At a Q & A session with ASIC on 10 February 2017, EY sought guidance on the new clarifications around the fee and cost disclosure requirements for superannuation and managed investment products. The requirements differ for superannuation and managed funds and application in some circumstances will necessitate a number of estimates.

Here is our take on ASIC’s views.

**Won’t these changes make products look more expensive?**

The changes will improve transparency and lead to fairer competition. ASIC is aware the requirements may make some products look more expensive, but suggests that cost is just one factor that investors consider. They also evaluate products based on asset allocation, investment strategy and performance.

**Will any further extension be granted?**

ASIC does not plan for any further extensions. Issuers with special circumstances may apply for relief through RG 51. Applications for relief and ASIC may grant relief through RG 169. Disclosure: Discretionary powers. However, ASIC is cautious about giving such relief.

**What will ASIC do with the fee and cost data provided by issuers using the extension period?**

Around 220 notifications have been received from issuers opting for the extension period. ASIC will analyse the data and will provide feedback to issuers where any unusual results are detected. No action will be taken unless issuers are found not to have taken reasonable steps. Compliance reviews will be undertaken post 30 September 2017.

**Does RG 97 apply for MDA providers and is RG 97 relevant for closed products?**

Aside from superannuation and managed funds, MDAs will need to comply with the fee disclosure requirements by 1 October 2017. RG 97 has limited relevance for closed products, but issuers should still consider the impact on periodic statement reporting requirements, as well as ongoing obligations in respect of significant event notice disclosures.

**What are the more difficult aspects of implementing RG97?**

- Calculating ‘implicit’ transaction costs. RG97 does not refer to ‘implicit’ costs, rather it categorises transaction costs as the difference in price between the purchase and immediate sale of an asset. How to determine these costs is currently an area for discussion, with limited industry guidance on a number of more exotic assets.

- Determining the appropriate amount to be treated as costs in respect of OTC derivatives - see RG 97 and the legislative instrument.

If you are using estimates, make sure you keep records of the methodology and results.

**Are there differences between APRA and ASIC requirements for fee and cost disclosures?**

ASIC confirmed that the RG97 updates have taken concern over different treatments into consideration. Given the APRA Data Reporting Standards require information based on PDS disclosures, there should not be inconsistencies.

**Could disclosure errors result in compensation or remediation action?**

Not necessarily, as they may not affect the net assets of the fund or member balances. Investors may have a right to compensation if they have been misled and the issuer has not taken reasonable steps. If a reasonable estimate is made but turns out to be inaccurate, this may not give rise to a right to compensation. However, investors may be entitled to compensation if the resulting costs are significantly higher than those disclosed in the PDS and the issuer has not taken reasonable steps to estimate the costs.

**What are explicit transactional and operational costs and what is an implicit cost? How should they be disclosed?**

Explicit transaction costs include those additional costs incurred on asset purchases, such as brokerage fees and stamp duty, which always need to be disclosed.

Implicit transaction costs are often embedded in the price paid for an asset and can be determined as the difference between that price and the price achieved if the asset were to be immediately sold following purchase. They need to be considered for a wide range of assets including property and unlisted assets, including OTC derivatives, as well as some listed assets. You should estimate and disclose implicit costs in the additional explanation section of the PDS, not as an indirect cost or investment fee nor in the dollar based example.

**What constitutes a “reasonable estimate” in determining fees and costs?**

Since the guidance does not define materiality, you should consider industry standards and look at this issue from the investor’s perspective.

ASIC also recommends:

- When deciding the level of effort, consider: information availability, relationships with third-party providers, absolute and relative size of the costs, relevant time periods and causes of the change (one off vs. ongoing).

- Take the materially adverse test into account when estimating performance fees.

- Where applicable, explain briefly why future costs might be higher compared with the current PDS disclosures.
Questions to consider

- Have you identified and determined your indirect costs in accordance with the modified definition?
- Have you correctly applied the Assets test, PDS test and Platform test for interposed vehicles?
- Are you able to source required data to determine or estimate your costs?
- Do you understand the disclosures required for transactional and operational costs, both explicit and implicit?
- For items that need to be disclosed on a prospective basis, how have you assessed the reasonableness of estimates?
- How have you treated OTC derivatives when determining and disclosing costs?
- Have you documented your thought process/methodology?
- What processes do you have in place for ongoing monitoring of disclosures?
- How robust is your process to implement the updated requirements and what comfort have you provided your Board?

Polling results from EY’s event

How progressed are you in meeting the updated RG 97 requirements?

<table>
<thead>
<tr>
<th>Level</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>2%</td>
</tr>
<tr>
<td>Medium</td>
<td>37%</td>
</tr>
<tr>
<td>High</td>
<td>37%</td>
</tr>
<tr>
<td>None</td>
<td>24%</td>
</tr>
</tbody>
</table>

What do you expect the impact to be on total costs disclosed in the $50K fee example in your PDS, as a result of implementing the updated requirements?

<table>
<thead>
<tr>
<th>Level</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>2%</td>
</tr>
<tr>
<td>Moderate</td>
<td>37%</td>
</tr>
<tr>
<td>Low</td>
<td>37%</td>
</tr>
<tr>
<td>None</td>
<td>24%</td>
</tr>
</tbody>
</table>

Where can you get more information?

ASIC encourages you to participate in industry workgroups to determine appropriate templates to collate fee and cost information and guidance notes for consistent PDS disclosures. You’ll also find additional guidance here and can ask questions via email feeandcostdisclosure@asic.gov.au

To find out how we can help you meet your RG97 fees and costs disclosure requirements, contact:

Darren Handley-Greaves
Oceania Financial Services Assurance Leader
Darren.Handley-Greaves@au.ey.com
+61 2 9248 5118

Maree Pallisco
Oceania Superannuation Leader
Maree.Pallisco@au.ey.com
+61 3 9655 2508

Rita Da Silva
Partner, Financial Services
Rita.da.silva@au.ey.com
+61 2 8295 6142

Nadine Frketic
Director, Financial Services
Nadine.Frketic@au.ey.com
+61 2 9248 4574

EY | Assurance | Tax | Transactions | Advisory

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2017 Ernst & Young, Australia.
All Rights Reserved.

APAC no. AU00002907

This communication provides general information which is current at the time of production. The information contained in this communication does not constitute advice and should not be relied on as such. Professional advice should be sought prior to any action being taken in reliance on any of the information. Ernst & Young disclaims all responsibility and liability (including, without limitation, for any direct or indirect or consequential costs, loss or damage or loss of profits) arising from anything done or omitted to be done by any party in reliance, whether wholly or partially, on any of the information. Any party that relies on the information does so at its own risk. Liability limited by a scheme approved under Professional Standards Legislation.

ey.com/au