

Australian Securities and Investments Commission
Corporations Act 2001 — Paragraphs 1020F(1)(a) and (c) — Variations

Enabling legislation

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

Title

2. This instrument is ASIC Class Order [CO 07/386].

Commencement

3. (a) Paragraph 4 of this instrument commences on the later of:
 - (i) the date it is registered under the *Legislative Instruments Act 2003*; and
 - (ii) the commencement of ASIC Class Order [CO 06/636].
- (b) The remainder of this instrument commences on the date it is registered under the *Legislative Instruments Act 2003*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (*FRLI*) in electronic form: see *Legislative Instruments Act 2003*, s 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

Variations

4. ASIC Class Order [CO 06/636] is varied by:
 - (a) omitting subparagraphs 4(a) and (b) and substituting:
 - “(a) after section 1013FA inserting:

“1013FB Choices available in relation to Product Disclosure Statements for superannuation custodial arrangements and related regulated acquisitions

 - (1) This section applies if a regulated acquisition of a financial product (the *accessible financial product*) may be made through a superannuation entity.
 - (2) If this section applies, a Product Disclosure Statement (the *superannuation entity PDS*) for the

superannuation product to which the superannuation entity relates may comply with:

- (a) subsection (3) (separate Statements for the superannuation product and the accessible financial product); or
- (b) subsections (5) and (6) (integrated Statement for the superannuation product and the accessible financial product).

If the superannuation entity PDS complies with subsections (5) and (6), a Product Disclosure Statement for the accessible financial product must also comply with those subsections.

Note : Product Disclosure Statements do not have to comply with paragraph (a) or (b). They may instead be prepared in accordance with this Division apart from this section.

Alternative 1—Separate PDSs for superannuation product and accessible financial products

- (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; and
 - (b) either:
 - (i) inform people of their right to obtain from the trustee (the *provider*) of the superannuation entity on request a Product Disclosure Statement (the *provider's accessible product PDS*) for the accessible financial product that the provider has prepared; or
 - (ii) 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.

- (4) If the superannuation entity PDS complies with subsection (3):
- (a) 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; and
 - (b) the provider must give a copy of the provider's accessible product PDS (where subparagraph (3)(b)(i) applies) or the issuer's accessible product PDS (where subparagraph (3)(b)(ii) applies) to any person who asks for it.

Alternative 2—Integrated PDS for superannuation product and related accessible financial products

- (5) The superannuation entity PDS and the Product Disclosure Statement for the accessible financial product must be combined in a single document (the ***integrated PDS***) or in 2 or more separate documents (the ***integrated PDS***) that are given at the same time.

Note 1: Other requirements relating to Product Disclosure Statements made up of 2 or more separate documents are set out in section 1013L.

Note 2: This subsection does not limit the circumstances in which a Product Disclosure Statement for a financial product may be combined with a Product Disclosure Statement for another financial product.

- (6) The integrated PDS must contain the information that a person would reasonably require as a retail client to understand the investment strategy under which the accessible financial product may be acquired by way of a regulated acquisition.

Note: Paragraph 1012IA(5)(aa) enables a Product Disclosure Statement for the accessible financial product to be prepared by the provider where:

- (a) Alternative 1 is relied on and the Product Disclosure Statement for the superannuation product informs people of their right to obtain the provider's accessible product PDS; or
- (b) Alternative 2 is relied on.”; 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 person (the *client*) has directed (whether before or after the commencement of this section) the trustee (the *provider*) of a superannuation entity 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 to which the entity relates; and
 - (b) at a time when the provider holds the accessible financial product as a result of the client’s direction, a material adverse change to a matter, or a significant event that adversely affects a matter occurs, being a matter that would have been required to be specified in a Product Disclosure Statement for the accessible financial product prepared on the day before the change or event occurs; and
 - (c) the provider has not decided to stop making regulated acquisitions of the product under the affected strategy;

the provider must comply with subsections (2) and (5).

Note: Paragraph (b) applies whether or not a Product Disclosure Statement was in fact prepared (or required to be prepared) on the day before the change or event occurs.

- (2) As soon as practicable after the change or event occurs, the provider must notify the client in accordance with subsections (3) and (4):
- (a) of the change or event; and
 - (b) 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;
 - (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) The issuer must notify the client in one of the following ways:
- (a) in writing; or
 - (b) electronically; or
 - (c) in a way specified in the regulations.
- (4) The notice must give the client the information that is reasonably necessary for the client to understand the nature and effect of the change or event.
- (5) Subject to subsections (6) and (7), at the same time as notifying the client, the provider must give the client:
- (a) where the only regulated acquisitions of the accessible financial product that the provider is making or is proposing to make are additional acquisitions either:
 - (i) any further information that the client reasonably requires for the purposes of making a decision about whether to give a direction of the kind referred to in paragraph (2)(b); or
 - (ii) a copy of a Product Disclosure Statement (the *current PDS*) for the accessible financial product that would be required to be given under section 1012IA in relation to a regulated acquisition of the product on the instruction of a person

who is not a holder of the product on the day the notice is sent; or

- (b) otherwise—a copy of the current PDS.

