

**Australian Securities and Investments Commission**  
**Corporations Act 2001 — Paragraph 1020F(1)(c) — Declaration**

**Enabling legislation**

1. The Australian Securities and Investments Commission makes the declaration set out in this instrument under paragraph 1020F(1)(c) of the *Corporations Act 2001* (the *Act*).

**Title**

2. This instrument is ASIC Class Order [CO 06/636].

**Commencement**

3. This instrument commences on 1 July 2007.

**Relief in relation to regulated acquisitions through certain superannuation funds**

4. Part 7.9 of the Act applies in relation to a trustee of a superannuation entity as if provisions in that Part were modified or varied by:

*Main modifications*

- (a) after section 1013FA inserting:

**“1013FB Information not required to be included in Product Disclosure Statement for certain superannuation products**

- (1) This section applies to a Product Disclosure Statement (the *superannuation entity PDS*) or a Short-Form PDS (the *superannuation entity PDS*) for a superannuation product where a regulated acquisition of a financial product (the *accessible financial product*) may be made through the superannuation entity to which the superannuation product relates.

Note: The use of a Short-Form PDS instead of a Product Disclosure Statement is covered by Division 3A of this Part: see regulation 7.9.61AA and Schedule 10BA to the *Corporations Regulations 2001*.

- (2) If the superannuation entity PDS complies with subsection (3), it does not have to include any other information about the accessible financial product that would be required by sections 1013D, 1013DA, 1013E or 1013F.
- (3) The superannuation entity PDS must:
  - (a) contain the information that a person would reasonably require as a retail client to:

- (i) identify the accessible financial product; and
  - (ii) understand the investment strategy under which the product may be acquired by way of a regulated acquisition; and
  - (iii) work out whether to ask for further information about the product from the trustee (the *provider*) of the superannuation entity; and
  - (iv) understand any differences between:
    - (A) the rights of a person who makes an equivalent direct acquisition of the product; and
    - (B) the rights of a person on whose instructions the provider acquires the product by way of a regulated acquisition; and
- (b) either:
- (i) inform people of their right to obtain from the provider on request a Product Disclosure Statement (the *issuer's accessible product PDS*) for the accessible financial product that the issuer of the product has prepared; or
  - (ii) inform people of their right to obtain from the provider on request a Product Disclosure Statement (the *provider's accessible product PDS*) for the accessible financial product that the provider has prepared (see section 1013FC).
- (4) If the superannuation entity PDS informs people of their right to obtain the issuer's accessible product PDS or the provider's accessible product PDS, the provider must give a copy of that Statement free of charge to any person who asks for it.

**1013FC Preparation of Product Disclosure Statements for accessible financial products by superannuation entity trustees**

- (1) This section applies where a superannuation entity PDS informs people of their right to obtain a copy of a provider's accessible product PDS for an accessible financial product.
- (2) This Part has effect in relation to a regulated acquisition of the accessible financial product as if:

- (a) the reference to the issuer of the financial product in subsection 1013A(1) included a reference to the provider (within the meaning of section 1013FB); and
- (b) the reference to the person making the offer to sell the financial product in subsection 1013A(2) included a reference to the provider (within the meaning of section 1013FB); and
- (c) the reference to the responsible person in subsection 1013C(2) were a reference to the issuer of the financial product.

Note: The effect of this provision is that:

- (1) a Product Disclosure Statement for the accessible financial product that is required to be given under subsection 1012A(1) may be prepared by the provider; and
- (2) the provisions of Part 7.9 otherwise apply to the Statement in the same way as they apply to a Product Disclosure Statement for the product prepared by the issuer or seller (as relevant).”; and

(b) after section 1017C inserting:

**“1017CA Information for existing holders of superannuation products who have given instructions to make regulated acquisitions**

- (1) If:
  - (a) a trustee (the *provider*) of a superannuation entity relies on subsection 1013FB(2) in relation to a superannuation entity PDS for a superannuation product to which the entity relates; and
  - (b) a person (the *client*) has directed (whether before or after the commencement of this section) the provider to follow an investment strategy (the *affected investment strategy*) that involves making a regulated acquisition of an accessible financial product in relation to all or part of the client’s holding of the superannuation product; and
  - (c) at a time when the provider holds the accessible financial product as a result of the client’s direction, the provider:
    - (i) has reasonable grounds to believe that the Product Disclosure Statement for the product that the provider is giving or has available to give under subsection 1013FB(4) is defective; and

- (ii) has not decided to stop making regulated acquisitions of the product;

the provider must comply with subsection (2).

