

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

Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under subsection 1020F(1) of the *Corporations Act 2001* (the *Act*).

Title

2. This instrument is ASIC Class Order [CO 14/1252].

Commencement

3. This instrument commences on the day after 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*, section 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

Declaration

4. Part 7.9 of the Act applies in relation to managed investment and superannuation products as if provisions of that Part were modified or varied as set out in paragraphs 5 to 7.

Note: The provisions of Part 7.9 include the regulations made for the purposes of that Part: see section 761H.

5. In subsection 1013C(2) of the Act, omit “The” substitute, “Unless otherwise provided in the regulations, the”.

6. In Schedule 10 to the *Corporations Regulations 2001* (the *Regulations*):

(a) in clause 101:

(i) omit the definition of *indirect cost*, substitute:

“indirect cost has the meaning given by clause 101A.”;

(ii) after the definition of *insurance fee* insert:

“interposed vehicle means in relation to a MySuper product, an investment option offered within a superannuation product other than a MySuper product, managed investment product or investment option offered by a managed investment scheme—a body, trust or partnership other than a body, trust or partnership to which either of the following applies:

- (a) the body, trust or partnership:
- (i) does not predominantly carry on a business of investment in securities or other financial products; and
 - (ii) either:
 - (A) is included in the official list of a prescribed financial market or of a financial market operated outside of this jurisdiction that is regulated by a foreign government or an agency of a foreign government; or
 - (B) having regard to each Product Disclosure Statement for the product or option, a security or interest in the body, trust or partnership is reasonably regarded as the investment of the superannuation entity or registered scheme to which the product or option relates, rather than the means by which the benefit of investments by or through the body, trust or partnership is obtained;
- (b) all of the following apply:
- (i) the Product Disclosure Statement for the product or option states that a holder of the product may give instructions, directions or requests for financial products to be acquired;
 - (ii) the responsible person for the Product Disclosure Statement has published a list of financial products in relation to which the instructions, directions or requests may be given includes a security or interest in the body, trust or partnership;
 - (iii) the arrangement under which the instructions would be acted on is a custodial arrangement as defined in subsection 1012IA(1) of the Act.

(iii) omit the definition of *switching fee*, substitute:

“*switching fee*:

- (a) for a MySuper product—has the meaning given by subsection 29V(5) of the SIS Act; or
- (b) for a superannuation product other than a MySuper product—means a fee to recover the costs of switching all or part of a member’s interest in the superannuation entity from one investment option or product in the entity to another; or
- (c) for a managed investment product—means an amount paid or payable when a product holder transfers all or part of the product holder’s interest in the managed investment product from one investment option to another.”;

(iv) by inserting after the definition of *withdrawal fee*:

“101A Indirect costs

- (1) Despite subsection 1013C(2) of the Act, the indirect cost of a MySuper product, an investment option offered within a superannuation product other than a MySuper product, managed investment product or investment option offered by a managed investment scheme means any amount that:
 - (a) a trustee of the entity or responsible entity knows, or reasonably ought to know or, where this is not the case, may reasonably estimate, will directly or indirectly reduce the return on the product or option that is paid from or reduces the amount or value of:
 - (i) the income of or the property attributable to the product or option; or
 - (ii) the income of or property attributable to an interposed vehicle in or through which the property attributable to the product or option is invested; and
 - (b) is not charged to a member as a fee; and
 - (c) is not a fee under section 29V of the SIS Act.
- (2) For the purposes of subclause (1):
 - (a) property is invested in or through an interposed vehicle even if:

- (i) the property is in turn invested in or through one or more other interposed vehicles; or
 - (ii) the property was invested in the first mentioned interposed vehicle through or by another interposed vehicle; and
- (b) property is not invested in or through an interposed vehicle if the property is invested in the vehicle by a body, trust or partnership that:
- (i) is not an interposed vehicle; and
 - (ii) is not the trustee or responsible entity.
- (3) Without limiting subclause (1), indirect costs of a product or option include the amount (***buy-sell spread***) by which the amount that would be required to acquire a derivative that is not able to be traded on a financial market at the relevant time exceeds the amount that would be obtained on its disposal at that time that is attributable to:
- (a) the product or option; or
 - (b) an interposed vehicle through which the property attributable to the product or option is invested.
- (4) Despite subclause (1) and (3), indirect costs of a managed investment product or an investment option of a managed investment scheme do not include:
- (a) the buy-sell spread for the derivative; and
 - (b) any other costs associated with the acquisition or disposal of the derivative,

where the derivative is acquired or disposed of for the primary purpose of avoiding or limiting the financial consequences of fluctuations in, or in the value of, receipts or costs of the managed investment scheme. This is the case regardless of whether the receipts or costs arise in or through an interposed vehicle.

