



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 127

Additional investments in managed investment schemes

Chapter 7 — Securities

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From 5 July 2007, this document may be referred to as Regulatory Guide 127 (RG 127) or Policy Statement 127 (PS 127). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 127.1) or their policy statement number (e.g. PS 127.1).

Headnotes

Additional investments in managed investment schemes; no application form required; three methods of making sure existing investors have current information: standard prospectus method; two-part prospectus method and the updating supplementary prospectus method; electronic delivery; regular savings plans; member discretionary master funds; interaction with simpler managed investment prospectuses pilot program; transitional arrangements from the relief granted before the issue of this guide to the relief described in this guide; proposed policy assessment after one year.

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Summary

RG 127.1 This guide outlines relief which allows:

- (a) existing investors in managed investment schemes to make additional investments in schemes managed by the same management company without having to complete an application form attached to a current standard prospectus (“application form relief”); and
- (b) management companies to choose between three alternative methods of providing those existing investors with current information.

RG 127.2 The application form relief only applies to additional investment applications made by existing investors. New investors must continue to complete an application form taken from a current prospectus (unless otherwise exempted from the application of reg 7.12.15(6)(ba)).

RG 127.3 The application form relief only applies when an existing investor has:

- (a) received current information that meets the disclosure standard of the Law for a prospectus; and
- (b) the same civil remedies available to them as if they had received a copy of the current standard prospectus at the time of making an application. This can only happen if the information they received has prospectus status.

[Historical note: RG 127.3 amended 4/3/1998 by deleting original para(a) and renumbering (b) as (a) and (c) as (b).]

RG 127.4 In practical terms, the application form relief accommodates:

- (a) additional investment arrangements including regular savings plans (except for member discretionary master funds that use the relief described in Class Order [CO 96/1580]);
- (b) introducing additional investment arrangements in a fresh prospectus or in a supplementary prospectus;
- (c) the management company offering additional investment arrangements to existing investors at any time during the life of their investment, whether or not their initial investment pre-dates the issue of this guide; and
- (d) the management company accepting applications for prescribed interests in schemes not initially covered by the additional investment arrangement.

RG 127.5 The three methods for ensuring that existing investors get current information which has prospectus status are described below:

(a) *Standard prospectus method*

Under this method, management companies may accept applications from existing investors even though the application is not made on an application form taken from a current standard prospectus where the management company makes sure that, before accepting the application, the existing investor has a copy of the prospectus for the scheme to which the application relates.

New investors may invest on the basis of the same standard prospectus. However, they must complete an application form taken from a copy of that prospectus.

(b) *Two-part prospectus method*

Under this method, an existing investor will receive a two-part prospectus. Part-1 has a three year life and contains information which is unchanging or rarely changes and part-2 has information which changes regularly and has a life of no more than 12 months. Management companies may accept applications from existing investors even though the application is not made on an application form taken from a current two-part prospectus where the management company makes sure that, before accepting the application, the existing investor has received a copy of the current part-1 and the current part-2 for the scheme to which the application relates.

New investors may also invest on the basis of a current two-part prospectus. However, they must complete an application form taken from a copy of that two-part prospectus.

(c) *Updating supplementary prospectus method*

Under this method an existing investor will receive a copy of the current standard prospectus which will be updated annually by a supplementary prospectus (called an updating supplementary prospectus). Management companies may accept applications from existing investors even though the application is not made on an application form taken from a current standard prospectus provided the management company makes sure that, before accepting the application, the existing investor has received a copy of the relevant standard prospectus and all updating supplementary prospectuses (maximum of two) relating to it for the scheme to which the application relates.

New investors may not invest on the combined basis of a standard prospectus and updating supplementary prospectuses relating to it.

They must complete an application form taken from a current standard prospectus.

RG 127.6 The guide is set out as follows:

- (a) Part I — commercial background to this guide RG 127.7;
- (b) Part II — policy background to this guide RG 127.10;
- (c) Part III — the three methods a management company may use to give existing investors current information and an overview of each method RG 127.24;
- (d) Part IV — application form relief RG 127.104;
- (e) Part V — how to apply for relief RG 127.116;
- (f) Part VI — transitional arrangements RG 127.117;
- (g) Part VII — ASIC's proposal for assessing this guide RG 127.125; and
- (h) Part VIII — interpretation section RG 127.129.

Part I: Commercial background

RG 127.7 This guide developed as a result of:

- (a) submissions to ASIC from management companies about existing investors making additional investments in schemes managed by the same management company; and
- (b) ASIC's review of its policy on regular savings plans (Superseded Policy Statement 27 *Regular savings plans* [SPS 27]).

RG 127.8 ASIC received submissions that existing investors in managed investment schemes often wish to:

- (a) make additional investments in the same scheme or make new investments in another scheme managed by the same management company from time-to-time;
- (b) switch an existing investment to another scheme which is described in a different deed and managed by the same management company; and
- (c) participate in regular savings plans and make ad hoc additional investments without completing an application form attached to a current standard prospectuses.

RG 127.9 ASIC has also received submissions that existing investors who participate in additional investment arrangements do not need a copy of the current standard prospectus each year and that the costs of complying with this requirement are excessive.

Part II: Policy background

Policy development

RG 127.10 ASIC has considered the commercial matters in Part I and balanced them with investor protection.