Note: Sections 1014D and 1014E will enable subparagraph (a)(ii) or paragraph (b) to be satisfied in some circumstances by giving a Product Disclosure Statement together with a Supplementary Product Disclosure Statement or just giving a Supplementary Product Disclosure Statement.

- (6) The provider does not have to give the client information or a Product Disclosure Statement under paragraph (5) if:
- (a) the client has already received a Product Disclosure Statement that contains all of the information that the first-mentioned Product Disclosure Statement would be required to contain; or
 - (b) the provider believes on reasonable grounds that paragraph (a) applies.
- (7) The provider does not have to give the client information or a Product Disclosure Statement under paragraph (5) if the provider believes on reasonable grounds that the client has received, or has, and knows that they have, access to, all of the information that the first-mentioned Product Disclosure Statement would be required to contain through:
- (a) a Product Disclosure Statement; and
 - (b) information provided to the client under section 1017B in relation to the superannuation product or through continuous disclosure under Chapter 6CA in relation to the accessible financial product.
- Note 1: A material adverse change or a significant adverse event relating to the accessible financial product may need to be notified to the client under section 1017B because the client holds the superannuation product. If the client is notified of the change or event under that section by the time notification is required under subsection (2), the provider may not need to also give the client information or a Product Disclosure Statement under subsection (5).
- Note 2: The continuous disclosure provisions in Chapter 6CA apply to accessible financial products that are both managed investment products and ED securities.
- (8) The information referred to in subparagraph (5)(a)(i) may be given by including it in the notice referred to in subsection (2).

- (9) 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 change or event occurs. In a case where the provider is not so holding the product at that time, the provider nonetheless may need to 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 provider decides to stop making regulated acquisitions of a financial product, the provider must notify holders of interests in the superannuation entity in accordance with section 1017B.”; and””; and

- (b) in subparagraph 4(e) (notional subsection 1012IA(2A) of the Act):

- (i) omitting from subparagraph (a)(i) “the” and substituting “a”;
and
- (ii) after subparagraph (a)(ii) inserting:

“Note: This subsection applies regardless of whether a current Product Disclosure Statement for the product has been prepared.”; and

- (c) after subparagraph 4(e) inserting:

“(ea) in subsection 1012IA(5):

- (i) inserting after paragraph (a):

“(aa) where the provider is a trustee of a superannuation entity and a current Product Disclosure Statement for the superannuation product to which the entity relates complies with paragraph 1013FB(3)(a) and subparagraph 1013FB(3)(b)(ii) or with subsection 1013FB(5)—the reference to the issuer of the financial product in subsection 1013A(1) included a reference to the provider; and””; and

- (ii) in paragraph (b), omitting “section.” and substituting “section; and””; and

- (iii) inserting after paragraph (b):

“(ba) where the provider is a trustee of a superannuation entity—the reference to the

person making the offer to sell the financial product in subsection 1013A(2) included a reference to the provider.”; and

(eb) after subsection 1012IA(5), inserting:

“(5A) **Modification of section 1013C**

Section 1013C applies in relation to a regulated acquisition by a provider who is a trustee of a superannuation entity as if the reference to the responsible person in subsection 1013C(2) were:

- (a) in the case of an issue Statement—a reference to the issuer of the financial product; or
- (b) in the case of a sale Statement—a reference to the seller of the financial product.”; and”;

(d) in paragraph 4(h) (notional section 1011BA of the Act):

(i) inserting after the definition of *accessible financial product*:

“*additional acquisition* has the meaning given in subsection 1012IA(1).”; and

(ii) omitting the definition of *provider’s accessible financial product PDS*; and

(iii) in the definition of *regulated acquisition* omitting “1012IA.” and substituting “1012IA.; and”;

(iv) omitting the definition of *superannuation entity PDS* and the punctuation that appears after it; and

(e) after subparagraph 4(h) inserting:

“(i) in subregulation 7.9.75A(1) of the *Corporations Regulations 2001* (the *Regulations*) omitting “paragraph 1017B(3)(c)” and substituting “paragraphs 1017B(3)(c) and 1017CA(3)(c)”;

(j) in subregulation 7.9.75B(1) of the *Regulations* inserting after paragraph (a):

“(aa) paragraph 1017CA(3)(c) of the Act”;

(k) in Part 3 of Schedule 10BA of the *Regulations* (paragraph (a) of notional section 1017K of the Act):

(i) after “1013A,” inserting “1013FB,”;

- (ii) omitting “1016E and 1017A” and substituting “1016E, 1017A and 1017CA.”.

5. ASIC Class Order [CO 03/1097] is varied by in paragraph 2:

- (a) omitting “30 June 2007” and substituting “30 June 2008”; and
- (b) omitting “the Act.” and substituting “the Act, where the provider has not given any client a Product Disclosure Statement for the superannuation product that is required to be dated later than 1 July 2007.

Note: The date that is required to be given to a Product Disclosure Statement is that specified by section 1013G. That date is not affected by the date of any Supplementary Product Disclosure Statement that supplements the Statement.”.

Dated this 8th day of June 2007

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