



**ASIC**

Australian Securities & Investments Commission

## INFORMATION SHEET 155

# Shorter PDSs: Complying with requirements for superannuation products and simple managed investment schemes

This information sheet provides concise guidance for industry on technical issues related to implementation of the Product Disclosure Statement (PDS) requirements in the Corporations Regulations 2001 (Corporations Regulations), as amended by the Corporations Amendment Regulations 2010 (No. 5), for superannuation products and simple managed investment schemes. These regulations were made in June 2010 and are referred to in this information sheet as the 'shorter PDS regime'.

This information sheet explains:

- generally what requirements apply to PDSs for superannuation products and simple managed investment schemes under the shorter PDS regime (shorter PDS requirements), and
- what interim relief is available for certain products.

It also gives guidance on the following specific topics relating to the shorter PDS requirements:

- incorporation by reference
- page length, font size and warnings
- additional information
- 'white label' products
- whether and how investment options may change
- employer PDSs and employer-sponsored members
- Stronger Super
- insurance information
- accumulation and pension interests in the same superannuation fund
- the standard risk measure.

The topics in this information sheet are based on the feedback we have received from industry and on the results of review work undertaken by ASIC that has identified areas where industry may benefit from further guidance. We may add to this guidance in future.

Note: This information sheet does not provide guidance on the shorter PDS requirements for standard margin lending facilities.

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

## What requirements apply?

From 22 June 2012, all issuers of certain financial products must comply with requirements for shorter PDSs under the shorter PDS regime. The shorter PDS requirements apply to all PDSs for superannuation products except products that:

- are solely a defined benefit interest
- are solely a pension product
- have no investment component (also known as ‘risk-only superannuation products’), or
- are subject to relief: see reg 7.9.11K of the Corporations Regulations and s1020F of the *Corporations Act 2001* (Corporations Act).

The shorter PDS requirements also apply to simple managed investment schemes, except schemes that are:

- intended to be quoted on a financial market
- part of a stapled security
- a platform, or
- subject to relief: see reg 7.9.11S of the Corporations Regulations and s1020F of the Corporations Act.

Note: For the definition of ‘simple managed investment scheme’, see Information Sheet 133 *Shorter PDS regime: Superannuation, managed investment schemes and margin lending* (INFO 133).

This means that, on and after 22 June 2012, if you are an issuer of a superannuation product or a simple managed investment scheme, you must provide disclosure in the form of a shorter PDS, unless relief applies.

The shorter PDS requirements are set out in Pt 7.9 of the Corporations Act, as modified by Pt 7.9, Div 4, Subdiv 4.2B of the Corporations Regulations (for superannuation products) and Pt 7.9, Div 4, Subdiv 4.2C of the Corporations Regulations (for simple managed investment schemes).

The objectives of the Australian Government in developing these requirements were to help consumers engage with disclosure documents and better understand their financial products.

## What relief is available?

On 22 December 2011, the Minister for Financial Services and Superannuation announced that the Government would be undertaking further consultation with industry and consumer groups to determine whether superannuation platforms, multi-funds and hedge funds should be excluded from the shorter PDS regime.

Pending further work by the Government on the appropriate long-term treatment of these products, ASIC has provided interim class order relief to exempt superannuation platforms, multi-funds and hedge funds from the shorter PDS regime: see Class Order [CO 12/749] *Relief from the Shorter PDS regime* and the explanatory statement to the class order for full details. [CO 12/749] has been amended subsequently so that, for superannuation platforms, multi-funds and hedge funds, relief has been extended until 22 June 2014.

After industry consultation, ASIC has amended the characteristics that trigger a scheme’s classification as a hedge fund: see Class Order [CO 13/1128], which further amends [CO 12/749]. This change will reduce the number of funds specifically excluded from the shorter PDS regime. The funds that remain are more complex products, which are required to address the benchmarks and disclosure principles in Regulatory Guide 240 *Hedge funds: Improving disclosure* (RG 240). This will ensure that ASIC’s disclosure requirements for

hedge funds are appropriately targeted at more complex schemes that expose investors to greater risks.

Note: For the definitions of ‘superannuation platform’ and ‘multi-fund’, see [CO 12/749] and the explanatory statement to the class order. For further information about the revised definition of ‘hedge fund’, see the explanatory statement to [CO 13/1128] and RG 240.

