



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 97

Enhanced fee disclosure regulations: Questions and answers

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What this guide is about

The *Corporations Amendment Regulations 2005 (No. 1)* (the enhanced fee disclosure regulations) introduce requirements for disclosure of fees and charges in Product Disclosure Statements (PDSs) and periodic statements for most superannuation and managed investment products.

This guide for product issuers answers some common questions about the enhanced fee disclosure regulations. It:

- incorporates specific guidance issued by ASIC to date; and
- provides guidance on other issues.

Any further guidance will be included in this guide if needed.

Note: This version of the guide updates Section A by deleting and amending some previous questions. It also includes new questions A11 to A13 and questions D1 to D4. The guide was first issued in March 2006 containing previous questions A1 to A10 and B1 to B3. In June 2006 the guide was updated adding questions C1 to C5. Previous guidance by ASIC was issued in Information Release [IR 05-19] *ASIC provides answers on some fees and costs questions* (10 May 2005) and Information Release [IR 05-54] *Further answers on some fees and costs questions* (26 September 2005).

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The *Corporations Amendment Regulations 2005 (No. 1)* (enhanced fee disclosure regulations) and Explanatory Statement can be downloaded from:

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Section A: Product Disclosure Statements

A1 When do the enhanced fee disclosure regulations apply?

The enhanced fee disclosure regulations applied to Product Disclosure Statements (PDSs) for:

- (a) superannuation products provided to retail clients other than:
 - self-managed superannuation funds;
 - superannuation products that have no investment component (also known as risk-only superannuation products);
 - annuities (except market linked annuities including both investment linked and investment account annuities); and
 - life insurance policies offered through a superannuation fund from 1 July 2005.
- (b) managed investment products to retail clients from 1 July 2006.

A2 When do the new requirements apply for managed investment products?

Deleted.

A3 Do the new requirements apply to investment life insurance policies?

In the Explanatory Statement to the enhanced fee disclosure regulations, the Australian Government indicated that it will examine how to appropriately extend the new enhanced fee disclosure regulations to include investment life insurance policies by 1 July 2006. The Explanatory Statement notes this is consistent with the intent of ASIC's model for fee disclosure issued in June 2004.

Note: The Corporations Regulations require disclosure of transactions in periodic statements for investment life insurance products: See reg 7.9.60B(1)(d).

Therefore, as a matter of good practice, we also encourage providers of investment life insurance policies (as commonly understood) to start complying with the new requirements with any necessary adaptation as soon as possible.

A4 What is the status of ASIC's preferred model of good practice for fee disclosure?

ASIC's model for fee disclosure issued in June 2004 is superseded by new requirements in the enhanced fee disclosure regulations.

Note: See Media Release [MR 04-192] *ASIC releases revised fee disclosure model* (16 June 2004).

A5 What information should be included in the fees and costs template for multiple investment options?

The fees and costs template should contain information about all the multiple investment options unless doing so is likely to confuse or mislead consumers because of the volume of the information presented.

Where the volume of information about multiple investment options in the template is likely to confuse or mislead consumers, the Explanatory Statement to the enhanced fee disclosure regulations states that fees and costs information for multiple investment options may be cross-referenced from the fees and costs template to another part of the PDS.

Where a product issuer is cross-referencing from the template to another part of the PDS, the Explanatory Statement also makes clear that as a minimum the template should include the fees and costs information for the balanced investment option and the default option (if relevant or applicable).

Note: See Specific requirements—Clauses 201 to 208—Fees and costs template in the Explanatory Statement.

A6 What information must be disclosed if there is more than one balanced investment option?

The product issuer should include fees and costs information for the balanced investment option with the most funds invested. We think this is consistent with the spirit and substance of the enhanced fee disclosure regulations.

An example of where this may apply is where a superannuation fund has multiple sub-plans with balanced investment options.

Note: In some cases the option called a "balanced investment option" may not contain the asset ratio set out in the regulations. Issuers should use the option where the assets most closely meet the prescribed ratios. See definition of "balanced investment option" in Clause 101 of Part 1 of Schedule 10 to the Corporations Regulations.