Note: Costs excluded under subparagraph (4) are likely to be transaction costs under clause 102. Indirect costs for superannuation products include transaction costs.”;

(b) in clause 102:

(i) in paragraph (1)(h) omit “arrangements.”, substitute:

“arrangements;

(i) indirect costs.”;

(ii) omit paragraph (2)(b), substitute:

“(b) transactional costs and operational costs other than those costs under subclause 101A(3);”;

(iii) omit paragraph (2)(h), substitute:

“(h) costs (related to a specific asset, other than a security or interest in an interposed vehicle, or activity to produce income) that an investor would incur if he or she invested directly in the asset;”;

(c) in clause 202 omit “and insurance costs”;

(d) in clause 202A omit “and insurance costs”;

(e) in clause 209 omit paragraph 209(m);

(f) in clause 209A:

(i) omit “fees”:”, substitute,

“fees”, or incorporated by reference.”;

(ii) by omitting the definition of *switching fees*, and substituting:

“A *switching fee* for a MySuper product has the meaning given by subsection 29V(5) of the SIS Act and, for superannuation products other than a MySuper product, is a fee to recover the costs of switching all or part of a member’s interest in the superannuation entity from one investment option or product in the entity to another.”;

(g) omit clause 221, substitute:

“221 Consumer advisory warning

(1) Superannuation products

DID YOU KNOW?

Small differences in both investment performance and fees and costs can have a substantial impact on your long term returns. For example, total annual fees and costs of 2% of your account balance rather than 1% could reduce your final return by up to 20% over a 30 year period (for example reduce it from \$100 000 to \$80 000).

You should consider whether features such as superior investment performance or the provision of better member services justify higher fees and costs.

You may be able to negotiate to pay lower contribution fees and management costs where applicable. Ask the fund or your financial adviser.

TO FIND OUT MORE

If you would like to find out more, or see the impact of the fees based on your own circumstances, the **Australian Securities and Investments Commission (ASIC)** website (www.moneysmart.gov.au) has a superannuation fee calculator to help you check out different fee options.

(2) Managed investment products

DID YOU KNOW?

Small differences in both investment performance and fees and costs can have a substantial impact on your long term returns.

For example, total annual fees and costs of 2% of your account balance rather than 1% could reduce your final return by up to 20% over a 30 year period (for example reduce it from \$100 000 to \$80 000).

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TO FIND OUT MORE

If you would like to find out more, or see the impact of the fees based on your own circumstances, the **Australian Securities and Investments Commission (ASIC)** website (www.moneysmart.gov.au) has a managed funds fee calculator to help you check out different fee options.

”;

- (h) omit clause 222, substitute:

“The Consumer Advisory Warning referred to in subclause 221(1) must be located at the beginning of the fees section of the Product Disclosure Statement for superannuation products and the Consumer Advisory Warning referred to in subclause 221(2) must be located at the beginning of the fees section of the Product Disclosure Statement for managed investment products where fees or costs may be deducted from amounts to be held for members of the managed investment scheme.”.

7. In subclause 8(3) of Schedule 10E to the Regulations omit “Termination fee”, substitute “Exit fee”.

Transitional

8. Paragraphs 4 to 7 apply in relation to a Product Disclosure Statement:
- (a) from 1 January 2016 (regardless of when it was first given); or

- (b) if the Statement states that this instrument applies to it.
9. Paragraphs 4 to 7 apply in relation to a periodic statement that is required to be given in accordance with section 1017D of the Act:
- (a) if the outer limit for giving the statement is on or after 1 January 2017; or
 - (b) if the periodic statement states that this instrument applies to it.

Note: The timing for the giving of certain periodic statements for superannuation products is affected by Subdivision 5.12 of Part 7.9 of, and Part 11 of Schedule 10A to the Regulations.

Dated this 8th day of December 2014

Signed by Stephen Yen PSM
as a delegate of the Australian Securities and Investments Commission