ASIC will also consider individual applications for relief from issuers where they consider the operation of the class order produces anomalous results in relation to their fund or funds: see Regulatory Guide 51 *Applications for relief* (RG 51) for details of how to apply to ASIC for individual relief.

## Incorporation by reference

The shorter PDS regime is designed to make PDSs shorter and simpler for consumers and to facilitate comparison between financial products. To achieve this aim, the shorter PDS regime prescribes certain section headings and content for superannuation products or simple managed investment schemes. This key information must be disclosed in an eight A4 page, 16 A5 page or 24 DL page document (primary document): see ‘Page length’ below for more information.

Extra information and section headings may be included in the primary document provided that the prescribed length is not exceeded: see Schs 10D(2)(5) and 10E(2)(5) of the Corporations Regulations.

Some material is required or permitted to be located separately from the primary document, with a reference to be included in the primary document telling readers where they can find this information: see regs 7.9.11P and 7.9.11X of the Corporations Regulations. This mechanism is called ‘incorporation by reference’ and is an important means by which the primary document can be kept short and concise, while providing full information elsewhere for those consumers who wish to read it.

A ‘shorter PDS’ includes both the primary document and the material incorporated by reference. Therefore, material incorporated by reference is deemed to be part of the shorter PDS, and the full range of liability and enforcement provisions of the law apply to it: see s1013C(1C) of the Corporations Act as modified.

As part of our recent review work, we saw examples of issuers who tried to use a supplementary PDS to update their shorter PDS. Shorter PDSs cannot be updated in this way: see regs 7.9.11M and 7.9.11U of the Corporations Regulations. If you update the primary document, you are issuing a new PDS.

When you change fee information or other information in the primary document, you should treat the PDS as a new PDS by re-dating it and lodging with ASIC Form FS88 *PDS in-use notice*.

On the other hand, if you change incorporated documents but not the primary document, no PDS notice is required (unless there is a change to the incorporated fee information, in which case, Form FS89 *Notice of change to fees and charges in a PDS* should be lodged with ASIC).

If a product ceases to be available to be recommended or offered to new clients, Form FS90 *Notice that a product in a PDS has ceased to be available* should be lodged with ASIC.

## Page length

The primary document must be a maximum of eight A4 pages, 16 A5 pages or 24 DL pages in length: see reg 7.9.11O and Sch 10D(1) of the Corporations Regulations (for superannuation products) and reg 7.9.11W and Sch 10E(1) of the Corporations Regulations (for simple managed investment schemes). However, it is not stipulated whether these are single-sided or double-sided pages.

We consider that the policy intent was that the primary document should be consumer friendly and easy to read. Therefore, the prescribed maximum page length should be treated

as a total page length. For example, if a primary document uses A4 paper, it could be eight single-sided pages, or four double-sided pages.

In our recent review work, we found that some shorter PDSs were too long.

## Font size

We also found that some shorter PDSs were difficult to read because they used a small font size. You may be tempted to use a smaller font in shorter PDSs because of limited space.

Font size in the primary document must be at least 9 points (except for the issuer's name, address, ACN, ABN or Australian financial services licence number, which must be at least 8 points): see Schs 10D(1)(2) and 10E(1)(2).

We encourage you to consider how easy your PDS is to read – for example, by testing it with potential consumers. You may be able to make the PDS easier to read by increasing the font size and ensuring that the print is not too pale or faint.

## Warnings

In our recent work, we found that the required warnings were often not formatted to attract consumers' attention.

The shorter PDS regime requires shorter PDSs to contain warnings such as those set out in Table 1 below. To alert consumers, these warnings must be made prominent. You may be able to amend the formatting of the required words to create emphasis – for example, by:

- increasing their font size
- changing their colour
- putting a box around them
- using a coloured background, or
- inserting a warning symbol next to them.