A7 Can additional voluntary information be included in the fees and costs template and the example of annual fees and costs?

Generally, additional voluntary information should not be included in the fees and costs template or in the example of annual fees and costs. However, we acknowledge that in limited circumstances some tailoring of the fees and costs template and the example of annual fees and costs can occur.

Note: See D1 where some Responsible Entities may need to adapt the example of fees and costs to take into account the nature of the scheme and its fee and cost arrangements.

Examples might be where:

- gross fees do not accurately reflect the cost of a product to the consumer—in this case, a product issuer may also wish to include the net fees with a simple explanation;
- a total figure for management costs is inserted—in this case, a product issuer may also choose to show how that cost is split; or
- management costs do not affect a consumer's investment (e.g. in a pure defined benefit super fund)—in this case, a product issuer may wish to include a note explaining this.

Note: See Section C for a definition of a 'pure defined benefit super fund'.

When including additional information, product issuers should bear in mind the requirement to show information in a clear, concise and effective manner: see s1013C(3) of the *Corporations Act 2001*.

In particular, product issuers should be careful not to complicate disclosure by including large amounts of information. We will closely monitor any tailoring of these PDS requirements by product issuers to ensure that the ability of consumers to effectively compare products is not affected.

A8 Can additional voluntary information be included in the boxed consumer advisory warning?

We do not consider there are any circumstances where additional voluntary information can be included in the boxed consumer advisory warning.

A9 Can prescribed information be omitted?

In general, we do not consider there are any circumstances where prescribed information can be omitted from the fees and costs template, the example of annual fees and costs, or the boxed consumer advisory warning.

Note: See D1 where some Responsible Entities may need to adapt the example of fees and costs to take into account the nature of the scheme and its fee and cost arrangements.

A10 Can updated fee and cost information be provided in a supplementary PDS?

Updated fee and cost information can be provided in a supplementary PDS. However, where the correction or update concerns information in the fees and costs template (or in the example of annual fees and costs), product issuers should include in the supplementary PDS a complete fees and costs template and, where necessary, a complete example of annual fees and costs reflecting the amended fees and costs.

This is to assist consumers to understand the fees and costs of a product by not having to look in two places for information included in the most up-to-date template.

A11 What is meant by "components" in clause 204(6) of Part 2 of Schedule 10?

Where the structure of an amount or cost prevents it from being presented as a single amount, it can be broken into components.

The components must however show the amount or cost that will be paid by consumers.

Components that show how the amount or cost recovered by the product issuer will be applied by the issuer (e.g. custodian fees) are not useful to consumers in understanding the cost to them and, if included in the fees and costs template, may complicate disclosure.

Product issuers can include information on how amounts or costs recovered by the issuer will be applied in the 'Additional explanation of fees and costs' section of the PDS.

A12 Where fees or costs are reduced, waived or a rebate is offered, what figure should be included in the calculation of management costs?

Where it is reasonable to expect that the reduction or waiver will continue (i.e. effectively the fee or cost has been reduced), the calculation of management costs should reflect the reduction or waiver.

Where the period of the reduction or waiver is known, the fees and costs template should include two entries - one for the 'honeymoon' or reduced period and one for when the honeymoon period or reduced period expires (or the maximum fee applicable in the constitution or trust deed for the fund).

If a product issuer has instituted a flexible charging structure the 'Additional explanation of fees and costs' section of the PDS should disclose any maximum, the times and when it would apply and any waiver and when it would not apply.

Note: See Clause 209(1) of Part 2 of Schedule 10 to the Corporations Regulations.

Similarly, if a product issuer offers a rebate, the 'Additional explanation of fees and costs' section of the PDS should disclose how the rebate is calculated and when it applies.

Note: Where issuers of a managed investment scheme impose differential fee arrangements for some members, they should consider Class Order [CO 03/217] *Differential fees*.

A13 Can contingent fees or costs be excluded from the calculation of management costs?

Generally no. We consider contingent fees and costs to be part of management costs.

