



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 221

Facilitating electronic financial services disclosures

November 2014

About this guide

This is a guide for financial services providers that use (or plan to use) technology, including email and the internet, to deliver financial services disclosures to clients.

This guide:

- explains how ASIC interprets the electronic disclosure provisions under Pts 7.6–7.9 of the *Corporations Act 2001* (Corporations Act);
- describes the relief available under Class Order [CO 15/XXX] *Facilitating electronic delivery of financial services disclosure*;
- describes the relief available under Class Order [CO 15/YYY] *Electronic disclosure documents*; and
- sets out our good practice guidance on electronic disclosure.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

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

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This draft guide was issued in November 2014 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 221, issued December 2010

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

While the *Corporations Act 2001* (Corporations Act) expressly permits the electronic delivery of financial services disclosures, we understand that some providers have been discouraged from doing so because of uncertainty about what specific practices the law allows.

The purpose of this guide is to clarify our interpretation of the law and to explain the class order relief we have given in relation to:

- the delivery of electronic disclosures; and
- the removal of potential barriers to the use of more innovative Product Disclosure Statements (PDSs).

This guide also sets out our 'good practice guidance' on electronic disclosure, including guidance to facilitate the use of more innovative PDSs, such as interactive PDSs.

Our approach to facilitating electronic disclosure

- RG 221.1 Financial services disclosures (disclosures) are often lengthy, printed documents that many clients find difficult to understand and engage with. We think that one way to make disclosure more effective is by encouraging and facilitating the use of electronic disclosures. An advantage of electronic disclosure for clients is that it can incorporate more engaging forms of media and can be interactive. This can make the information more attractive and easier to understand for clients.
- RG 221.2 Electronic disclosure also has advantages for providers in reducing the costs of printing and mailing.
- RG 221.3 We take a technologically neutral approach to disclosures and do not mandate the delivery of disclosures electronically. Providers need to determine the method of delivering disclosures that best suits their clients and which will not expose those clients to undue risk of scams and fraud. For example, a margin-lending product might work well online because clients are likely to be monitoring their investments online. However, other clients might prefer to receive printed disclosures (e.g. clients without ready access to the internet, or clients who have access to the internet but who do not use it regularly or who do not feel comfortable with online communication).

Our guidance and relief

- RG 221.4 While the Corporations Act expressly permits the electronic delivery of financial services disclosures, we understand that some providers have been discouraged from doing so because of uncertainty about what specific practices the law allows.
- RG 221.5 To facilitate the use of electronic disclosures, we have:
- (a) explained how delivery methods can be used relying on the electronic disclosure provisions under Pts 7.6–7.9 of the Corporations Act, including explaining our views on the requirement that a client nominate an address and how we think providers should use email addresses;
 - (b) given relief in Class Order [CO 15/XXX] *Facilitating electronic delivery of financial services disclosure* to facilitate the delivery of disclosures by making the disclosure available electronically and notifying the client; and
 - (c) given relief in Class Order [CO 15/YYY] *Electronic disclosure documents* and provided guidance to facilitate the use of more innovative PDSs.
- RG 221.6 We have also provided ‘good practice guidance’ to help ensure that clients receive clear, concise and effective information when disclosures are delivered electronically: see Section D.
- RG 221.7 The appendix summarises how different types of disclosure can be delivered under the law.

B Delivery of electronic disclosures

Key points

Under the Corporations Act, most financial services disclosures can be delivered electronically using a variety of methods.

This section:

- sets out our interpretation of the electronic disclosure provisions under Pts 7.6–7.9 of the Corporations Act; and
- explains the methods providers can use to deliver disclosures electronically, and our relief in [CO 15/XXX] to facilitate the delivery of disclosures by making the disclosure available electronically and notifying the client that the disclosure is available.

We also strongly encourage providers to take into consideration our ‘good practice guidance’ when delivering disclosures electronically: see Section D.

Corporations Act requirements

RG 221.8 Parts 7.6–7.9 of the Corporations Act permit a wide range of financial services disclosures to be delivered electronically. The provisions that enable disclosures to be delivered electronically differ depending on the type of disclosure.