RG 127.11 In developing the terms of relief and in making sure that existing investors remain protected, ASIC applied the following principles:

- (a) all investors investing with a management company for the first time should complete an application form attached to a current prospectus;
- (b) existing investors must be treated as having the same information needs as new investors. Therefore investors must, when they first invest and when they later make additional investments, get current information about the relevant scheme which complies with s1022 (as modified by reg 7.12.12). As a general rule, this information must be received before the existing investor makes an additional investment application. This will give that person an opportunity to read the information and, if desired, obtain advice before making an additional investment application;
- (c) both new and existing investors must have the same civil remedies when applying for prescribed interests. Therefore, both must receive information that has prospectus status; and
- (d) an existing investor must not be locked into an investment decision where a material adverse change (in the sense in which that term is used in s1024E) has occurred if the existing investor has not received a copy of the replacement or supplementary prospectus describing that change.

[Historical note: RG 127.11 amended 4/3/1998 by deleting original para(b) and renumbering (c) as (b), (d) as (c) and (e) as (d). Para (b) formerly read:

“(b) an existing investor who participates in an additional investment arrangement must first have elected to do so. This active choice may prompt the existing investor to keep information about the relevant schemes for future reference when making an additional investment and will make sure that the relief only applies where an existing investor has signified that the additional investment arrangement will enhance their convenience;” .]

RG 127.12 ASIC intends management companies to have maximum flexibility in choosing how to benefit from the relief in this guide. Accordingly, the relief does not prescribe how existing investors may apply for additional investments. Nor does it prescribe which of the three alternative methods management companies should adopt for making sure existing investors get current information. This is a matter of choice for each management company.

Electronic delivery

RG 127.13 Electronically delivered prospectuses, including the separate electronic delivery of part-1 and part-2 of a two-part prospectus and updating supplementary prospectuses to existing investors, fall within the scope of Class Order [CO 96/1578] for electronic prospectuses as far as is necessary.

Regular savings plans

RG 127.14 ASIC does not propose to revoke any relief granted before the issue date of this guide under [SPS 27].

RG 127.15 However, ASIC does not intend giving any further relief of the kind described in [SPS 27], except for member discretionary master funds that also use the relief described in Class Order [CO 96/1580]: see RG 127.17–RG 127.19.

RG 127.16 This is because the relief given by this guide covers similar ground to the relief for regular savings plans described in [SPS 27].

Member discretionary master funds

RG 127.17 ASIC has given class order relief to certain member discretionary master fund operators (see Superseded Policy Statement 94 *Member discretionary master funds* [SPS 94] and Class Order [CO 96/1580]). Under the terms of that relief there are two tiers of disclosure. The first tier of disclosure relates to the master fund and the second tier relates to the underlying securities of the master fund. In addition to this relief many master fund operators have obtained the relief described in [SPS 27] for regular savings plans.

RG 127.18 ASIC is exploring the possibility of giving relief that is analogous to the relief in this guide to member discretionary master funds. However, further consultation with member discretionary master fund operators is necessary to make sure it is practically feasible. In addition further consideration is necessary to make sure that the policy objectives stated in this guide can be achieved for member discretionary master funds.

RG 127.19 ASIC presently intends that, pending further consideration of this matter, the relief in [SPS 27] will continue to be available to member discretionary master fund operators that also use the relief in Class Order [CO 96/1580].

Simpler managed investment prospectuses pilot program

RG 127.20 Class Orders [CO 98/1421] and [CO 98/1422] permit the use of concise prospectuses for offers of interests in unlisted managed investment schemes (other than master funds) formed for portfolio investment purposes. That relief is available for concise prospectuses lodged with ASIC from 4 August 1998 to 1 August 1999. It is available both for schemes with a single responsible entity and schemes subject to the transitional provisions in s1454 of the Law with a management company and trustee structure: see Superseded Policy Statement 137 [SPS 137].

[*Historical note:* RG 127.20 replaced 4/9/1998. The paragraph formerly read:

“RG 127.20 The ASC is proposing to give relief to management companies participating in a pilot program that will permit some management companies to issue short form managed investment prospectuses. The ASC is giving this relief from 1 July 1997 to early November 1997.”]

RG 127.21 [Deleted]

[*Historical note:* RG 127.21 deleted 4/9/1998. The paragraph formerly read:

“RG 127.21 Under this relief investors will receive both a short form managed investment prospectus and a standard prospectus.”]

RG 127.22 Issuers of concise prospectuses will be able to use the relief described in this guide, except for the relief that facilitates the use of a two-part prospectus.

[*Historical note:* RG 127.22 amended 4/9/1998 by replacing the words “Management companies participating in the pilot program” with the words “Issuers of concise prospectuses”.]

RG 127.23 A two-part prospectus can not be used for managed investment schemes if a concise prospectus is issued for that scheme. Issuers of concise prospectuses may, however, use a two-part prospectus for other managed investment schemes that they manage.

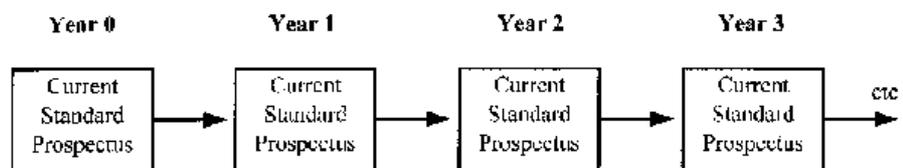
[*Historical note:* RG 127.23 amended 4/9/1998 by replacing in the first sentence the words “short form managed investment prospectus” with the words “concise prospectus” and in the second sentence by replacing the words “Management companies participating in the pilot program” with the words “Issuers of concise prospectuses”.]

Part III: Methods of giving updating information

RG 127.24 A management company may choose between three methods to make sure that existing investors get current information which has prospectus status. Each method is described below.

Standard prospectus method

RG 127.25 A diagram of the standard prospectus method is set out below:



Overview

RG 127.26 Under this method management companies may accept additional investment applications from existing investors who participate in an additional investment arrangement provided the management company believes, on reasonable grounds, that the existing investor making the application has received a copy of the current standard prospectus for the applicable scheme.