This is because management costs are intended to capture all relevant costs involved in managing the fund and deriving an investment return for product holders. These include amounts that are chargeable but which may not be charged in the particular circumstances of all product holders or of the fund or scheme. These amounts may be contingent.

However, contingent fees or costs will not be management costs where they fall within an exclusion.

Note: See Clause 102(2) of Part 1 of Schedule 10 of the Corporations Regulations for costs that are not management costs.

For example, if contingent costs are incidental fees they can be excluded from the calculation of management costs. However, where the contingent fees or costs can materially impact the consumer's decision in relation to a product, they will not be incidental fees and should be included in the calculation of management costs.

Note: "Incidental fees" are defined at Clause 101 of Part 1 of Schedule 10 of the Corporations Regulations.

Issuers can provide an explanation of the contingent costs, and the circumstances in which they are likely to be charged, in the 'Additional explanation of fees and costs' section of the PDS.

Section B: Indirect cost ratio

B1 What do product issuers need to take into account when disclosing management costs and the indirect cost ratio (ICR)?

Management costs information needs to take into account *at least* the costs of direct investments and the cost of investments in an entity that may itself make further investments (an interposed entity).

Management costs information about the investments made by an interposed entity (and other entities in a chain of such entities) should be included in the assessment of management costs to the extent these are known to the product issuer.

By way of background, we note that:

- product issuers will be aware of all management costs information for direct investments made by the issuer.
- where a product issuer makes investments in an interposed entity, the product issuer will also be aware of all management costs information about investing in the interposed entity.
- product issuers may also be aware of management costs information relating to those further investments made by an interposed entity.

B2 How can estimated performance fees be included in assessing management costs and the ICR?

Product issuers will be able to satisfy this requirement by basing the assessment of performance fees on reasonable assumptions consistent with Policy Statement 170 *Prospective financial information* [PS 170]. For example, if appropriate, performance fees could be estimated by reference to the previous 12 months' performance.

As required by the enhanced fee disclosure regulations, the actual estimate of performance fees used to assess management costs and the reasonable assumptions on which it is based should be included in the 'Additional explanation of fees and costs' section of the PDS.

B3 How current must management costs information be when calculating the ICR?

The product issuer should use the most current management costs information available for determining the ICR at the time that the PDS is issued. Typically, this will be management costs information for the last financial year ended before the issue of the PDS.

Note: If management costs information for the last financial year is not available, information for a different financial period can be used provided that it is reasonably current and that its use is not misleading to consumers. For example, a product issuer may determine that a period of less than 12 months may be appropriate.

However, where current or prospective fee information is available which differs to that applying over the financial year before the PDS is to be issued, this most recent fee information should be used to calculate the management costs and ICR. This may also be required to ensure the PDS is not misleading.

Note: See 'Clause 104 Indirect Cost Ratio (ICR)' in the Explanatory Statement to the enhanced fee disclosure regulations.

In any case, a product issuer should prepare updated management costs information where the issuer knows it would be misleading to continue to rely upon management costs information in the PDS from a previous financial period (whether the most recently ended financial year or a later financial period).

For example, this updated information can be included in a supplementary PDS, or, if it is not materially adverse, it can be made available in a way allowed under Class Order [CO 03/237] *Updated information in product disclosure statements*.

Section C: Periodic statements

Note: For the purposes of A7, C1, C2 and C3, a ‘pure defined benefit super fund’ is a fund where the members are entitled to benefits defined *solely* by reference to the factors in paragraphs (a) and (b) of the definition of ‘defined benefit member’ in reg 1.03(1) of the SIS Regulations.

C1 How are pure defined benefit super funds expected to report contribution transactions?

Product issuers of pure defined benefit super funds should, as a minimum, report transactions that are:

- receipt of a member’s contributions; and
- receipt of benefits rolled over or transferred into the fund in respect of a member.

Note: See reg 7.9.20(1)(a) and 7.9.20(1)(b) of the Corporations Regulations.