RG 221.9 Financial Services Guides (FSGs), Statements of Advice (SOAs), PDSs and information statements for Commonwealth Government Securities (CGS) depository interests can be ‘given’ if they are sent to an electronic address or fax number ‘nominated’ by the client or the client’s agent: s940C(1)(a)(ii), 1015C(1)(a)(ii) and 1020AK(1)(a)(ii).

Note: In this document, references to sections, parts and chapters are to the Corporations Act, and references to regulations are to the Corporations Regulations 2001 (Corporations Regulations).

RG 221.10 The following disclosures may be notified or given to a client in ‘electronic’ form or may be sent ‘electronically’:

- ongoing disclosure (s1017B(3)(b));
- periodic statements (s1017D(6)(b));
- confirmations of transactions (s1017F(6)(a)(ii));
- annual superannuation information (s1017DA(3) and reg 7.9.75A(3)(b));
- additional information provided by a superannuation trustee (s1017DA(3) and reg 7.9.75A(3)(b)); and

- (f) unsolicited offers to purchase financial products off-market (s1019E(1)), 1019G(3) and 1019J(2)).
- RG 221.11 The following disclosures may alternatively be ‘made available in any way agreed to’ by a client or their agent:
- (a) FSGs and SOAs (s940C(1)(a)(iii));
 - (b) PDSs (reg 7.9.02A);
 - (c) ongoing disclosure (reg 7.9.75A(1));
 - (d) periodic statements (reg 7.9.75A(2));
 - (e) annual superannuation information and additional information provided by a superannuation trustee (reg 7.9.75A(3)(c) and (d)); and
 - (f) additional information on request (s1017A(4)(b)).
- RG 221.12 Annual superannuation information can also be provided to members of a regulated superannuation fund by ‘making [it] available on a website that is maintained by or on behalf of the trustee’ in accordance with reg 7.9.75BA.
- RG 221.13 Confirmations of transactions can be provided ‘by means of a standing facility’ in accordance with s1017F(5)(b) and 1017F(5A).
- RG 221.14 Under Class Order [CO 13/763] *Investor directed portfolio services*, quarterly reports for an investor directed portfolio service (IDPS) can either be delivered electronically, or a client (with their consent) can be given access to their account via an electronic platform, where the Australian financial services (AFS) licensee has no reason to doubt that the client has substantially continuous access.
- RG 221.15 Table 2 in the appendix summarises the disclosure delivery provisions—both printed and electronic—that apply to different disclosures.

Delivery of disclosures to an email address

- RG 221.16 All of the provisions referred to in in RG 221.9–RG 221.10 allow a provider to send disclosures to an electronic address as text in an email or as an attachment to an email.

Provision of disclosures on a website or other electronic facility

- RG 221.17 We consider that the provisions allowing delivery in any way agreed to by the client (see RG 221.11) allow a provider to deliver those disclosures in any way, but including by sending clients:
- (a) an email with a hyperlink to the disclosure; or
 - (b) a written (printed or electronic) notification that the disclosure is available electronically.

Without our relief, the client must have agreed to one of these methods.

- RG 221.18 Regulations 7.7.01 (SOAs and FSGs), 7.9.02B (PDSs), 7.9.63I (confirmations of transactions) and 7.9.75B (periodic statements, material changes and signification events, annual superannuation information and additional superannuation information) require the disclosure, if it is in electronic form, to be presented in a way that allows the client to ‘keep a copy so that the person has ready access to [the disclosure] in the future’.
- RG 221.19 We do not think this requirement prevents the use of hyperlinks and references to website addresses in delivering disclosures, provided there is some capacity for the client to either store the disclosure, or continue to have access to that disclosure.
- RG 221.20 We also do not think this requirement prevents delivery of disclosures to, for example, smartphones or tablet apps or online facilities, as long as the provider satisfies itself that the client will have access to the disclosure in future and the ability to keep a copy. This might include, for example, multimedia online disclosures that can be saved/downloaded or continually accessed, or an app that can be kept on a smart phone or tablet, a disclosure that can be saved offline, printed or forwarded to an email address.
- RG 221.21 We think that this requirement is a general principle of delivering disclosures.