[Historical note: RG 127.26 amended 4/3/1998 by replacing the words “have elected to join” with “participate in”.]

RG 127.27 Management companies may choose how investors join an additional investment arrangement. Examples of methods include:

- (a) giving an investor an automatic entitlement to participate when they complete an application form taken from a copy of a current standard prospectus;
- (b) requiring an investor to complete a section of an application form taken from a copy of a current standard prospectus;
- (c) requiring an investor to complete a discrete election form; or
- (d) notifying existing investors of an automatic entitlement to participate.

[Historical note: RG 127.27 replaced 4/3/1998. The paragraph formerly read:

“RG 127.27 Investors may elect to join an additional investment arrangement by completing either:

- (a) a section of an application form taken from a copy of a current standard prospectus; or
- (b) a discrete election form.”]

RG 127.28 When investors first join an additional investment arrangement, the management company will need to make sure that they have or receive a copy of the current standard prospectus.

[*Historical note:* RG 127.28 replaced 4/3/1998. The paragraph formerly read:

“RG 127.28 When investors first join an additional investment arrangement, the management company must send a copy of the current standard prospectus to those existing investors who elected by completing a discrete election form. They need not do so for investors who joined by completing the relevant section of an application form taken from a current standard prospectus. This is because those investors will have received a copy of that prospectus when they completed the application form.”.]

RG 127.29 When the standard prospectus initially received by investors participating in an additional investment arrangement expires, management companies will need to send those investors a copy of the current standard prospectus.

[*Historical note:* RG 127.29 amended 4/3/1998 by deleting the words “, irrespective of how they elected,” before the words “a copy of the current standard prospectus”.]

RG 127.30 In practical terms this will be necessary to make sure that the management company complies with the reasonable belief requirement described in RG 127.26 and does not breach the prohibition in s1040 of the Law.

Supplementary or replacement prospectus

RG 127.31 Section 1024E will not apply where an existing investor makes an additional investment application after a supplementary prospectus or replacement prospectus is issued in relation to a current standard prospectus. This is because existing investors making additional investment applications do not complete application forms.

RG 127.32 Under the relief management companies must follow a procedure similar to that described in s1024E where:

- (a) an existing investor makes an additional investment application after the issue of a supplementary prospectus or replacement prospectus relating to the current standard prospectus for the scheme to which the application relates; and
- (b) the existing investor has not received a copy of that supplementary prospectus or replacement prospectus (see cl 7 of Pro Forma 169).

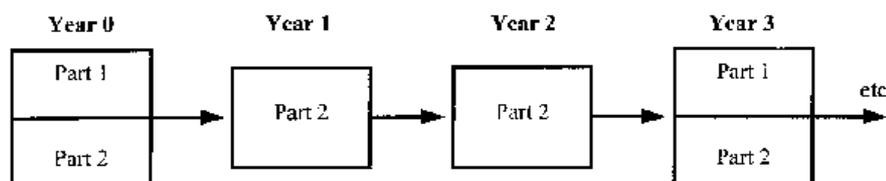
RG 127.33 Section 1024E will continue to apply to applications made by investors who complete application forms that are not current.

Number of documents

RG 127.34 Under this method, unless a supplementary prospectus has been issued, an existing investor will only need to refer to one document (the standard prospectus) for complete and current information.

Two-part prospectus method

RG 127.35 A diagram of the two-part prospectus method is set out below:



Overview

RG 127.36 Under this method a management company may accept additional investment applications from existing investors who participate in an additional investment arrangement if the management company believes, on reasonable grounds, that the existing investor making the application has received a copy of both the current part-1 and the current part-2 of a two-part prospectus for the applicable scheme.

[Historical note: RG 127.36 amended 4/3/1998 by replacing the words “have elected to join” with “participate in”.]

RG 127.37 A two-part prospectus is a prospectus that is structured so that:

- Part-1 has the information about the schemes to which it relates that the management company and any other person involved in its preparation reasonably believe will not change while it is current. It remains current for three years; and
- Part-2 has the information that changes regularly. It is replaced every 12 months.

RG 127.38 If a management company adopts this method, the same joining mechanisms are available as under the standard prospectus method: see RG 127.27.

[Historical note: RG 127.38 amended 4/3/1998 by replacing the words “election” with “joining”.]

RG 127.39 Accordingly, when investors first join an additional investment arrangement, management companies will need to make sure that they have or receive a copy of the current two-part prospectus.

[Historical note: RG 127.39 replaced 4/3/1998. The paragraph formerly read:

“RG 127.39 Accordingly, when investors first join an additional investment arrangement, management companies must send a copy of the current two-part prospectus to those existing investors who elected by completing a discrete election form. They need not do so for investors who joined by completing the relevant section of an application form taken from a current two-part prospectus. This is because those investors will, when they completed the application form, have received a copy of that prospectus.”.]

RG 127.40 While part-1 remains current management companies will only need to send existing investors who joined the additional investment arrangement, irrespective of how they elected, a copy of the fresh part-2 every 12 months.

RG 127.41 When part-1 is no longer current, management companies will need to send all investors participating in an additional investment arrangement a copy of the entire fresh two-part prospectus. This is necessary to make sure that the management company does not breach the condition for reasonable belief described in RG 127.36 and does not breach the prohibition in s1040 of the Law.

[Historical note: RG 127.41 amended 4/3/1998 by deleting the words “, irrespective of how they elected,” before the words “a copy of the entire fresh two-part prospectus”.]