We do not expect issuers of pure defined benefit super funds to report bulk and generalised employer contributions that are calculated to maintain the general solvency of the fund and that do not specifically relate to individual members.

C2 How are pure defined benefit super funds expected to report transactions (other than contributions) that do not impact on the final benefit?

Product issuers of pure defined benefit super funds should, as a minimum, report transactions in respect of a particular member.

However, if they choose, issuers can note in the brief description of the transaction that they do not impact on the member’s final benefit.

We do not expect issuers of pure defined benefit super funds to report transactions that are made at the fund level that do not relate to a particular member.

A product issuer may however choose to include a brief note explaining the transaction.

Note: Any such additional note should take into account the matters raised in A7.

C3 For a pure defined benefit super fund, can ‘Other management costs’ and ‘Total fees you paid’ be disclosed as zero?

We acknowledge that in a pure defined benefit super fund, the management costs of the fund may ultimately be borne by employers and not impact on consumers’ defined benefit entitlements.

Where there are no management costs or other fees and costs that affect the consumer's investment, the 'Other management costs' and 'Total fees you paid' items can be shown as zero.

A product issuer may also choose to include a brief note as to how the management costs of the fund are financed.

Note: See Clause 301—Other management costs and Clause 302— Total fees you paid in the Explanatory Statement. See also our comments on management costs disclosure in PDSs for defined benefit funds at A7.

C4 When will GST, stamp duty or income tax be applicable to the amount of a transaction?

Product issuers should include GST, stamp duty or income tax (after deductions) in the amount of a transaction where these are incurred at the time of the transaction.

If GST, stamp duty or income tax are not an inherent part of the transaction to which they relate, they should be reported as separate transactions.

An example is a transaction that is the receipt of a superannuation contribution for a member. The receipt of the contribution does not, of itself, involve income tax at the time it is received. Reduction of the member's account balance to reflect income tax payable by the trustee in relation to the contribution is another transaction, which may occur after the fund has received its income tax assessment.

In this case there are two transactions that must be reported separately:

- receipt of the contribution; and
- any reduction of benefits for fund income tax.

C5 Can transactions be grouped on an annual basis?

The Explanatory Statement makes it clear that each type of grouping should be considered on its merits. Product issuers will therefore need to make their own assessment of whether annual grouping will achieve clear disclosure of the relevant fee.

Note: See Item 7—Regulation 7.9.60B—Disclosure of Transactions in Periodic Statements—'Specific requirements' in the Explanatory Statement and the example in reg 7.9.60(B)(5).

Grouping should not obscure the true frequency or amount of a recurring fee. Using a sub-total would help meet this objective (e.g. weekly administration fee of \$1 for 52 weeks: total \$52).

In some cases, annual grouping may not be appropriate. An example is where there is a fee increase during the reporting period (e.g. weekly administration fee until 31 December 2005 of \$1 for 26 weeks: total \$26 and weekly administration fee until 30 June of \$1.50 for 26 weeks: total \$39).

Section D: Managed investment products

D1 How should issuers of managed investment products comply with the example of annual fees and costs?

The enhanced fee disclosure regulations require PDSs for managed investment products to provide consumers with a prescribed worked example of the application of fees and costs in relation to the product during a single year's holding of the product.

Note: See Division 5 of Part 2 of Schedule 10 of the Corporations Regulations

Where the nature of the product and its fees and costs arrangement supports disclosure in the prescribed format, that format must be used and prescribed information cannot be omitted. An example of such a product is an investment type product.

Note: See A9 about omitting prescribed information.

In other cases, we think that it would be good practice for the product issuer to adopt a format that provides consumers with a clear example or examples of the application of the fees and costs arrangements of the product.

Any adapted format for the example of annual fees and costs should bear in mind the objectives of the regulations and continue to reflect the central features of the prescribed format in Schedule 10 including:

- the placement of the example of annual fees and costs in the Fees section of the PDS;
- making the minimum necessary adaptations to the required preamble to the worked example;
- that the fees and costs should be the typical ongoing costs that apply to the product as required to be disclosed in the worked example;
- if contributions are clearly not relevant, the adapted disclosure need not refer to contributions as would otherwise be required in the worked example;
- that management costs are calculated in accordance with the definition in the enhanced fee disclosure regulations;
- that the adapted format note any establishment and withdrawal fees that may apply consistent with the prescribed content and format for the worked example.