Relief from the requirement for express client consent

- RG 221.22 We have given relief in [CO 15/XXX] to enable providers to make the following disclosures available electronically, and notify the client the disclosure is available, without the need for any express agreement to receive the disclosures in that manner:
- (a) FSGs and SOAs;
 - (b) PDSs;
 - (c) ongoing disclosure of material changes and significant events;
 - (d) periodic statements; and
 - (e) information statements for CGS depository interests.
- RG 221.23 While we think that the provisions outlined at RG 221.11 mean providers can publish a disclosure on a website or other electronic facility and notify the client that it is available, without our relief the provider would first need to agree this method of delivery with the client.
- RG 221.24 To further facilitate delivery in this way, or a similar way, our relief in [CO 15/XXX] enables a provider to deliver most disclosures by making the disclosure available on a website or other electronic facility and notifying

clients (including to the electronic or postal address, telephone number or fax number that the client has provided for the purposes of receiving information from the provider).

- RG 221.25 For example, if a client has provided a postal address, the provider could post a letter to the client notifying the client that the disclosure is available, without having to first seek the client's agreement to that method of delivery. Similarly, this notification could be delivered by email, SMS, voice call, or in person.
- RG 221.26 The relief provides that the notification should contain details about how to access the disclosure and provide an option for the client to have the disclosure delivered either to an email address or to a postal address on request. This notification would need to be given on each occasion that the provider delivers a disclosure by making it available on a website or other electronic facility.
- RG 221.27 When the disclosure contains personal information, such as in a periodic statement from a superannuation fund, the provider should ensure that the information is adequately secured, such as by password protection.

Additional relief for PDSs, FSGs and SOAs: Receipt of disclosure

- RG 221.28 Regulations 7.7.01(2) and 7.9.02A(1) require that PDSs, FSGs and SOAs be delivered in a way that allows the provider to be satisfied, on reasonable grounds, that the client or the client's agent has received the disclosure. This could be considered an additional barrier to providers delivering PDSs, FSGs and SOAs through hyperlinks or references to an electronic disclosure.
- RG 221.29 This could mean that a provider wishing to deliver a PDS, FSG or SOA via hyperlinks or references to an electronic disclosure must have a mechanism to track whether a client has accessed the disclosure. It may not be sufficient that the provider merely be satisfied that the client has received an email or a paper notification of the availability of the disclosure. This may present practical difficulties for providers and discourage them from delivering PDSs, FSGs and SOAs electronically.
- RG 221.30 To promote greater confidence for providers in delivering PDSs, FSGs and SOAs electronically, we have given relief from the requirement for the provider to be reasonably satisfied where the provider delivers the disclosure via the 'publish and notify' method outlined at RG 221.24.

Individual relief to facilitate electronic disclosure

- RG 221.31 The methods of delivery discussed above relate to specific areas where industry participants have sought clarification. By providing these examples of how electronic disclosures can be delivered, we do not intend to restrict the ways in which disclosures can be delivered. We recognise that there will be other methods of delivery that are also possible under the law, including, for example, delivery through apps or other multimedia channels or web-based platforms.
- RG 221.32 We encourage providers to explore more innovative forms of disclosure and where providers are concerned that there are remaining regulatory barriers, we are open to granting individual relief to facilitate the use of these kinds of disclosure.

Providing contact details

- RG 221.33 Where the law allows delivery of disclosures to an email address that has been ‘nominated’ by the client or the client’s agent (e.g. PDSs: see RG 221.9), the provider should be satisfied that the address has been nominated for that purpose—in the same way that a provider would be required to satisfy itself that a postal address had been nominated for the delivery of a disclosure. We think in most instances this will be clear from the context—for example, if a client has provided their email and postal address as part of their application, the provider could deliver disclosures in respect of the product the client applied for to either address.
- RG 221.34 Other provisions, including our relief (see RG 221.24), enable a disclosure to be sent, given, provided, notified or delivered electronically: see RG 221.10.
- RG 221.35 In determining whether a provider has met their obligation to give a disclosure or notification, they may wish to consider the context in which the client provided their address (including an electronic address), telephone number or fax number, in order to satisfy themselves that they can use that address to effectively ‘give or notify’.