RG 127.42 The concept of a two-part prospectus is given legal effect in the pro forma instrument by making part-1 an original prospectus and part-2 a supplementary prospectus with a number of special characteristics.

Content

RG 127.43 As previously noted, a two-part prospectus must be structured so that part-1 has the information about the relevant schemes that the management company and any other person involved in its preparation reasonably believe will not change while it is current and part-2 has the information that changes regularly.

RG 127.44 When read together part-1 and part-2 must contain all the information required by the Law to be in a complying prospectus (see s 1022 as modified by reg 7.12.12) for the applicable schemes. Taken as a whole, part-1 and part-2 must not be misleading or deceptive.

RG 127.45 ASIC has not prescribed, except for the statements referred to at RG 127.47–RG 127.49, the content of either part-1 or part-2. However, examples of what might be included in part-1 include:

(a) general information about the management company;

- (b) description of the relevant schemes;
- (c) terms of the relevant deeds;
- (d) services provided by the management companies;
- (e) rights attaching to the prescribed interests being offered;
- (f) the investment philosophy and the risks associated with investing in the relevant markets (for example the share market, the fixed interests market, property securities and liquid assets).

RG 127.46 Examples of what might be included in part-2 include:

- (a) performance figures;
- (b) fees;
- (c) management expense ratios;
- (d) method of pricing;
- (e) method of valuation of a scheme and/or the relevant prescribed interests;
- (f) effect of the tax regime;
- (g) events which affect the management company, for example its financial position, corporate standing and possibly information about the scheme size and last distribution;
- (h) changes in macro-economic and micro-economic conditions.

Statements to be contained in a two-part prospectus

RG 127.47 Each part of a two-part prospectus must contain a prominent statement that identifies it as part-1 or part-2 (as the case may be) of a two-part prospectus.

RG 127.48 Part-1 of a two-part prospectus must also contain statements that:

- (a) confirm it contains information that the management company and others involved in its preparation reasonably believe will not change during its currency;
- (b) tell the reader that each part should be read in conjunction with the other part and explain why this is necessary; and
- (c) comply with s1021(5) of the Law as modified under the relief to take into account the extended life of a two-part prospectus.

RG 127.49 Part-2 must contain statements that confirm:

- (a) the combined current part-1 and part-2 comply with the content requirements of the Law for a prospectus for the applicable schemes and are not false or misleading; and
- (b) the completeness and accuracy of:
 - (i) any expert's statement; and
 - (ii) any statement based on an expert's report, contained in the part-1 (as supplemented, varied or amended in part-2) to which it relates; and
- (c) the consent of each expert referred to in sub-paragraph (b) above is current.

RG 127.50 These statements are designed to make sure that the information in the two-part prospectus meets the content standard of the Law for a standard prospectus issued on the same date as the relevant part-2. This result is achieved because the statements to be included in part-2 have the practical effect of including the information in the current part-1 in the freshly issued part-2 and the prospectus liability provisions described in Pt 7.11 of the Law will apply to part-2.

RG 127.51 These statements are additional to those statements otherwise required by the Law to be in both part-1 and part-2 of a two-part prospectus. Because of the structure of the relief, part-1 will also need to contain those statements that the Law ordinarily requires to be in a prospectus and part-2 will need to contain those statements that the Law ordinarily requires to be in a supplementary prospectus.

Life of a two-part prospectus

RG 127.52 In view of the unchanging nature of the information in part-1, ASIC will allow part-1 to have a life of three years.

RG 127.53 Three years has been chosen to make sure that any changes to the information contained in part-1 which are later described in part-2 (see RG 127.58) are consolidated at regular intervals.

RG 127.54 Because part-2 contains information that regularly changes it will have a life of 12 months and each fresh part-2 will replace the previously issued part-2.

Due diligence

RG 127.55 Even though the life of part-1 is extended, management companies must still make sure, at least annually, that both parts of the two-part prospectus contain all the information that would otherwise be required to be in a current standard prospectus for the relevant schemes.

RG 127.56 This is because a two-part prospectus will effectively be issued every 12 months.

RG 127.57 The defences in Pt 7.11 of the Law that are linked to a due diligence process will be available for the information in a two-part prospectus.

Part-2 may update part-1

RG 127.58 A fresh part-2 may describe changes to the information contained in the current part-1. This is because ASIC recognises that it is not possible to predict, with absolute certainty, that the information contained in part-1 will not change for three years.

Replacement or supplementary prospectus

RG 127.59 When a material or significant change of the kind referred to in s1024 of the Law occurs or there is a deficiency of the kind referred to in s1023B of the Law in either part-1 or part-2, a management company must lodge with ASIC a supplementary prospectus or replacement prospectus relating to the change or deficiency.

RG 127.60 A supplementary prospectus may contain information that relates to either or both part-1 or part-2. However, all supplementary prospectuses issued in relation to either or both parts of a two-part prospectus will effectively expire on the same day as the part-2 that was current when the supplementary prospectus was issued.

RG 127.61 At that time management companies will need to consolidate the information contained in the supplementary prospectus in the fresh part-2 that is issued.

RG 127.62 The reason for consolidating is to make sure that an existing investor does not have to refer to an increasing number of documents for current information.

RG 127.63 It will not be possible for a management company to issue a replacement prospectus when using the two-part prospectus method. This is because a replacement prospectus will no longer be a two-part prospectus for the purposes of the relief.

RG 127.64 Section 1024E will not apply where an existing investor makes an additional investment application after a supplementary prospectus is issued in relation to a two-part prospectus. This is because existing investors making additional investment applications do not complete application forms.

RG 127.65 Where an existing investor makes an additional investment application after the issue of a supplementary prospectus and that person has not received a copy of the supplementary prospectus the management company must follow a procedure similar to that described in s1024E: see cl 7 of Pro Forma 169.