ASIC also expects that in adapting the disclosure product issuers will provide a clear, concise and effective description of the annual

application of fees and costs for the product and make such disclosures as necessary to ensure it is not misleading or deceptive.

For example, the fee and cost structure for a certain managed investment product may mean that in a typical ongoing year there are no fees and costs applied, but other fees and costs are applied at or towards the end of the product holding (eg harvest fees for agricultural schemes). In this case, we would expect the adapted disclosure of the annual application of fees and costs to clearly refer to these so that the description of the cost free typical ongoing year refers to these later fees and costs.

D2 How should fees and costs information be disclosed for a stapled security?

Where a joint disclosure document is used for a stapled security, we think it is good practice for all fees and costs information for both the managed investment and equity components of a stapled security to appear in a single fees and costs section.

Note: A typical stapled security involves the stapling of an interest in a managed investment scheme to a share of a company. Stapled securities may be issued through separate disclosure documents or through a combined PDS/prospectus document.

In any case, disclosure of fees and costs information relating to the managed investment component of the stapled security must comply with the enhanced fee disclosure regulations.

We also think that it is open to a product issuer of a joint disclosure document to apply the enhanced fee disclosure content and presentation requirements to the equity component of the stapled security. This may mean providing consolidated fees and costs information for both the managed investment and equity components of the stapled security in the fees and costs template and then breaking down this information in the 'Additional explanation of fees and costs' section of the joint PDS/prospectus.

Consolidating all fees and costs information for both the managed investment and equity components of the stapled security in the fees and costs section of the combined PDS/prospectus (whether or not using a consolidated fees and costs template) will reduce the risk of misleading or deceptive disclosure.

D3 How should contributory mortgage issuers disclose transaction-specific fee information?

Product issuers of contributory mortgage schemes may wish to split fee disclosure information by placing general fee information in a PDS and transaction-specific fee information in a supplementary PDS.

Note: See Frequently asked questions [QFS 146] *How can continuous issuers of financial investments and contributory mortgage products comply with the PDS disclosure obligations?*

However, if product issuers of contributory mortgage schemes split fee information, we think it is good practice for all fee information required by the regulations to be set out together in the supplementary PDS.

This might mean some repetition of general fee information in the supplementary PDS. However, this helps consumers to understand the fees and costs of a product by not having to look in two places for that information.

Note: This guidance is consistent with our interpretation of the enhanced fee disclosure regulations set out in A10 about disclosure of updated fee information.

This guidance is also relevant for issuers of contributory mortgage schemes who use a two part PDS.

D4 How should start-up and initial one-off fees or costs be disclosed?

Generally, start-up and initial one-off fees or costs should be included in management costs in the fees and costs template.

This is because management costs are intended to capture all relevant costs involved in managing the fund and deriving an investment return.

Note: Start-up and initial one-off fees and costs can only be excluded from management costs if they fall within one of the exclusions in Clause 102(2) of Part 1 of Schedule 10 of the Corporations Regulations.

For example, some agricultural schemes have a 'start-up' cost that is often tax deductible. Typically, this cost bundles some or all of the management costs for the scheme up front. We take the view that such costs are management costs.

Start-up and initial one-off fees or costs are not typically ongoing fees and therefore do not have to be reflected in the annual example of fees and costs. However, to avoid the possibility that a consumer may misunderstand the cost structure of the product, we think it is good practice for issuers to explain these start-up and initial one-off fees and costs. For example, issuers can provide any one or more of a:

- description of these initial and start-up fees or costs in a note under the annual example of fees and costs;
- further example after the prescribed annual example of fees and costs;
- further example in the fees and costs template; or
- a description and further example in the 'Additional explanation of fees and costs' section of the PDS.