Example 1: Email provided for purpose of delivery of disclosures

In 2014, Rahini enters a relationship with a new financial planner, Anna. Rahini gives Anna all her contact details, including her email address. Rahini does not provide express consent to use her email address for the purpose of delivery of disclosures and Anna does not normally contact Rahini by email because they meet in person and speak on the telephone. Rahini has asked Anna to purchase Big Company bonds on her behalf. Anna gives Big Company Rahini’s email address.

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We think that given Rahini recently provided her email address to her financial planner, one of the purposes of providing that email address was to receive disclosures. We think Big Company can send most disclosures to that email address, but if the law requires that the address has been 'nominated' for that purpose, Big Company would have to be satisfied that either Rahini, or Anna as her agent, had nominated that address.

Delivery methods 'as agreed with the client'

- RG 221.36 When a provider wishes to supply a disclosure in an alternative manner to those described above, under a provision enabling disclosures to be made available as agreed between a client or their agent and the provider (e.g. s940C(1)(a)(iii)), the provider will need to ensure that the client or agent has expressly agreed to receive the disclosures via the relevant method of delivery.

Industry codes and other legal obligations

- RG 221.37 Providers need to consider whether industry codes (e.g. the ePayments Code) otherwise restrict how they may deliver disclosures, including, for example, via hyperlinks, or to take into account consent requirements. Providers also need to consider their other legal obligations when delivering disclosures electronically (e.g. providers should ensure they comply with the *Spam Act 2003* and meet privacy obligations).

C Facilitating the use of more innovative PDSs

Key points

We encourage providers to explore new ways of delivering disclosures.

This section sets out our relief to remove potential legal barriers to the use of more innovative PDSs, including relief:

- from various provisions that require a copy of the PDS to be given on request;
- from the requirement for certain PDSs under the shorter PDS regime to be a particular page length; and
- from provisions that require the use of certain words on the cover or 'at or near the front of' a PDS.

This section also sets out some specific guidance on the use of more innovative PDSs. Section D sets out 'good practice guidance' for electronic disclosure.

RG 221.38 We encourage providers to explore new ways of delivering mandated information and disclosures to meet consumer expectations and to facilitate better understanding of financial products and services. PDSs can be in electronic form (reg 7.9.02B), potentially incorporating a range of multimedia features such as video, audio, interactive menu features, radio buttons, Q&A, animation and gamification.

RG 221.39 There are nevertheless some potential legal barriers that could discourage the use of less traditional formats. In addition, we understand that, for the most part, providers would still want to have a printed version of a PDS available.

Relief to remove potential barriers to more innovative PDSs

RG 221.40 We have provided relief in [CO 15/YYYY] to facilitate the use of more innovative PDSs, such as interactive PDSs.

Giving a copy of 'any' current PDS

RG 221.41 Various provisions require a copy of a PDS to be given on request: s1015D, regs 7.9.11G, 7.9.11R and 7.9.11Z and s1012G(3) (as modified by reg 7.9.15H).

RG 221.42 The provider would be able to give the electronic PDS to the client if they had nominated an electronic address, but because it might be challenging or expensive to send a copy of an electronic PDS to a postal address or to give

it in person, we have given relief to allow a provider to give a copy of *any* current PDS in use for the relevant product. This means that a provider could provide a copy of a *different* printed PDS instead of the electronic PDS where the client had not nominated an electronic address.

Page length and headings

- RG 221.43 We have given relief from the requirement for certain PDSs under the shorter PDS regime to be a particular page length (Sch 10C (margin loans), Sch 10D (some superannuation products) and Sch 10E (simple managed investment schemes) to the Corporations Regulations), provided that the electronic PDS contains the same information required by the shorter PDS regime provisions.

On the cover or ‘at or near the front of’

- RG 221.44 We think the language ‘at or near the front of’ can be applied equivalently to printed and electronic PDSs.
- RG 221.45 We have given relief so that when a provider is using an electronic PDS the requirement for the title ‘Product Disclosure Statement’ to be used on the cover or at or near the front of the document will be satisfied by the title being used at or near the beginning of the PDS.
- RG 221.46 For example, if the title ‘Product Disclosure Statement’ appears at the top of a webpage, on launch of an app or is spoken at the beginning of a video, we think this requirement would be satisfied.
- RG 221.47 If the words ‘Product Disclosure Statement’ are, for example, only found after scrolling down a webpage, we do not think this requirement would be satisfied.
- RG 221.48 The same principles apply to the various other requirements for specific words to be included at or near the front of the PDS—for example, ‘Supplementary Product Disclosure Statement’ (s1014B) or ‘Combined Financial Services Guide and Product Disclosure Statement’: reg 7.7.08A.