RG 127.66 Section 1024E will continue to apply to applications made by any investor who completes an application form that is not current.

Lodgment and registration

RG 127.67 Extending the life of part-1 will not avoid the necessity of annual lodgment and, where registrable, registration of a two-part prospectus with ASIC. This is because the maximum life of part-2 is 12 months and the content of a two-part prospectus must be considered as a whole for the purposes of registration.

RG 127.68 Initially both part-1 and part-2 of a two-part prospectus must be lodged with ASIC and, if registrable, registered. Subsequently, only part-2 need be lodged and, if registrable, registered.

RG 127.69 When a fresh part-2 is lodged, ASIC requires management companies to provide it with a copy of the current part-1. This is because part-2 cannot be considered in isolation.

Fees

RG 127.70 When either an entire two-part prospectus or a fresh part-2 is lodged with ASIC, the fee payable will be the fee set out in Item 10 of the Corporations (Fees) Regulations on lodging a prospectus under s 1018. This fee is payable on lodgment of a fresh part-2 because part-2 is lodged under s1018 of the Law.

RG 127.71 When a supplementary prospectus relating to a two-part prospectus (other than a fresh part-2) is lodged with ASIC, the fee will be that set out in Item 10 of the Corporations (Fees) Regulations on lodging a supplementary or replacement prospectus under s1023B or 1024 (no fee at the date of issue of this guide).

Number of documents

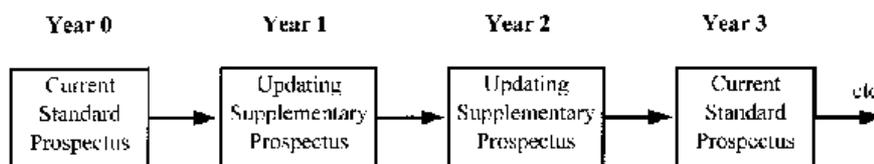
RG 127.72 Under this method, unless a supplementary prospectus has been issued, existing investors will only need to refer to two documents in order to get complete and current information. That is, the current part-1 and the current part-2 of a two-part prospectus.

Instrument of relief

RG 127.73 The terms of ASIC's relief facilitating the use of a two-part prospectus are set out in Pro Forma 170. This relief is only available in conjunction with the application form relief described at Part IV of this guide.

Updating supplementary prospectus method

RG 127.74 A diagram of the updating supplementary prospectus method is set out below:



Overview

RG 127.75 Under this method, management companies may accept additional investment applications from existing investors who participate in an additional investment arrangement if the management company believes, on reasonable grounds, that the existing investor making the application has received a copy of the relevant standard prospectus and all updating supplementary prospectuses relating to it for the applicable scheme.

[Historical note: RG 127.75 amended 4/3/1998 by replacing the words “have elected to join” with “participate in”.]

RG 127.76 An updating supplementary prospectus is a supplementary prospectus that is additional to other supplementary prospectuses which management companies issue under s1023B or s1024A of the Law and updates a standard prospectus. When taken together, the standard prospectus and all related updating supplementary prospectuses must contain all the information required by the Law to be in a prospectus

issued on the same date as the most recent updating supplementary prospectus for the applicable schemes.

RG 127.77 Management companies may issue a maximum of two updating supplementary prospectuses in relation to a standard prospectus.

RG 127.78 If a management company adopts this method, the same joining mechanisms are available as under the standard and two-part prospectus methods: see RG 127.27.

[Historical note: RG 127.78 amended 4/3/1998 by replacing the words “election” with “joining”.]

RG 127.79 Accordingly, when investors first join an additional investment arrangement, management companies will need to make sure that they have or receive a copy of the current standard prospectus.

[Historical note: RG 127.79 replaced 4/3/1998. The paragraph formerly read:

“RG 127.79 Accordingly, when investors first join an additional investment arrangement, management companies must send existing investors who elected by completing a discrete election form, a copy of the current standard prospectus. They need not do so for investors who joined by completing the relevant section of an application form taken from a current standard prospectus. This is because those investors will have received a copy of that prospectus when they completed the application form.”.]

RG 127.80 When the standard prospectus initially received by investors participating in an additional investment arrangement expires, management companies will need to send those investors a copy of the current updating supplementary prospectus relating to that standard prospectus.

[Historical note: RG 127.80 amended 4/3/1998 by deleting the words “, irrespective of how they elected,” before the words “a copy of the current updating supplementary prospectus”.]

RG 127.81 At least once every three years, an existing investor who participates in an additional investment arrangement must receive a copy of the current standard prospectus. This is because the number of updating supplementary prospectuses which may be issued in relation to a standard prospectus is limited to two.

RG 127.82 Sending these documents to existing investors who participate in an additional investment arrangement is necessary to make sure that the management company does not breach the condition for reasonable belief described in RG 127.75 or the prohibition in s1040 of the Law.

[Historical note: RG 127.82 amended 4/3/1998 by replacing the words “have elected to join” with “participate in”.]

Content

RG 127.83 As previously noted, the content requirements of the Law for a prospectus must be met by the cumulative information contained in the relevant standard prospectus and the updating supplementary prospectus or prospectuses relating to it.

RG 127.84 In practical terms this means that in year “0” an existing investor will receive a copy of the relevant standard prospectus that must comply with the Law.

RG 127.85 In year “1” the standard prospectus will be updated by an updating supplementary prospectus. The information contained in the standard prospectus plus the information contained in the updating supplementary prospectus must comply with the content requirement in the Law for a current standard prospectus for the applicable schemes.

