

### Executive summary

1. The Financial Markets Conduct Act 2013 (Act) and Financial Markets Conduct Regulations 2014 (Regulations) have introduced new disclosure requirements for managed funds. These include a requirement to prepare quarterly fund updates, which, among other things, set out information relating to the total charges of the fund.
2. We have provided guidance to help managers and supervisors understand the new disclosure obligations, and the various categories of fees and charges they must disclose. In formulating this guidance, we undertook a number of rounds of consultation with industry on the subject. Following these consultations, we considered the industry's submissions and suggestions on the regulatory and financial impact of the guidance. Our assessments were made based on:
  - the purpose of the legislation
  - the likely compliance cost
  - the likely effect on competition
  - other impacts, costs and benefits.
3. This report outlines the key issues raised by the industry on our draft versions of *Guidance Note – Fee disclosure by managed funds* – and our responses to the issues raised. This report covers key issues only. It is not intended to be a comprehensive summary of all responses received, nor does it report on every question we sought feedback on.

### About our consultation process

4. We undertook three rounds of consultation, targeted at managed funds, their supervisors and investors. The first was in October 2015 where we sought views on our guidance on:
  - calculation of returns applying a 0% prescribed investor rate (PIR) for funds
  - disclosures related to performance-based fees, and
  - classification of underlying funds (initial consultation).
5. In total we received 27 submissions on the initial consultation, primarily from fund managers. However, one law firm and industry association also responded. The first two items were non-controversial. Nearly all who submitted supported the FMA's proposed approach, although some useful clarifications were suggested. In February 2016, we released two information sheets which outlined our expectations on preparing 0% PIR returns for funds, and the disclosures which should be provided with performance-based fees.
6. Feedback received as part of the initial consultation and subsequent discussions with industry participants raised additional issues that we could address through our guidance. We extended the consultation process to cover additional related matters, including clarifying the definition of 'manager's basic fee'. In March 2016 we undertook a round of targeted consultation on our approach to the manager's basic fee. We received nine submissions from industry on the consultation.



## Response to submissions on fee disclosure by managed funds

7. In April 2016, amendments to the proposed guidance were sent to industry for final consultation (final consultation). We received another 11 submissions. The final consultation was focused on the issue of classifying underlying funds. We also asked stakeholders about the costs, benefits and other impacts of the proposed guidance, and whether they needed further guidance to help them understand their obligations.
8. This report highlights the key issues raised in submissions and our responses to those issues. Feedback from the consultation process helped us in developing and finalising our guidance. A list of all submitters is available in Appendix 1.

### Initial consultation

9. As noted above, our proposed guidance on the calculation of returns applying a 0% prescribed investor rate (PIR) and disclosures related to performance-based fees, were supported by submitters.<sup>1</sup> However, the industry had considerable feedback on aspects of the draft guidance which related to the classification of underlying funds.

### Listed entities

10. The majority of submitters voiced concern about the treatment of listed investment entities (such as listed property trusts and listed investment funds). They felt that listed entities should be excluded from the definition of underlying fund. There was also uncertainty as to how fund managers were expected to calculate costs for listed entities. Calculations were said to be complex and subject to a high risk of errors. In addition obtaining the data required to provide the proposed level of disclosure was said to be extremely difficult to impossible.
11. We acknowledge that managers may face difficulty in ascertaining the management costs of a listed entity, particularly for investments in overseas entities. Although the cost of compliance is a relevant consideration, we do not feel all listed entities should be excluded from the definition of an underlying fund simply because this would be a difficult exercise for the industry. We have clarified that there will not be any disclosable fees in relation to many listed entities, but we believe there are certain listed entities which have features highly synonymous of a fund and understand that the definition of 'fund' and 'underlying fund' in the Regulations were broadly drafted with these entities in mind.

### Additional guidance

12. We received a number of submissions asking for more substantive guidance on why an investment vehicle should be classified as a fund. Given the complexity of this issue, we have attempted to provide additional guidance that helps to delineate between funds and non-funds. These tests have been developed with the intention of the fee disclosure provisions in mind. This ensures investors are informed of the additional fees or costs they incur when they invest in a fund, as opposed to directly investing in the underlying asset. We have also provided examples and a flowchart to help with the process of applying the tests.

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<sup>1</sup> For a summary of the submissions see our website here: <http://fma.govt.nz/compliance/consultation/consultation-papers/consultation-paper-draft-guidance-on-disclosure-of-certain-fees-and-returns-by-managed-funds/>

13. It is noted that some of the additional guidance is extensively similar to the criteria which apply in Australia for interposed vehicles. Similar to the position in New Zealand, Australian funds managers are required to disclose the costs imposed by interposed vehicles. By adopting an approach that is broadly consistent with Australia, New Zealand fund managers looking to collect information on fees and charges from overseas investment entities may be able to leverage off work done by larger Australian fund managers.

### Minimum threshold

14. Some submitters proposed that there should be a minimum investment threshold, under which managers would not be required to ascertain whether an investment constitutes an underlying fund. Their view is where an investment constitutes a small percentage of a fund's total assets, the influence of that investment on the funds' overall fee disclosure would not be significant. They argued that this approach would reduce compliance costs without materially affecting the quality or accuracy of the disclosure.
15. The Regulations do not allow a materiality threshold to be introduced. If an investment is determined to be in an underlying fund, then the disclosure requirements must be complied with. However, where actual figures are not available, the Regulations allow managers to make a best estimate of the fees or costs of an underlying fund. In this regard, we consider it acceptable for managers to consider the materiality of the investment. Where a fund has a significant amount invested in an underlying fund, we would expect more strenuous attempts to be made to obtain information than we would if the amount was negligible. The revised guidance outlines our expectations in this area.

### Manager's basic fee consultation

16. The 'manager's basic fee' must be disclosed separately as part of a fund update. It is a subset of a fund's overall management and administrative charges and refers to the fees 'charged by the manager in respect of the fund'. In March 2016, we undertook a round of targeted consultation seeking feedback on whether the manager's basic fee should relate only to fees charged by the manager for its own services (that is, services actually provided to the fund by the manager). Accordingly, all third-party fees, irrespective of whether they are charged to the manager (and then charged to the fund) or charged directly to the fund, must be disclosed in the 'other management and administration charges' line item in the table.
17. The majority of submitters queried whether it was necessary for the manager's basic fee to be disclosed less any fees paid to external managers. It was noted this had no reflection on the overall cost of the fund, but simply reflected whether the manager had internal staff to undertake administrative functions, or chose to engage external consultants. Submitters instead suggested that it would be more helpful for the manager's basic fee to provide investors with information about all the fees that are charged to them for the management of their investment, rather than information about the margins retained by the managers.
18. Some submitters were concerned that the proposed interpretation may result in the disclosure of commercially sensitive information on margins and contractual arrangements. However, not all submitters felt this was a concern, given the disclosure would be made as a bundled amount. A number of submitters noted that they would incur systems costs and personnel time-cost to extract data on the third party fees from the manager's fee they charged.



## Response to submissions on fee disclosure by managed funds

19. Based on submissions, it was apparent that the proposed approach to manager's basic fee may introduce significant compliance costs for managers with little additional benefit to investors. We have amended our guidance to accord more with existing industry practice, whilst still following the wording of the legislation. The amended approach also recognises the differences that exist in the way managed funds are structured and provides for more consistent and comparable disclosure.

### Final consultation

20. In April 2016 we released a final draft of the proposed guidance to the industry for comment. The submissions received indicated a broad acceptance of the proposed approach to classifying underlying funds and to the guidance more generally.

21. Some submitters asked us to clarify certain points. Minor amendments were made to the guidance in line with these. A few amendments were also made to areas where there might be some misunderstanding of the guidance.

22. Most submitters were comfortable with the additional tests proposed to classify an underlying fund. Some concerns remained as to the treatment of listed property trusts. A suggestion was that to avoid different treatments amongst different fund managers, listed property trusts should either be excluded from the definition of an underlying fund, or specifically included in all respects. Another submitter suggested that the fees of listed entities should be specifically excluded from 'management and administration charges' as defined.

23. We acknowledge that the treatment of listed property trusts remains a complicated issue. We will continue our dialogue and liaison with the industry to help them comply with their disclosure requirements. We also encourage industry bodies and groups to work together to help achieve consistency. We will continue to monitor this area and consider amendments to our guidance in the future if necessary.

### Where to from here?

24. The guidance will be published on our website and participants notified.

25. We will assess whether the information provided has helped fund managers and investors by monitoring the fee related disclosure they provide, and through our ongoing communication and liaison with industry. Further guidance may be provided in the future where difficulties remain.

## Appendix 1 – List of submitters

October 2015 consultation	March 2016 consultation	April 2016 consultation
AMP Capital Investors (NZ) Limited	ANZ Bank New Zealand Limited	AMP Capital Investors (NZ) Limited
AMP Wealth Management New Zealand	Civic Assurance	ANZ Bank New Zealand Limited
ANZ Bank New Zealand Limited	Fisher Funds	Dynamique Risk
ASB Bank Limited	King Tide Asset Management	Fisher Funds
Aspiring Asset Management Limited	Milford Asset Management	Implemented Investment Solutions Ltd
BT Funds Management (NZ) Limited	MMC Limited	Kensington Swan
Devon Funds Management	Mercer (N.Z.) Limited	Mercer (N.Z.) Limited
Dynamique Risk	Nikko Asset Management New Zealand Limited	Milford Asset Management
Grosvenor Financial Services	Westpac New Zealand Ltd	New Zealand Funds Management Ltd
Guardian Trust		Salt Funds Management
Financial Express Australia		Socrates Fund Management Ltd
Fisher Funds		
Hassan & Associates		
Harbour Asset Management		
Implemented Investment Solutions Ltd		
Kensington Swan		
King Tide Asset Management		
Mercer (N.Z.) Limited		
MMC Limited		
Milford Asset Management		
New Zealand Funds Management Limited		
New Zealand Bankers' Association (NZBA)		
New Zealand Assets Management Ltd		
Nikko Asset Management New Zealand Limited		
Pathfinder		
Salt Funds Management		
Socrates Fund Management Ltd		



## Response to submissions on fee disclosure by managed funds



### Document history

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This version was issued in May 2016 and is based on legislation and regulations as at the date of issue.

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