**Table 1: Shorter PDS warnings required by the Corporations Regulations**

Warning	Regulations requirement
When choosing an investment option, the person must consider the likely investment return, the risk and their investment timeframe.	Sch 10D(7)(2)
Additional fees may be paid to a financial adviser if a financial adviser is consulted.	Sch 10D(8)(9)(a) and Sch 10E(8)(9)(a)
When acquiring a superannuation product, consumers should provide their tax file number.	Sch 10D(9)(2)(a)
There will be taxation consequences if a consumer's superannuation contribution caps are exceeded.	Sch 10D(9)(2)(c)
If a superannuation product offers default insurance, unless a person declines or cancels the cover, the cost of the cover will be deducted from their account or contributions.	Sch 10D(10)(3)(g)

## Additional information

In addition to material incorporated by reference, primary documents may refer to other information that is set out in another document: see s1013C(1E) of the Corporations Act as modified by reg 7.9.11N and Sch 10A of the Corporations Regulations (for superannuation products) and reg 7.9.11V and Sch 10A of the Corporations Regulations (for simple managed investment schemes).

This information does not form part of the shorter PDS, although it is still subject to certain requirements under the Corporations Act or Corporations Regulations: see s1013C(1F) of the Corporations Act as modified.

## **‘White label’ products**

Many financial conglomerates have financial products which they ‘white label’—that is, the financial products are identical except for the name which brands the financial product. Where you have a number of white label products, each requiring their own primary document, the relevant material incorporated by reference may be identical for each white label product. In such circumstances, the primary documents can incorporate by reference the same material (i.e. material incorporated by reference can relate to more than one primary document) as long as the material incorporated by reference identifies by name, date and version all primary documents to which it relates: see regs 7.9.11P and 7.9.11X of the Corporations Regulations.

We consider the policy intent is that material incorporated by reference should be easily identifiable and linked to each primary document. Having one generic document for material incorporated by reference with no reference to the name, date or version of the primary documents would not achieve this intent.

## **Whether and how investment options may change**

Shorter PDSs must provide information about how a person may switch their investments in the product: see Schs 10D(7)(9)(a) or 10E(7)(7)(a). In addition, under Schs 10D(7)(9)(b) or 10E(7)(7)(b), the PDS must provide information about whether investment options may be changed and, if so, how.

We interpret this latter requirement as requiring the PDS to state whether the trustee or responsible entity can add, close or alter investment options and, if so, what notice they will give to members or investors.

## **Employer PDSs**

A superannuation fund trustee must give a shorter PDS to a standard employer sponsor, as well as to members. We understand that the current practice is for superannuation trustees to prepare a separate PDS for employers, focusing on the information that an employer would want to know about the superannuation fund provided for employees.

Under the Corporations Regulations, a shorter PDS for superannuation products must be in the form prescribed in Sch 10D of the Corporations Regulations: see reg 7.9.11O of the Corporations Regulations. This means that a superannuation trustee cannot provide a separate tailored shorter PDS for employers.

To address this issue, we consider that superannuation trustees could give employers a copy of the shorter PDS for employees together with a non-PDS document outlining any employer-specific information.

## **Employer-sponsored members**

Where an employer-sponsored member of a superannuation fund leaves their employer, the superannuation fund trustee may transfer them to another division of the fund (e.g. personal division), with a possible increase in fees and insurance premiums or a reduction in benefits.

If this is the case, we regard any potential fee or premium increase, or any loss of benefits, as a significant feature of the superannuation product that should be disclosed in the shorter PDS in Section 3 ‘Benefits of investing with [name of superannuation product]’. Section 3 must describe not only significant benefits, but significant features of the superannuation product: see Sch 10D(5)(1).

Alternatively, you may disclose the consequences of a member leaving their employer in Section 4 of the PDS 'Risks of super': see Sch 10D(6)(2).

## Stronger Super

The Government is introducing changes to the regulation of superannuation, including new default fund arrangements known as 'MySuper' products. From 1 July 2013, trustees who want to offer default superannuation can offer a 'MySuper' product if the Australian Prudential Regulation Authority (APRA) authorises them to do so.

Where a fund offers a MySuper product, this will generally replace the current default option mentioned in the superannuation fund trustee's primary document (with 'Choice' options incorporated by reference). We do not anticipate that there will be any requirement for a MySuper product option to have a separate, shorter PDS, but recognise that some MySuper products will be stand-alone products, which need their own shorter PDS.