RG 127.86 In year “2” the information contained in both the standard prospectus plus the first updating prospectus will need to be updated in a second updating supplementary prospectus. At this time the information contained in the standard prospectus, the first updating supplementary prospectus and the second updating supplementary prospectus must comply with the content requirement in the Law for a current standard prospectus for the applicable schemes.

RG 127.87 When taken together the original standard prospectus and all updating supplementary prospectuses must not be misleading or deceptive.

RG 127.88 A cumulative approach in relation to the information contained in an updating supplementary prospectus has been adopted to allow the information contained in an updating supplementary prospectus to apply to up to two standard prospectuses.

Statements to be contained in all updating supplementary prospectuses

RG 127.89 Every updating supplementary prospectus must contain statements to the effect that the updating supplementary prospectus, when combined with the standard prospectus and any other updating supplementary prospectus to which it relates:

- (a) complies with the content requirements of the Law for a current prospectus for the applicable schemes; and
- (b) is not false or misleading.

RG 127.90 In addition, each updating supplementary prospectus must contain statements that confirm:

- (a) the completeness and accuracy of:
 - (i) any expert's statement; and
 - (ii) any statement based on an expert's report contained in the standard prospectus and any other updating supplementary prospectus to which it relates (as supplemented, varied or amended in an updating supplementary prospectus); and
- (b) the consent of any expert referred to in that standard prospectus and updating supplementary prospectus is current.

RG 127.91 The updating supplementary prospectus is required to contain these statements to make sure that the information contained in any fresh updating supplementary prospectus when considered with the information contained in the standard prospectus to which it relates and any other related updating supplementary prospectus meets the content standard of the Law for a prospectus issued on the same date as the relevant fresh updating supplementary prospectus. This result is achieved for the same reasons as stated at RG 127.50.

RG 127.92 Where a management company proposes to use the updating supplementary prospectus method, the standard prospectus in respect of which updating supplementary prospectuses have been issued will need to contain the statement otherwise required by s1021(5) of the Law which has been modified to take into account the extended life of a prospectus under the updating supplementary prospectus method.

Life of an updating supplementary prospectus

RG 127.93 The life of an updating supplementary prospectus is 12 months.

Due diligence

RG 127.94 At least once every 12 months, the information contained in the relevant standard prospectus and any updating supplementary prospectus relating to it will need to be considered as a whole and updated to make sure that the documents when considered together contain all the information that would otherwise be required in a current standard prospectus for the applicable schemes.

RG 127.95 The defences in Pt 7.11 of the Law that are linked to a due diligence process will be available in respect of the information contained in the standard prospectus and all related updating supplementary prospectuses.

Replacement or supplementary prospectus

RG 127.96 Under this method, management companies will also need to issue a current standard prospectus. This will be necessary so that new investors may invest in the applicable schemes.

RG 127.97 The supplementary and replacement prospectus provisions of the Law continue to apply in relation to all current standard prospectuses.

RG 127.98 Section 1024E will not apply where an existing investor makes an additional investment application after a supplementary prospectus (including an updating supplementary prospectus) has been issued in relation to a standard prospectus for which an updating supplementary prospectus has been issued. This is because existing investors making additional investment applications do not complete application forms.

RG 127.99 Where an existing investor makes an additional investment application after the issue of a supplementary prospectus (other than an updating supplementary prospectus) or replacement prospectus and that person has not received a copy of the supplementary prospectus or replacement prospectus, the management company must follow a procedure similar to that described in s1024E: see cl 7 of Pro Forma 169.

RG 127.100 Section 1024E will continue to apply to applications made by any investor who completes an application form that is not current.

Lodgment

RG 127.101 All updating supplementary prospectuses must be lodged with ASIC in accordance with the lodgment requirements for a supplementary prospectus. Therefore, they need not be registered. The fee payable will be the fee set out in Item 10 of the Corporations (Fees) Regulations on lodging a supplementary prospectus.

Number of documents

RG 127.102 In light of the requirement to provide existing investors with a copy of the current standard prospectus every three years (see RG 127.81), unless a supplementary prospectus has been issued, an existing investor will need to refer to no more than three documents to get complete and current information — that is, a standard prospectus, the current updating supplementary prospectus and the updating supplementary prospectus issued for the preceding year.

Instrument of relief

RG 127.103 The terms of ASIC's relief facilitating the use of an updating supplementary prospectus are set out in Pro Forma 171. This relief is only available in conjunction with the application form relief described at Part IV of this guide.

Part IV: Application form relief

RG 127.104 In addition to the pro forma relief that facilitates the use of a two-part prospectus and an updating supplementary prospectus, pro forma relief (see Pro Forma 169) is also available to allow management companies to:

- (a) accept additional investment applications not made on application forms taken from a current prospectus; and
- (b) use discrete election forms and notices in relation to joining additional investment arrangements.

[*Historical note:* RG 127.104 amended 4/3/1998 by replacing in para (b) the words “in relation to” with “and notices in relation to joining”.]

RG 127.105 Following is an outline of the terms of that relief. These terms apply irrespective of which updating method is chosen.

Additional investment arrangements

RG 127.106 If a management company offers an additional investment arrangement for any scheme that it manages, the current prospectus or a supplementary prospectus relating to that prospectus must:

- (a) describe the additional investment arrangement;
- (b) describe how and when existing investors who join the additional investment arrangement will be given on-going current information, (including confirmation of all additional investment applications and a copy of the current prospectus); and
- (c) have a prominent statements with the description of the additional investment arrangement:
 - (i) that existing investors who participate in additional investment arrangements should keep for future reference the prospectus together with any updating information later sent to them under this relief; and
 - (ii) that a copy of the current prospectus is available free of charge from the management company;
 - (iii) explaining the entitlement to a transaction statement both periodically and on request (see RG 127.113).

