

# ASIC CLASS ORDER [CO 07/386]

## EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

Paragraph 1020F(1)(a) – Variation; Paragraph 1020F(1)(c) – Declaration

The Australian Securities and Investments Commission (ASIC) makes Class Order [CO 07/386] *Superannuation: Delivery of product disclosure for investment strategies —amendment* under s1020F(1) of the *Corporations Act 2001* (the Act).

Section 1020F(1)(a) provides that ASIC may exempt a person or class of persons from all or specified provisions of Pt 7.9 of 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 or varied.

### 1. Background

Section 1012IA applies to superannuation trustees (providers) who offer a choice of investment strategies to members (clients) where, if the client instructs the provider to follow a particular strategy, the provider will acquire accessible financial products on behalf of the client. The application of s1012IA to superannuation was deferred until 30 June 2007 (by ASIC Class Order [CO 03/1097] *Deferral of s1012IA*).

In August 2006, ASIC released Policy Statement 184 *Superannuation: Delivery of product disclosure for investment strategies* [PS 184] and made Class Order [CO 06/636] *Superannuation: Delivery of product disclosure for investment strategies* to give effect to the policy outlined in [PS 184]. Specifically, [CO 06/636]:

- (a) removed duplication between multiple disclosure obligations;
- (b) enabled providers to take responsibility for the information provided to clients about accessible financial products; and
- (c) recognised 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.

In late 2006, superannuation trustees raised concerns about the practical implementation of [PS 184] and [CO 06/636].

## 2. Purpose of the class order

The purpose of [CO 07/386] is to address the implementation concerns raised by superannuation trustees by amending [CO 06/636] and to provide some additional transitional relief by amending [CO 03/1097].

[CO 07/386] amends [CO 06/636] in three main ways. It:

- (a) provides an additional disclosure relief option (the *integrated PDS option*) to enable a provider to include information about accessible financial products included in available investment strategies in the same document as the Product Disclosure Statement for the superannuation product;
- (b) modifies the test to determine whether the provider will be required to provide additional disclosure where additional acquisitions of an accessible financial product are being made; and
- (c) provides alternative methods for providing updated disclosure depending on whether the accessible financial product is 'open' or 'closed'.

[CO 07/386] modifies [CO 03/1097] by extending the transition period to not later than 1 July 2008.

## 3. Operation of the class order

### Additional relief option: an integrated PDS

[CO 07/386] modifies the law to allow a provider to include the information that would be required to be in a Product Disclosure Statement about an accessible financial product in the same disclosure document as information about the superannuation product (i.e. to produce an integrated PDS): see s1013FB(2)(b) and (5)–(6). Under the integrated PDS option, the provider will be responsible for *all* the required disclosure information. The provider will prepare both the information about the superannuation product plus the information about an accessible financial product.

This means that providers have three options for providing disclosure about accessible financial products to clients. They may:

- (a) prepare the information themselves in an accessible product PDS for one or more accessible financial products, or
- (b) prepare the information themselves in an integrated PDS that combines information about the superannuation product with information about one or more accessible financial products in the one PDS; or
- (c) give a client an accessible product PDS prepared by the issuer of the particular accessible financial product.

### **Content requirements for the superannuation entity's PDS**

[CO 07/386] modifies the law to omit the condition in s1013FB(3)(a)(iv) requiring the provider to ensure that the superannuation entity's PDS contains information that will allow a client to 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 client where the provider acquires the product on behalf of a client.

### **Amendments to the relief for additional acquisitions**

[CO 07/386] changes the test for when updated disclosure must be given to clients who make additional acquisitions of an accessible financial product on an ongoing basis from 'defective' (a concept linked to PDSs) to 'materially adverse' (a concept linked more closely with the ongoing disclosure required under s1017B and, therefore, not PDS-dependent): see s1017CA(1)(b). This change was made to deal with the concern that not all accessible financial products were 'open' to new instructions and thus would not necessarily have a current PDS, which meant that a PDS-based approach was not appropriate.

### **Providing updated disclosure**

[CO 07/386] amends the way in which updated disclosure is to be provided under s1017CA(2) to distinguish between 'open' and 'closed' accessible financial products. An 'open' accessible financial product is an accessible financial product for which a provider will accept new instructions from a client to acquire that product for the client for the first time. A 'closed' accessible financial product is an accessible financial product for which a provider will not accept a new instruction from a client to acquire the product for the client for the first time, even though the provider might continue to invest in that product because of a standing instruction given by a client before the product was closed. Updated disclosure for an 'open' accessible financial product must be given by providing a copy of the current PDS (including a supplementary PDS, where relevant): see s1017CA(5)(b). Updated disclosure for a 'closed' accessible financial product may be given by providing information in a form other than in a PDS or, if there is a current PDS, by giving that PDS to a member: see s1017CA(5)(a).

[CO 07/386] also clarifies that:

- (a) updated disclosure may be provided in the same way as disclosure under s1017B (i.e. in writing, electronically or in a way specified in the Corporations Regulations 2001); and
- (b) updated disclosure is not required to be given where the client:
  - (i) has already received a PDS that contains all the required information: see s1017CA(3); or

- (ii) has already received all the required information through a PDS and information provided under s1017B or continuous disclosure made under Chapter 6CA: see s1017CA(6)–(7).

**Extended transition: amendment to [CO 03/1097]**

[CO 07/386] further extends the delayed application of s1012IA until not later than 1 July 2008. All new superannuation trustees will need to comply from 1 July 2007. However, all current trustees will need to comply from the earlier of when they next issue a new complete PDS for the superannuation product after 1 July 2007, or 1 July 2008. The amended transition period will allow trustees to comply with s1012IA and take into account the compliance options offered.

**4. Documents incorporated by reference**

A Regulatory Impact Statement (RIS) was prepared for [CO 06/636] (Legislative Instrument – F2006L02636) in August 2006. The changes made by this class order are within the scope of that RIS. A copy of the RIS is available on the Federal Register of Legislative Instruments <[www.comlaw.gov.au](http://www.comlaw.gov.au)> and on the ASIC website <[www.asic.gov.au/co](http://www.asic.gov.au/co)>.

**5. Consultation**

ASIC undertook extensive consultation about the implementation of [PS 184] and [CO 06/636]. Public seminars were held in Sydney and Melbourne in November 2006 and ongoing targeted consultation took place between January and May 2007. ASIC has taken the comments made during the consultation process into account in revising [PS 184] and amending [CO 06/636] and [CO 03/1097].