

17 October 2014

Mr Maan Beydoun
Senior Specialist
Investment Managers and Superannuation
Australian Securities and Investment Commission
Level 5, 100 Market Street
Sydney NSW 2000

Via email: feeandcostdisclosure@asic.gov.au

Dear Mr Beydoun

Re: Draft ASIC Class Order: Disclosure of fees for superannuation trustees and managed investment scheme responsible entities

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds. As the principal advocate and peak representative body for not-for-profit super funds, AIST plays a key role in policy development and is a leading provider of research to the \$1.85 trillion superannuation industry.

AIST wishes to note our thanks to ASIC for the level of consultation undertaken. AIST strongly supports ASIC's work on strengthening transparency and integrity in the space of fee disclosure. The promotion of transparency and consistency in reporting is critical to ensuring greater competition and efficiency within the superannuation sector, as well as promoting consumer awareness. AIST's strong support for ASIC's work was reinforced in our submission to the Financial System Inquiry's Interim Report. AIST reiterates its wish to offer ASIC whatever ongoing assistance we can to continue strengthening improvements in this space.

If you have any further questions regarding this submission, please contact myself on 0419 127 496 or at kvolpato@aist.asn.au

Yours sincerely,

Karen Volpato
Senior Policy Adviser
Australian Institute of Superannuation Trustees

Specific comments regarding the draft Class Order

Clause 3 – Commencement

AIST recommends that transition should be framed around PDS production, rather than providing a specific date. For example, PDSs should be updated within one year of ‘commencement’. This would assist with managing PDS costs.

Declaration – clause 1 – indirect costs

Regulation 101A provides a breakdown of those indirect costs which may either directly or indirectly reduce the return on the option or product.

However, AIST believes that it would be preferable to extend the introduction to Regulation 101A (1) *Indirect costs* so that it is a general introduction, capturing the concept of ‘relates to’ (underlying assets), which then refers to the specific instances listed. For example, Regulation 101A(1) could read:

The indirect cost of a MySuper product or investment option offered by a superannuation entity or managed product means any amount that will directly or indirectly reduce the return on underlying assets that are or relate to the investment of the member, including:

Estimations of indirect costs

In response to ASIC’s question (B1Q1) whether we agree with the provision that a trustee may reasonably estimate indirect costs, AIST agrees with the provision that a trustee may reasonably estimate indirect costs where these costs are not known. In essence, the difference between ‘hard close’ costs and ‘soft close’ costs is a matter of time.

AIST believes that outside the Class Order, it would be useful to have Regulatory Guides that provide examples. AIST has previously commented that such Regulatory Guides can be used to clarify calculation methodologies. In this case, any Regulatory Guide could stipulate that the methodology to be used is forward-looking. Stipulation of methodologies assists with reducing any opportunities for ‘gaming’ the Indirect Cost Ratio.

Double counting

ASIC has queried (B1Q2) whether the amended costs definition addresses instances of double counting. AIST believes that draft Regulation 101A indirect costs does exclude double counting of fees, given the provisions of Regulation clause 101A(c) and (d), which excludes those amounts which are not charged to a member.

Definition of switching fee and double counting

ASIC has queried (B1Q3) whether the definition of switching fee results in instances of double counting of a fee where a switch from one product to another within a superannuation entity may be captured by another fee.

AIST believes that the revised definition of switching fee may result in double counting where, for example, the member moves from a ‘balanced’ investment option in MySuper to a ‘balanced’ option in a non-MySuper product. Some funds do mirror the MySuper investment option in Choice options.

Defined fees and switching fees

(B3Q1) Draft Regulation 209A includes trustees being able to set a definition of ‘switching fee’ through incorporation by reference. While AIST understands that this is seeking to remove a definition from the primary disclosure document, AIST believes that the ability to include this definition by incorporation by reference should be removed.

Disclosure surrounding fees is critical to consumers, and therefore should remain within the primary disclosure document.

Consumer advisory warnings

AIST believes the amended consumer advisory warnings better reflects terminology used. Where instances in the consumer advisory warning (e.g. negotiation of lower contribution fees and management costs, or asking via the employer for lower costs) are not appropriate, these should be capable of being deleted as they are confusing to the member. The warning should be at the beginning of the fees section.

General

ASIC Guidance

AIST recommends that outside the Class Order, it would be useful to have a Regulatory Guide, which provides worked examples as well as commentary on how to administer the disclosure requirements. AIST would be very pleased to assist by drafting case studies if ASIC so wishes.

Other clarifications needed

AIST believes that further clarification is needed in relation to:

- The definition of ‘investment fee’. AIST suggests that an investment fee should be excluded from an indirect cost so far as it is a fee charged against the member’s account. Where an investment cost is ‘charged by the trustee through a reduction in a unit price’ (ASIC Information Sheet INFO 197), this would appear to come directly within the definition of ‘indirect cost’ and should be included within the indirect cost calculation.
- Further clarification is needed in relation to ‘transactional costs’. Transaction costs may be incurred by a fund to facilitate investments, rather than acting as a reduction in returns. We note, however, that this may result in the opportunity for entities to obscure costs within transaction costs.

Relationship with APRA requirements

In order for this disclosure to work effectively, AIST believes that is important that APRA expectations about disclosure of underlying fees and costs for reporting purposes are identical to those of ASIC in relation to disclosure. If there is an ASIC test of ‘reasonably ought to know or, where this is not the case, may reasonably estimate’, then APRA’s expectations shouldn’t be at a lower level than this. It is important that the level should not be lower, since this would undermine effective and competitive disclosure in relation to fees.

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