Further, some superannuation trustees (as is the case now) will be able to tailor their superannuation offerings for employees of a particular employer. If this occurs, the shorter PDS requirements will need to be met, including the requirements for incorporation by reference.

Stronger Super will also change fee disclosure arrangements for both superannuation and managed investment schemes, and you will need to be aware of these changes when preparing shorter PDSs in 2014.

## Insurance information

Certain insurance information must be provided in the primary document if a superannuation product offers insurance cover: see Sch 10D(10)(2) of the Corporations Regulations. This includes a summary of the main types of insurance cover that a person can acquire, as well as other required information.

In addition, if insurance cover is provided by default, the primary document must include a summary of the level and type of cover, the cost of the insurance and how a person can decline, cancel or change the cover: see Sch 10D(10)(3) of the Corporations Regulations.

If insurance is provided as an option (but not as a default), certain information must be provided, but it is discretionary whether this information is in the primary document or incorporated by reference: see Sch 10D(10)(4) of the Corporations Regulations.

Any other information about insurance may be incorporated by reference: see Sch 10D(10)(5) of the Corporations Regulations.

The policy intent is that the primary document should only contain the essential 'need to know' information as set out above. We acknowledge that there may be other compulsory disclosure requirements that apply under the relevant insurance legislation. This information may be incorporated by reference: see s1013C(1A) of the Corporations Act as modified.

We also understand that there may be a number of different insurance offerings from which members may need to make a selection. In these circumstances, it is up to you to determine the essential information that must be provided in the primary document and to incorporate by reference any other relevant information as permitted by Sch 10D(10)(5) of the Corporations Regulations.

## Accumulation and pension interests in the same superannuation fund

Where a superannuation fund has an accumulation division and a pension division, and the superannuation trustee uses a shorter PDS covering both divisions, the PDS should give similar prominence to both accumulation and pension features. If, for example, the shorter

PDS focuses more on accumulation than pension features, consumers may not have enough information to make informed decisions about the pension part of the product.

## Standard risk measure

In July 2011, the Association of Superannuation Funds of Australia (ASFA) and the Financial Services Council (FSC) announced new industry guidelines to standardise the disclosure of investment risk in superannuation funds.

The standard risk measure (SRM) is an investment risk classification system developed by the FSC and ASFA to enable investors to compare investment options across superannuation funds. The SRM contains seven risk levels, from very low to very high, with each level based on the estimated number of negative annual returns over any 20-year period. For example, a very low risk investment option means less than 0.5 negative annual returns in a 20-year period, while a very high risk option means six or more negative annual returns in a 20-year period. For more information, see the *Standard risk measure guidance paper for trustees*, issued by the FSC and ASFA in July 2011, available at [www.superannuation.asn.au](http://www.superannuation.asn.au).

We encourage trustees, as far as practicable, to disclose the SRM for their default option in the primary document under the heading 'Risks of super'. We would encourage all other components of the SRM – such as the explanation of what it is, its limitations and the methodology – to be included in the material incorporated by reference for a superannuation product.

We recommend that funds that do not use the SRM should explain in the primary document why this model is not being used and describe what risk classification model has been used instead. If trustees want to add other information about risk in the material incorporated by reference, they can do so: see Schs 10D(6)(4) and 10E(6)(4) of the Corporations Regulations.

We recognise that industry is continuing to develop its thinking on risk disclosure and we support these initiatives. However, in the interim, we consider the SRM is a useful aid for consumers in better understanding their superannuation product.

Trustees should be aware that the Stronger Super reforms require MySuper products to have a product dashboard publicly available on the fund's website from 31 December 2013. The product dashboard requires the use of the SRM as one of its key elements: see s1017BA of the Corporations Act, reg 7.9.07V of the Corporations Regulations and APRA's Reporting Form SRF 700.0 *Product dashboard*. We think this provides a further reason to include the SRM in the PDS.

## Where can I get more information?

- Download a copy of INFO 133 at [www.asic.gov.au/infosheets](http://www.asic.gov.au/infosheets).
- Download a copy of [CO 12/749] at [www.asic.gov.au/co](http://www.asic.gov.au/co).
- Contact ASIC on 1300 300 630.

## Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law on that topic, and it is not a substitute for professional advice.

You should also note that, because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases, your particular circumstances need to be taken into account when determining how the law applies to you.