Guidance on the use of more innovative PDSs

- RG 221.49 This section sets out some specific guidance on the use of more innovative PDSs: see also Section D for our ‘good practice guidance’ on electronic disclosure, including the more innovative forms.

More than one version of a PDS

- RG 221.50 We believe Pt 7.9 operates to allow a provider to have two PDSs for a financial product (e.g. a printed version and a separate interactive version) provided that each version of the PDS satisfies the requirements of Pt 7.9.

Lodgement with ASIC

- RG 221.51 The requirement for some PDSs to be lodged with ASIC in s1015B (PDSs for managed investment products that are traded on a financial market or are able to be traded on a financial market) is a practical barrier to producing more innovative PDSs. ASIC does not generally accept electronic lodgement at this time; however, we are open to agreeing to electronic lodgement to facilitate the use of more innovative PDSs where they are required to be lodged with ASIC.

Overriding requirement of 'clear, concise and effective'

- RG 221.52 We think that consumers and providers can benefit from more innovative ways of presenting mandated disclosure information, but we remind providers of the overriding requirement that the information in the PDS must be worded and presented in a clear, concise and effective manner: s1013C(3).
- RG 221.53 Providers should apply the Good Disclosure Principles for PDSs in Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168) and other product-specific guidance on disclosure. The Good Disclosure Principles for PDSs in RG 168 are that disclosure should:
- (a) be timely;
 - (b) be relevant and complete;
 - (c) promote product understanding;
 - (d) promote product comparison;
 - (e) highlight important information; and
 - (f) have regard to consumers' needs.
- RG 221.54 The Good Disclosure Principles apply regardless of the form of the disclosure and we encourage providers to consider how they might apply to more innovative PDSs. In some cases a PDS in electronic form will enable providers to more easily satisfy the Good Disclosure Principles.
- RG 221.55 For example, electronic disclosure can allow a more timely delivery of the document and electronic disclosure may be more easily personalised, potentially increasing the likelihood that the information will be retained by the consumer. Electronic disclosures, by using a range of communication

methods, can also promote product understanding for consumers who have varying communication needs.

- RG 221.56 We encourage providers to undertake consumer testing of proposed and existing disclosures to inform the design to help ensure disclosures are meeting consumer needs.

Requirements to protect consumers

- RG 221.57 We think that the electronic environment presents some unique challenges to consumers. There may be more opportunity for distraction or important information being downplayed. As such, the legislation and our guidance include some requirements to protect consumers.

Identifying the information that is part of the disclosure and understanding the scope of the disclosure

- RG 221.58 Regulation 7.9.02B (PDSs) provides that where the disclosure is to be given in electronic form, it must be presented in a way that clearly identifies the information that is part of the disclosure.
- RG 221.59 In the case of a PDS that uses multimedia, compliance with this requirement is particularly important. We think that a client should be able to easily identify exactly what is part of the disclosure, and anything that is not part of the mandated disclosure.
- RG 221.60 It may also be desirable for consumers to have the ability to estimate how much time they might need to view and understand the information in the disclosure (in the same way a client could quickly estimate the time and effort it would take to absorb the contents of a PDS booklet based on whether it was thick or thin with large or fine print). This might mean a time-clock on a video or an upfront estimate as to how long the disclosure would take a client to go through.

Example 2: Identifying and understanding the scope of the PDS

Amanda is going overseas and wants to purchase a prepaid travel card. She contacted a travel card provider, who emailed a link to the PDS for the product. Amanda clicks on a link and it prompts her to download the travel money app. She does so and opens the app on her tablet. On first opening, the app prompts her to view the PDS. Amanda has 10 minutes before her next meeting and so clicks 'yes', and a new screen titled 'Product Disclosure Statement' opens.

We think this clearly shows Amanda that this is the mandated PDS.

Amanda starts swiping through some text and gets to a screen that asks her to drag boxes with each risk described to a box titled 'