

## ASIC CLASS ORDER [06/636]

### EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

Paragraph 1020F(1)(c) – Declaration

The Australian Securities and Investments Commission (ASIC) makes this Class Order [C0 06/636] *Superannuation: Investment strategy disclosure* under s1020F(1)(c) of the *Corporations Act 2001 (the Act)*. Section 1020F(1)(c) provides that ASIC may declare that Pt 7.9 of the Act applies in relation to a person as if specified provisions were modified.

#### 1. Background

Section 1012IA applies to custodial arrangements that allow a retail client to instruct the provider to acquire particular financial products (*accessible financial products*) that either:

- (a) are held on trust for the client (or its nominated beneficiary); or
- (b) otherwise provide a reference for the calculation of benefits for the client (or its nominated beneficiary).

An example of this type of arrangement is an investor-directed portfolio service (IDPS).

In addition, s1012IA applies to superannuation trustees who offer a choice of investment strategies to members where, if the member instructs the trustee to follow a particular strategy, the trustee will acquire accessible financial products on behalf of the member. The application of s1012IA to superannuation trustees has been deferred until 30 June 2007 (by ASIC Class Order [CO 03/1097] *Deferral of s1012IA*).

A superannuation trustee must prepare and give a product disclosure statement (*superannuation entity's PDS*) for interests in the superannuation entity. The superannuation entity's PDS must include information about the investment strategies available to members. If the member selects an investment strategy that will involve the acquisition of accessible financial products, the superannuation trustee must give the member a PDS for each accessible financial product (*accessible product PDS*) before the trustee—acting on the member's instruction—acquires that product: see s1012IA of the Act. The issuer of the product must prepare the accessible product PDS. Both the superannuation entity's PDS and the accessible product PDS must satisfy the requirements in Div 2 of Pt 7.9 of the Act, with the result that there will be duplication of information between these disclosure documents.

The superannuation industry has identified three anticipated difficulties with complying with s1012IA without modification, when it comes into effect for superannuation trustees. They are:

- (a) the duplication of disclosure obligations. Under the Act, a superannuation trustee needs to provide information about the accessible financial product to members twice — in the superannuation entity's PDS, which is prepared by the trustee, and in an accessible product PDS, which is prepared by the issuer of the financial product;
- (b) the law does not allow the superannuation trustee to prepare the accessible product PDS (it must be prepared by the product issuer). Many superannuation trustees indicated a strong preference to prepare the information that must be provided to members about the accessible financial products; and
- (c) the superannuation trustee must give a member a PDS each time an accessible financial product is acquired by the trustee on behalf of the member. Each additional investment of money by the member will be an additional acquisition, with the result that the member will generally be repeatedly given the same accessible product PDS.

ASIC has adopted Policy Statement 184 *Superannuation: Delivery of product disclosure for investment strategies* [PS 184], which outlines options to address these difficulties with compliance with s1012IA. [CO 06/636] gives effect to those relief options.

## **2. Purpose of the class order**

The purpose of [CO 06/636] is to give effect to the policy position outlined in [PS 184]. Specifically, [CO 06/636]:

- (a) removes duplication between multiple disclosure obligations;
- (b) enables superannuation trustees to take responsibility for the information provided to members about accessible financial products; and
- (c) recognises that, in many cases, additional money will be invested in an accessible financial product at frequent intervals over a lengthy period of time and the disclosure obligations need to be appropriate for that situation.

## **3. The class order**

[CO 06/636] modifies the law in two main ways. It provides:

- (a) two options to enhance mechanisms by which the superannuation trustee can prepare and deliver information about accessible financial products included in available investment strategies (the *trustee's accessible product PDS option* and the *issuer's accessible product PDS option*); and
- (b) relief to limit the obligation on the superannuation trustee to repeatedly provide the same information to members for each additional investment in an

accessible financial product under an investment strategy that the member has instructed the trustee to follow (*relief for additional acquisitions*).

### *The PDS options*

Without the modifications provided by [CO 06/636], a superannuation trustee would need to include the disclosure about accessible financial products required under s1013D and 1013E in the superannuation entity's PDS and, in addition, under s1012IA, give a member an accessible product PDS prepared by the issuer of the accessible financial product that also satisfies s1013D and 1013E. This means that a member would be given the same disclosure in two forms. This duplication is an unnecessary burden for the superannuation trustee and potentially confusing for members.

[CO 06/636] modifies the law to limit the information about accessible financial products that must be included in the superannuation entity's PDS (i.e. we give relief from s1013D and 1013E) provided that the superannuation trustee also gives the member detailed disclosure about accessible financial products in a separate accessible product PDS. There are two options:

- (a) under the trustee's accessible product PDS option, the superannuation trustee will be responsible for *all* the required disclosure information. The trustee will prepare both the superannuation entity's PDS plus an accessible product PDS giving detailed disclosure about any accessible financial products that will be acquired on the member's behalf; or
- (b) under the issuer's accessible product PDS option, the superannuation trustee will be responsible for *some* of the required disclosure information. The trustee will prepare the superannuation entity's PDS, but will give detailed disclosure about any accessible financial products that will be acquired on the member's behalf by giving members a copy of an accessible product PDS that has been prepared by the issuer of the accessible financial product.

A trustee may choose to rely on either option or to comply with the law without modification.

Both options include conditions requiring the superannuation trustee to ensure that, at a minimum, the superannuation entity's PDS contains information that will allow the member to:

- (a) identify the accessible financial products;
- (b) understand the investment strategies available to members;
- (c) work out whether to ask for more information about the accessible financial products; and
- (d) understand the differences between the rights of a person who purchases an accessible financial product directly as a retail client and the rights of a member where the superannuation trustee acquires the product on behalf of a member.

The superannuation entity's PDS must also include a statement that the superannuation trustee will, if requested, provide an accessible product PDS for each accessible financial product that will be acquired under an investment strategy.

This relief does not affect the trustee's disclosure obligations under the *Superannuation Industry (Supervision) Act 1993* or the Superannuation Industry (Supervision) Regulations 1994.

#### *Relief for additional acquisitions*

[CO 06/636] exempts a superannuation trustee from the requirement under s1012IA to provide a PDS to a member before each time that an accessible financial product is acquired by the trustee on the member's behalf. This relief includes conditions requiring the superannuation trustee to:

- (a) obtain the written acknowledgement of a member, who joins on or after 1 July 2007, that at the time an additional acquisition is made the member may not have the current disclosure document or be aware of any material changes or significant events;
- (b) provide the member with updated disclosure documents, if a disclosure document previously provided to a member by the trustee has become defective; and
- (c) where (b) applies, allow the member to select a new investment strategy.

The superannuation trustee does not have to obtain written acknowledgment from an existing member (i.e. a person who holds a superannuation product immediately before 1 July 2007), provided that the superannuation trustee tells that member that when an additional acquisition is made they may not have the current disclosure document or be aware of any material changes or significant events.

#### **4. Consultation**

ASIC undertook consultation about the application of s1012IA to superannuation entities by issuing the policy proposal paper *Superannuation: Delivery of Superannuation Product Disclosure and Investment Choice* in November 2004 and inviting public comments on that policy proposal paper. ASIC has taken those comments into account in developing [PS 184] and [CO 06/636].

A Regulatory Impact Statement (RIS) was prepared for [PS 184] and [CO 06/636]. A copy of the RIS is attached.