at the platform level are administration fees and the platform exception applies, the form should show for each relevant investment option:

Column in form	"Current PDS" section	"PDS as per fee template" section
Management Costs	Administration fees as set out in the current PDS	Where the IDPS would not disclose the management costs of accessible products as management costs, administration fees as would be set out in an IDPS Guide which complies with RG97
Transactional/Operational Costs	Where the IDPS Guide does not currently disclose any transactional or operational costs of the platform, nil	Where the super wrap PDS would not disclose the transactional and operational costs of accessible products in the Additional Explanation of

		Fees and Costs, nil
Total Costs of Product	The dollar amount set out in “Cost of Product” row of the statutory fee example of the IDPS Guide	Where the IDPS would not include costs of accessible products in the statutory fee example, the dollar amount that would be included in the “Cost of Product” row based only on the platform costs

Some IDPSs do themselves incur investment-related costs which are allocated to investors. In these structures, the investment-related costs should be reported to ASIC in the Management Costs row.

It is recognised that the above approach may result in the same amounts being reported for several different investment options.

## 2.7 What is the best way to set out fees and costs in the form?

The form should set out each amount as a single figure. Where a trustee or responsible entity would not normally include a single figure in its PDS, for example, because it would disclose performance-related fees as a separate percentage-based component of the investment fee or management cost (or include a general formula for calculating performance-related fees), additional information on the components of the fee or cost or the performance-related fees should be set out in the covering email sent to ASIC.

The amount of fees and costs that should be included in the “Current PDS” section of the form are those fees and costs which are set out in the PDS or IDPS Guide on issue immediately prior the date the form is lodged with ASIC. As a result, the amounts to include in this section should be extracted or calculated from the information in the current PDS or IDPS Guide.

For example, where the PDS currently issued by a trustee contains information about a buy/sell spread but does not contain information on the amounts of transactional and operational costs, the “Current PDS” section of the form should include information on the buy/sell spread in the Buy-Sell Spread column and show a nil amount in the Transactional/Operational Costs column. Alternatively, where the PDS currently issued by a responsible entity contains information about a buy/sell spread in the Additional Explanation of Fees and Costs but does not contain information on the amounts of other transactional and operational costs, the “Current PDS” section of the form should include information on the buy/sell spread in the Transactional/Operational Costs column.

The amount of fees and costs that should be included in the “PDS as per fee template” section of the form should be those fees and costs which would be included in an RG97-compliant PDS or IDPS Guide issued at the time of lodgement of the form.

Any activity-dependent fees, such as family law fees, contribution splitting fees, no-TFN tax fees and brokerage (for platforms) should not be reported for Other Fees and Costs (for superannuation products) or Service Fees (for managed investment schemes) in either the “Current PDS” section or the “PDS as per fee template” section as they depend on the number of times each activity is engaged in which will vary from investor to investor and will be nil for most investors. Where activity-dependent fees are currently set out in a PDS or IDPS Guide, trustees and responsible entities should consider reporting these amounts separately to ASIC in the covering email.

Switching fees are reported separately and so should not be included either as Other Fees and Costs or as Service Fees.

Where there is a range of fees for a particular fee (eg tiered administration fees, switching fees which are charged after a number of free switches), the trustee or responsible entity should report based on the maximum fee payable.

Transactional/Operational Costs that should be reported to ASIC are the gross total amount of those costs before any recoveries (eg before deducting costs recovered through buy-sell spreads charged on applications and redemptions during the period), not the net amount which impacts investor returns. Transactional/Operational Costs for the “current PDS” section

of the spreadsheet should be based on the transactional and operational costs of the superannuation product or managed investment scheme as disclosed in the current PDS. Transactional/Operational Costs for the “PDS as per fee template” section of the spreadsheet should be based on the transactional and operational costs of the superannuation product or managed investment scheme as well as those of interposed vehicles.

Trustees of superannuation funds should exclude borrowing costs from all amounts reported to ASIC in the “PDS as per fee template section”.

Where a trustee, responsible entity or IDPS operator does not charge a fee or cost, they should report \$0.00 in a “dollars” column or 0.0% in a “percent” column.

## **2.8 Should fees paid to advisers or insurance fees be included in the ASIC form?**

In most cases, fees paid to advisers (whether for the provision of personal advice or for other adviser services) should not be included in the ASIC form. However, any advice fees which are included in the “Advice fees” row of the fees and costs table in a PDS (eg intra-fund advice fees charged by the trustee of a superannuation fund) should be included in the “Advice fees” columns.

Insurance premiums should not be included in the form, however, insurance administration fees should be reported to ASIC.

## **2.9 Do I need to make a written election to report costs of interposed vehicles as indirect cost ratio?**

No – such an election is only required for PDS disclosure. However, a record of what fees and costs are reported to ASIC as indirect cost ratio should be retained.

Further, a decision to include a cost either as an investment fee or as part of the indirect cost ratio in the ASIC form does not preclude a trustee from re-considering that decision for the PDS issued later in 2017.

## **2.10 Which financial year should data be provided in the “PDS as per fee template” section of the ASIC form?**

Data provided in “PDS as per fee template” section of the ASIC form for existing products which must be calculated retrospectively should be based on the latest financial year prior to 1 March 2017. For a superannuation fund, managed investment scheme or IDPS with a 30 June financial year end, this will be 30 June 2016.

Some trustees, responsible entities and IDPS operators with a 30 June year end may have data on certain fees and costs for a period after 30 June 2016. For these entities, this data should not be incorporated into any fees and costs in the ASIC form which must be calculated retrospectively for the 12 months to 30 June 2016. However, it should be incorporated into any fees and costs in the form which must be calculated prospectively for the period from 1 July 2016.

Data provided in the “PDS as per fee template” section of the ASIC form which must be calculated prospectively should be based on the expected amount payable from February 2017.

## **2.11 What if issuers don't know or can't find out specific information relating to costs?**

It is recognised that many trustees and responsible entities may have sought and obtained information from investment managers and underlying funds but not sought additional or new information at the time of each RG97 development. The result is that some information may not be up-to-date or reflect the latest ASIC guidance and they may not have other information.

However, it should be noted that it is permissible to base a calculation on an estimate where there is a reasonable basis for an estimate. Where a trustee or responsible entity believes it has sufficient information to form a reasonable estimate, it need not seek further information from its investment managers or underlying funds. Further, a trustee or responsible entity may wish to highlight particular uncertainties in key estimations in the covering email.

Where a trustee or responsible entity does not have up-to-date information about certain costs but has a reasonable basis to form an estimate and it is not reasonably able to obtain up-to-

date information prior to 28 February 2017, it should use that estimate when reporting to ASIC.

The indirect costs regime has developed over the course of 2016, and it is possible that a trustee or responsible entity may not have obtained information from an underlying fund – for example, because of subsequent developments in the area (eg property operating costs).

In this situation, the trustee or responsible entity should consider whether it is able to undertake reasonable steps to acquire this information. Guidance can be taken from RG97.86, which provides that “reasonable steps” include those that are within the issuer’s duties and obligations as a trustee or responsible entity. However, in some cases, further steps may be considered reasonable.

Should the responsible entity or trustee not have information on a particular cost despite taking reasonable steps to obtain that information, it should still form a reasonable estimate of those costs. In practice, it is better to provide ASIC with an estimate and explain key uncertainties. Omission of information on costs risks the trustee or responsible entity being considered by ASIC not to meet the eligibility criteria for the extended PDS transition period (and so the transition period ending on 1 March 2017), even if this is explained in the covering email.

## **2.12 Must the processes undertaken to complete the ASIC form be documented?**

There is no legal obligation to document your processes. However, doing so will help demonstrate to ASIC that reasonable steps were taken to formulate the estimates provided in the form. It will also assist in responding to ASIC should it raise further questions.

Accordingly, the RG97 Working Group does recommend that trustees, responsible entities and IDPS operators consider documenting their procedures.

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