- (2) As soon as practicable after the provider has reasonable grounds to believe that the Statement is defective, the provider must:

- (a) give the client:

- (i) a new Product Disclosure Statement for the accessible financial product which the provider has no reason to believe is defective at the time it is given; or
- (ii) in the case where the client has been given a copy of the Statement—a Supplementary Product Disclosure Statement that corrects the deficiency; or
- (iii) in the case where the client has not been given a copy of the Statement—the Statement together with a Supplementary Product Disclosure Statement that corrects the deficiency; and

- (b) inform the client in writing that:

- (i) the client may direct the provider to follow an investment strategy made available by the provider that does not involve regulated acquisitions of the accessible financial product, in relation to either or both of the following:
  - (A) the holding in the product that the provider has acquired as a result of following the affected investment strategy on the direction of the client;
  - (B) any future contribution by or on behalf of the client to the superannuation entity to the extent to which it would otherwise have been subject to the affected investment strategy; and
- (ii) if the client does not give the provider directions in accordance with subparagraph (i)—the provider will continue to follow the affected investment strategy.

- (3) In this section, *investment strategy* means, in relation to a superannuation entity, an investment strategy formulated by the

trustee of the entity under the covenant referred to in paragraph 52(2)(f) of the *Superannuation Industry (Supervision) Act 1993*.

Note 1: This section only applies in relation to a client where the provider is holding the relevant financial product as a result of a direction given by the client at the time the provider realises that the relevant Product Disclosure Statement is defective. In a case where the provider is not so holding the product at that time, the provider nonetheless must give the client an appropriate Supplementary or new Product Disclosure Statement before acquiring the product on their instructions. This is because the Product Disclosure Statement required to be given by subsection 1012IA(2) is a Statement that meets the requirements for such Statements set out in Division 2 of Part 7.9.

Note 2: If a trustee decides to stop making regulated acquisitions of a financial product, the trustee must notify holders of interests in the superannuation entity in accordance with section 1017B.”; and

### *Consequential modifications*

(c) in subsection 1012IA(1), after the definition of **acquirer**, inserting:

“**additional acquisition** means, in relation to a client, a regulated acquisition of a financial product at a time when the provider is already holding a financial product of the same kind as a result of an instruction given by the client.”; and

(d) in subsection 1012IA(2) omitting “Before” and substituting “Subject to subsection (2A), before”; and

(e) after subsection 1012IA(2), inserting:

“(2A) **Exemption for additional acquisitions by superannuation trustees.**

(a) A provider who is a trustee of a superannuation entity does not have to comply with subsection (2) in relation to an additional acquisition if at any time (whether before or after the commencement of this subsection) before making the acquisition the provider tells the client in writing, and subject to paragraph (b), obtains the client’s written acknowledgement, that, at the time an additional acquisition of a financial product occurs, the client may not have received:

(i) the current Product Disclosure Statement for the product; and

(ii) the disclosure that subsection 1017B(1) would require the issuer of the product to give to the client if the client had made an equivalent direct acquisition of the product.

- (b) The provider does not have to obtain the client's written acknowledgement if the client held a superannuation product to which the entity relates immediately before the commencement of this subsection and has held such a product at all times since."; and
- (f) in subsection 1013D(1) omitting "sections 1013F and 1013FA," and substituting "sections 1013F, 1013FA and 1013FB,"; and
- (g) in section 1013E omitting "sections 1013F and 1013FA," and substituting "sections 1013F, 1013FA and 1013FB,"; and
- (h) after section 1011B, inserting:

**"1011BA Definitions relating to regulated acquisitions of financial products by superannuation trustees**

In this Division and section 1017CA:

*accessible financial product* has the meaning given in section 1013FB.

*equivalent direct acquisition* has the meaning given in subsection 1012IA(2).

*provider's accessible product PDS* has the meaning given in section 1013FB.

*regulated acquisition* has the meaning given in section 1012IA.

*superannuation entity PDS* has the meaning given in section 1013FB.".

Dated this 2nd day of August 2006

Signed by Brendan Byrne  
as a delegate of the Australian Securities and Investments Commission