[*Historical note:* RG 127.106 amended 4/3/1998 by replacing para (c). Para (c) formerly read:

“(c) have a prominent statement that existing investors who join additional investment arrangements should keep for future reference the prospectus together with any updating information later sent to them under this relief.”.]

Section 1024G

RG 127.107 Under s1024G information that would otherwise be in a prospectus can be set out in an application form attached to it. However, an application form is detachable and therefore, to make sure that part of the information is not missing when additional investment applications are made, application forms attached to prospectuses which offer additional investment arrangements cannot use s1024G.

Acceptance of applications

RG 127.108 Management companies may only accept an additional investment application that is not made on an application form taken from a current prospectus if:

- (a) the management company believes, on reasonable grounds, that the person making the application has received a copy of:
 - (i) the current standard prospectus for the applicable scheme — if the standard prospectus method is adopted; or
 - (ii) the current part-1 and the current part-2 of a two-part prospectus — if the two-part prospectus method is adopted; or
 - (iii) the relevant standard prospectus and all related updating supplementary prospectuses — if the updating supplementary prospectus method is adopted; and
- (b) the person making the application is an existing investor.

[Historical note: RG 127.108 amended 4/3/1998 by replacing para (b). Para (b) formerly read:

“(b) the person making the application is an existing investor who has, before applying, elected to join an additional investment arrangement with that management company.”.]

Discrete election forms and notices

[Historical note: Heading amended 4/3/1998 by adding the words “and notices”.]

RG 127.109 A management company may require an existing investor to join an additional investment arrangement by completing a discrete election form or it may notify existing investors about the arrangement and their entitlement to participate.

[Historical note: RG 127.109 replaced 4/3/1998. The paragraph formerly read:

“RG 127.109 An existing investor may elect to join an additional investment arrangement by either:

- (a) completing a section of an application form taken from a copy of a current prospectus; or
- (b) completing a discrete election form.”.]

RG 127.110 If a management company uses either of these methods it must make sure that the election form or notice contains the following information and no more:

- (a) the identity of the management company;
- (b) a description of the additional investment arrangement;
- (c) a description of how and when all ongoing information (including copies of confirmations of additional investment applications and copies of the current prospectus) will be provided to existing investors who participate in the additional investment arrangement;
- (d) prominent statements with the description of the additional investment arrangement:
 - (i) that existing investors who participate in the additional investment arrangement should keep the prospectus (which may be either a standard prospectus or a two-part prospectus) and any other updating information sent to them for future reference when making additional investment applications; and
 - (ii) that a copy the current prospectus is available free of charge from the management company;
 - (iii) explaining the entitlement to a transaction statement both periodically and on request (see RG 127.113);
- (e) if relevant, information about how the existing investor may elect to join the additional investment arrangement and a place where they may indicate whether they already have a copy of the current prospectus.

[Historical note: RG 127.110 replaced 4/3/1998. The paragraph formerly read:

“RG 127.110 If a management company uses a discrete election form it must:

- (a) make sure that the election form contains the following information and no more:
 - (i) the identity of the management company;
 - (ii) a description of the additional investment arrangement;
 - (iii) a description of how and when all ongoing information (including copies of confirmations of additional investment applications and copies of the current prospectus) will be provided to existing investors who participate in the additional investment arrangement;
 - (iv) a prominent statement that existing investors who join an additional investment arrangement should keep the prospectus (which may be either a standard prospectus or a two-part prospectus) and any other updating information sent to them for future reference when making additional investment applications; and
 - (v) information about how the existing investor may elect to join the additional investment arrangement; and

- (b) send a copy of the current prospectus (unless it is accompanied by the discrete election form) to existing investors who complete a discrete election form before accepting their additional investment applications.”.]

Applications made where an investor does not have current information

RG 127.111 If an existing investor makes an additional investment application after a supplementary prospectus (not being an updating supplementary prospectus) or a replacement prospectus has been lodged with ASIC, the management company must process that application in accordance with a procedure that closely mirrors the requirements of s1024E of the Law (see cl 7 of Pro Forma 169).

RG 127.112 Adopting the provisions of s1024E without modification was not possible. This is because s1024E only relates to applications for prescribed interests. It does not relate to applications to switch which involve both an application to redeem out of one scheme and an application to invest in another scheme.

Transaction records and confirmations

RG 127.113 The management company must:

- (a) maintain transaction records for all additional investment applications; and
- (b) give existing investors:
 - (i) a written transaction statement, at least quarterly, showing all transactions that have occurred since the date of the last transaction statement; and
 - (ii) upon request (free of charge and as soon as practicable after the request) a written transaction statement for the period between the date of the last transaction statement and the request.

Transaction statements must show an opening and closing balance and must identify every top-up and switching application that has been accepted and rejected during the relevant period. A transaction statement need not be sent if no transactions have occurred during the relevant period.

[Historical note: RG 127.113 replaced 4/3/1998. The paragraph formerly read:

“RG 127.113 The management company must:

- (a) maintain transaction records for all additional investment applications; and
- (b) give existing investors written confirmation of all additional investment applications not more than 14 days after each application is processed.”.]

Copy of prospectus available on request

RG 127.114 A management company must, on request, send to an existing investor (free of charge) a copy of the current prospectus.

Covenant in the trust deed

RG 127.115 The trust deed for any scheme to which an additional investment arrangement relates must contain a covenant that extends the covenant set out in reg 7.12.15(6)(b) to money received pursuant to an additional investment application.

Part V: Applications for relief

RG 127.116 Management companies may apply for relief under this guide at any ASIC Regional Office.

Part VI: Transitional arrangements

Withdrawal of current relief

RG 127.117 Before ASIC issued this guide certain management companies obtained relief which allowed them to accept additional investment applications from existing investors. This relief was subject to terms similar to those imposed under the standard prospectus method described in this guide.

RG 127.118 In most cases this relief had a sunset clause which, in effect, revokes the relief when the prospectus that was current at the time it was granted expires.

RG 127.119 If there is a sunset clause in the existing relief, ASIC does not propose revoking that relief before its expiry date.

RG 127.120 It also does not intend to extend that relief unless ASIC is satisfied that the roll-over date of the next prospectus is so close to the issue date of this guide as to create compliance and administrative difficulties for the management company.

RG 127.121 In this event, relief on the existing terms may be renewed for an additional year. However, if this happens it is proposed that the relief expire on the same day as the prospectus to which it relates.

RG 127.122 If there was no sunset clause in the existing relief, ASIC proposes to revoke that relief with effect on the expiry date of the current standard prospectus.

RG 127.123 If the expiry date of the current standard prospectus is very close to the date of issue of this guide and ASIC is satisfied that revocation would create compliance and administrative difficulties ASIC will consider revoking the relief from the expiry date of the next prospectus.

Notification of transition to existing investors

RG 127.124 If the relief outlined in this guide is granted to a management company who was granted relief that allows additional investment arrangements prior to the issue date of this guide, the management company:

- (a) must notify any existing investors who joined an additional investment arrangement during the currency of that relief about:

- (i) any changes to the additional investment arrangement resulting from the transition to the relief described in this guide; and
 - (ii) how and when all ongoing information required by the relief (including transaction statements and copies of current prospectuses) will be sent to that existing investor; and
- (b) must not accept any additional investment applications from those existing investors unless it believes, on reasonable grounds, that they have received the written notice referred to in sub-paragraph (a) above.

[*Historical note:* RG 127.124 amended 4/3/1998 by replacing, in para(a)(ii), the words “confirmations” with “transaction statements”.]

Part VII: Assessment after one year

RG 127.125 In August 1998 ASIC revised this guide to take into account the outcomes of the simpler managed investment prospectus pilot program: see [SPS 137].

[Historical note: RG 127.25 replaced 4/9/1998. The paragraph formerly read:

“RG 127.125 The ASC proposes to assess the relief described in this policy statement to take into account the outcomes of the simpler managed investment prospectus pilot program. This is because the relief described in this policy statement interacts with the relief available under that pilot program.”]

RG 127.126 ASIC also proposes to assess the two-part prospectus method and the updating supplementary prospectus method of giving current information to existing investors who join an additional investment arrangement. This is because these methods of providing information to existing investors have not been tested in the market place.

RG 127.127 This assessment is likely to commence 12 months after the issue date of this guide.

[Historical note: RG 127.22 amended 4/9/1998 by deleting the second sentence which read:

“This is because it is anticipated that the simpler managed investments prospectus pilot will end between July 1998 and early November 1998.”]

RG 127.128 When assessing the relief described in this guide ASIC proposes to take into account the three year time frame for the two-part prospectus method and updating supplementary prospectus method and to seek public comment. It also proposes that any ensuing policy changes have appropriate transitional provisions.

Part VIII: Interpretation

RG 127.129 In this guide, a reference to:

- (a) an “additional investment” is to a top-up or switch;
- (b) an “additional investment arrangement” is to an arrangement by which an existing investor can make an additional investment without having to complete an application form taken from a current prospectus;
- (c) the “application form relief” is to the relief described in this guide that allows a management company to accept additional investment applications not made on an application form taken from a current prospectus;
- (d) a “current prospectus” is to a prospectus which may be either a current standard prospectus or a current two-part prospectus;
- (e) an “existing investor” is a person who already holds prescribed interests in a scheme managed by a particular management company;
- (f) the “Law” is to the Corporations Law;
- (g) a “management company” is to the management company of a prescribed interest scheme;
- (h) a “new investor” is a person who makes an investment application for prescribed interests in a scheme managed by a management company where that person does not presently hold prescribed interests in that scheme or any other scheme managed by that management company;
- (i) “part-1” of a two-part prospectus is to that part of a two-part prospectus which contains the information required by s1022 as modified by reg 7.12.12 which, in relation to the relevant schemes, the management company and any other person involved in its preparation reasonably believe will not change while it is current;
- (j) “part-2” of a two-part prospectus is to that part of a two-part prospectus which contains the information required by s1022 as modified by reg 7.12.12 which is likely to change;
- (k) “regular savings plan” is to an arrangement to make regular investments in the same prescribed interest scheme under an automatic arrangement, for example, by authorised deduction from a nominated bank account on the first day of each month;
- (l) a “regulation” is to a regulation in the Corporations Regulations;
- (m) a “scheme” is to a prescribed interest scheme;
- (n) a “standard prospectus” is to a prospectus under the Law without modification;

- (o) a “statutory provision” is to a provision in the Law;
- (p) a “switch” is to redeeming an existing investment and reinvesting the proceeds in another scheme under a different deed managed by the same management company;
- (q) a “top-up” is to an additional investment made in the same prescribed interest scheme (other than pursuant to an excluded offer or invitation) or a new investment in another scheme managed by the same management company;
- (r) a “two-part prospectus” is to a prospectus which is in two parts where the two parts together comply with s1022 as modified by reg 7.12.12 and all other provisions of the Law applicable to a prospectus offering prescribed interests;
- (s) an “updating supplementary prospectus” is to a supplementary prospectus referred to at RG 127.76 and not to a supplementary prospectus otherwise required to be lodged with ASIC under the Law.