

Regulatory Guide 97 – Our observations on the expert’s report



Background

In November 2015, ASIC amended the enhanced fee disclosure regulations and updated Regulatory Guide 97—Disclosing fees and costs in PDSs and periodic statements (RG97). The application of RG97 in Product Disclosure Statements’ (PDS) disclosures came into effect from 1 October 2017 for those participants that applied for deferral. For new Funds established since 1 February 2017, RG97 is already in effect.

On 1 November 2017, in response to strong feedback from the industry, ASIC announced it would appoint an external expert to conduct a review of the fees and costs disclosure regime.

On 23 July 2018, ASIC released the external expert report prepared by Darren McShane on its website. – [Link](#)

The report at a glance



The expert has engaged with over 120 different stakeholders, compared the approach to fees and costs disclosure with other jurisdictions and considered the current Australian legislative and regulatory framework. The outcome is a comprehensive report that includes 34 recommendations and a number of observations. It concludes that significant changes to RG97 would be beneficial to customers and the industry in order to better meet the objective of enabling customers to easily compare and make informed investment decisions. The expert has cautioned against cherry picking the recommendations.

Main recommendations and observations made by the expert



Consistency and standardisation:

ASIC should work with the industry to improve consistency and standardisation in the way that fee information is set out in PDSs and periodic statements. The fee example in the PDS should also be extended to all investment options. An example of proposed enhanced standardisation includes the calculation of performance fees by reference to the average of the previous five years.



Comparability between MIS, Super and Platforms:

ASIC should aim at reducing or eliminating the differences between fee and cost disclosures appearing in PDSs of Managed Investment Schemes (MIS) and superannuation products and enhancing comparison between Platform and non-Platform based products.



Simplification of categories:

Proposed changes include removing:

- The disclosure of property operating costs, borrowing costs and implicit transactional costs in PDSs
- The distinction between Investment Fees and Indirect Costs for Superannuation funds
- The distinction between performance fees and performance-related fees.



Transparency and comparability:

ASIC should commission a feasibility study as to whether an online comparative tool should be developed to summarise fee and cost information extracted from PDSs by investment option types.



Surveillance:

ASIC should develop and implement a surveillance strategy as a number of market participants have expressed a view that figures disclosed by others are not credible and create serious suspicion about non-compliance.



Other topics

- Clarification of fees disclosure for Platforms
- Simplification of periodic statements disclosure
- No significant change to the consideration of interposed vehicles due to no better alternative immediately apparent



What's next?

ASIC agrees that changes to RG97 are in the interest of customers and the industry. ASIC has communicated that it intends to carefully consider the recommendations made in the report and to release by the end of 2018 a consultation paper setting out its proposed response to the issues raised in the report.

Depending on which, if any, of the recommendations and observations are implemented, this will have consequential impacts across a spectrum of areas. At the most obvious level, RG97 and CO 14/1252 will need to be amended. The impacts are also likely to be significant for the industry, who will need to amend their processes to adjust to the revised legislation.

Industry will need to engage in the consultation and by doing so, focus on what fee and cost disclosures will meet the needs of investors.

ASIC reviews

While the industry waits for ASIC's consultation paper, ASIC has reminded entities to continue to comply with RG97 on a best endeavours basis. In the last six months, ASIC has intervened to improve disclosure in cases where it had concerns that consumers could be misled.

How can PwC help?



Review of methodology and calculations supporting PDSs



Review of methodology and calculations supporting periodic statements



Review of proposed communications with stakeholders (media releases, script for call centres, board communications etc.)



RG97 training to directors, client teams and other key stakeholders

“We were pleased to see the expert report tackle challenging areas such as implicit, borrowing and property costs. In addition to addressing the 34 recommendations, we believe it would be valuable to the industry if ASIC was to also clarify and simplify the determination of interposed vehicles.”

Contacts

Please reach out to any of the below contacts should you wish to obtain further information on the expert review and its consequences.



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