



AUSTRALIAN INSTITUTE of  
SUPERANNUATION TRUSTEES



FINANCIAL  
SERVICES  
COUNCIL



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Mr Maan Beydoun  
Senior Manager  
ASIC  
Level 5  
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**By email only**

Dear Mr. Beydoun

**DISCLOSURE OF FEES AND COSTS FOR SUPERANNUATION PRODUCTS**

We refer to your letter of 10 July 2017 addressed to Ian Fryer, Convenor of the RG 97 Industry Working Group (**IWG**).

ASIC's letter was in response to the joint letter from AIST, ASFA and FSC dated 9 June 2017 that requested relief for the following:

1. the inclusion of borrowing costs in periodic statements for superannuation products;
2. the inclusion of implicit costs in periodic statements for superannuation and managed funds products; and
3. the inclusion of buy-sell spreads in periodic statements for superannuation products.

The IWG is grateful that ASIC has addressed the industry's concerns by granting interim relief in relation to item 1 and confirming that item 2 has no application insofar as periodic statements are concerned. We will address this latter aspect further below.

The main purpose of this letter is to request your further consideration of item 3 - buy/sell spreads.

Before addressing the specifics of item 3, we wish to reiterate several key issues:

- We confirm our support for buy-sell spreads being disclosed.
- Sufficient time needs to be provided to enable such disclosure to occur.
- While interim arrangements may be granted, we confirm that the aim should be disclosure on a dollar basis.
- Any interim arrangements must ensure that disclosure is not misleading to consumers.
- Any major changes – such as is the case with the inclusion of buy/sell spreads – must be clearly communicated by ASIC. For the reasons set out below, this has **not** occurred in the case of the inclusion of buy/sell spreads.
- **If no relief is provided, the majority of retail superannuation providers will be in a breach position for their periodic statements owing to a lack of time to implement what is effectively a new obligation – surely this is not desirable.**

We now turn to item 3 – buy/sell spreads.

## BUY-SELL SPREADS

Our 9 June 2017 letter requested that any requirement for periodic statements for superannuation products to include dollar disclosure of buy-sell spreads be deferred until 1 January 2019, with similar deferral for MISs if required. The deferral request was supported by the industry associations and the IWG more broadly. This letter advanced arguments for this deferral that included the following:

- most entities in the industry had not interpreted the law as requiring the disclosure of buy-sell spreads in periodic statements;
- ASIC's position on disclosure of buy-sell spreads has only become clear to the industry in the last few months;
- the relevant legislation and regulatory guidance from ASIC does not include any explicit reference to the need to include buy-sell spreads in periodic statements for either superannuation or managed funds (refer to the table on page 3);
- as entities have different views regarding the approach that should be taken to disclosure of buy/sell spread fees, the industry requires certainty as to ASIC's preferred approach;
- the disclosure of buy-sell spreads will require a significant system build for most entities, with a minimum lead time of approximately 6 months and the incurring of significant cost;
- given the timeframe and cost, it is imperative that entities have certainty of both the requirement to include buy-sell spreads as well as the approach to be implemented before commencing any work on system changes to avoid two rounds of implementation;
- there is concern in the industry that a 'hurried' implementation of such significant changes may result in inadequate time to properly build and, equally importantly, test the system changes to ensure that any changes do not detrimentally impact members;
- given that there has been no industry wide dissemination yet of ASIC's views on disclosure of buy-sell spreads, the requirement to include this component from 1 January 2018 will come as a shock to trustees of some superannuation funds.

### ASIC's view

It is our understanding that ASIC's primary reasons for declining to grant relief are as follows:

- Since the 2013 Stronger Super reforms, buy-sell spreads have been required to be disclosed in periodic statements – this is evident from legislation and has been confirmed in communications from ASIC, including RG 97.
- Superannuation funds that do not have buy-sell spreads will be disadvantaged if implementation is deferred as they will look more expensive.
- Periodic statements are a key document used by members to compare superannuation funds.

We will address each of these reasons in turn.

### Prior knowledge

In your letter you state as follows (your contention as to industry's prior knowledge is highlighted):

*ASIC provided guidance on the reporting of fees that are charged by an adjustment in the unit price or reduced crediting rate, as is normally the case of buy-sell fees, in RG97 published in November 2015 to draw attention to the requirement and provide clear requirements about how fees not reflected in a transaction statement should be disclosed in other fees. We do not agree*

*that there has been uncertainty in relation to reporting of buy-sell fee on periodic statements. We also note that trustees have until 1 January 2018 to comply with this requirement. Further, we consider that trustees may report the buy-sell fee based on a reasonable estimate. We expect that system improvements over time may be needed to report the buy-sell fee charged in a more precise manner.*

However, nowhere in Schedule 10 or RG97 is the specific and important connection made between buy-sell fees and periodic statements.

Major changes like this, which represent such a significant change to existing practice, require clear and public communication from ASIC to the industry that disclosure requirements have changed. As far as we are aware, your position on buy/sells spread fees **has never been communicated in writing to industry**, although you may have communicated this to individual entities by email.

We have reviewed the March 2017 version of RG 97 and have extracted below all explicit references to buy-sell spreads. We have also added a comment regarding whether the reference is applicable to periodic statements.<sup>1</sup>

PARA	SUBJECT MATTER	COMMENT
RG 97.52	Disclosure of transactional and operational costs under 'Additional explanation of fees and costs', if costs are recovered in whole or part by a spread	Not relevant to periodic statement disclosure
RG 97.53	Transactional and operational costs – recovery and disclosure of these costs in PDSs	Not relevant to periodic statement disclosure
Section C, Example 2	Calculating transactional and operational costs for inclusion in the 'Additional explanation of fees and costs' in PDSs	Not relevant to periodic statement disclosure
RG 97.175	Switching fees– need to include in PDS a note that it is in addition to buy-sell spread	Not relevant to periodic statement disclosure
RG 97.181	Exit fees– need to include in PDS a note that it is in addition to buy-sell spread	Not relevant to periodic statement disclosure
RG 97.182	Need to explain the buy–sell spread that may apply in the note required as part of the example of annual fees and costs in PDS	Not relevant to periodic statement disclosure
RG 97.196	Buy-sell spread must be included in fee template in PDS	Not relevant to periodic statement disclosure
Key terms	Definition of buy–sell spread	Not relevant to periodic statement disclosure

<sup>1</sup> In this regard, importantly, it appears that there are no substantive differences between the March 2017 version and the earlier 2014 draft and November 2015 version so as to alert industry to the issue. That is, the analysis in the text of our letter remains relevant.

Most significantly, Section E of RG97 outlines the requirements for the disclosure of fees and costs in periodic statements but **does not include any explicit reference to buy-sell spreads**.

For a trustee to have understood that the Stronger Super changes required the disclosure of buy-sell spreads in periodic statements, it would have had to recognise the following changes in various regulatory documents over the last four years:

- that the enhanced fee disclosure requirements in 2013 changed the treatment of buy-sell spreads by specifically defining them as a 'fee' and including them in the fee template in the product disclosure statement (**PDS**);
- that the 2013 change in categorisation of buy-sell spreads not only impacted product disclosure statements but also disclosure in periodic statements, although this is not explicitly stated anywhere;
- that regulation 7.9.60B of the Corporations Regulations required all fees to be included in the periodic statement so that buy/sell spread fees now need to be included;
- ASIC's and/or APRA's preferred approach for disclosure in periodic statements, i.e. whether it is full recognition of buy and sell spreads on application (to be consistent with the disclosure of the member's closing balance) or only recognition of the buy spread (to reflect member experience).

Given the fact that the majority of entities with buy-sell spreads have not changed their periodic statement disclosure since 2013 to include buy-sell spreads, it would appear that this was not an obvious or self-evident conclusion.

Given the significance of the change to the industry, it would have been helpful and indeed critical, if RG97 had explicitly called out the need now to disclose buy-sell spreads rather than only mentioning investment fees, administration fees and insurance fees.

Further, we are not aware of any other communications from ASIC that made this requirement clear. For many entities on the IWG, this first became apparent following discussions with ASIC over the last few months. For those entities who are not represented on the IWG, they may remain unaware.

### **Disadvantage to other funds**

The IWG is cognisant of the need to address any potential comparative disadvantage to those funds that do not have buy-sell spreads. With this in mind, the IWG put forward proposals to ASIC to include, as an interim measure, text in the periodic statement that buy-sell spreads may also be incurred, a link to a document setting out the spreads and a worked example showing the potential impact of a buy-sell spread.

As you know, discussions ensued with ASIC in relation to this measure. As an interim approach, ASIC proposed a simplified calculation method that apportioned total buy/sell fees for an option evenly across all members as a fixed percentage that would be added to the investment fee/ICR. The view of the IWG is that such disclosure would be misleading to members and would overstate or understate the actual position of all members of the fund.

We would however, welcome the opportunity to again explore including static disclosure in the periodic statement that would highlight that buy-sell spreads may have been incurred and provide members with the information to determine their costs for the relevant period. If such an interim

measure was in place until 1 July 2018, this would allow trustees the time they need to settle the preferred methodology with ASIC and to implement system changes.

We also highlight that all industry associations, including AIST which represents many funds who do not have buy-sell spreads, are fully supportive of ASIC providing interim relief in relation to the disclosure of buy-sell spreads.

### **Periodic statements as comparator documents**

We disagree with ASIC's contention that members use periodic statements to compare their existing fund against other super funds. Whilst a periodic statement is probably the document that would draw most attention from a member, it is very difficult to use as a comparator document. Whilst it shows fees and costs incurred, a member would need statements from other funds that had the same balance and transactions to use for comparison purposes, which would not be the case as member would have different balances. In our view, it is much more likely that a member will use the fee template and example table in the PDS, or MySuper product dashboards, to make such comparisons.

## **EXIT STATEMENTS– EXTENSION TO TRANSITIONAL RELIEF**

In relation to this matter we note as follows-

1. The IWG has considered the various representations made by the FSC on the topic of relief for MIS exit statements (**MES**) and endorses and supports those comments and representations for the reasons previously given to you by the FSC.
2. In addition, the IWG notes that much of the "build" required to be made by both superannuation and MIS providers (and their administrators) for exit statements generally has yet to be commissioned given the on-going uncertainty and confusion as to what ASIC requires to be included in such statements generally (exit statements).
3. The IWG also has noted that some superannuation OR MIS providers would be unaware of the forthcoming time frame for compliance with CO 14/1252 insofar as exit statements are concerned, as they do not have relevant connections into the IWG participating industry bodies.
4. In these circumstances, the IWG suggests that the following wording in Table 3 of RG 97 be adopted (and corresponding amendments be made to CO14/1252). The suggested text would mean that relief is provided for reporting periods that end prior to 1 January 2018 rather than for periodic statements that must be provided to members by 1 January 2018.

**Table 3: When the periodic statement requirements apply**

Situation	What the issuer must comply with
If the reporting period ends before 1 January 2018	<p>An issuer must comply with:</p> <ul style="list-style-type: none"> <li>• the requirements in this guide and [CO 14/1252] if the periodic statement applies the periodic statement provisions of [CO 14/1252] and the periodic statement states that [CO 14/1252] applies to it; or</li> <li>• our previous guidance in RG 97, issued in November 2011 (unaffected by [CO 14/1252]) for periodic statements required to be given before 1 January 2018, in any other case.</li> </ul>
For reporting periods ending on or after 1 January 2018	<p>An issuer must comply with the requirements in this guide and the fees and costs disclosure requirements, as modified by [CO 14/1252].</p>

5. We note that relief may have been provided to an FSC member and others subject to conditions on the basis of the law as it currently stands. We suggest that if you were to grant our application those issuers would not be obliged to rely on such relief but at their option could elect to rely on it ;
6. AIST reiterates its policy positions:
  - a. that the timing of exit statements for both MIS and superannuation products should be the same, ie, as soon as practicable - but no later than one month after exit. However, AIST wishes that this policy position be achieved by appropriate amendment to the legislation, rather than by class orders.
  - b. that periodic statement disclosure should be comparable between MIS and superannuation products
  - c. its ongoing support for relief regarding implementation.

Members of the industry associations and Industry Working Group would be happy to discuss this further with you. Feel free to contact us.

Yours sincerely



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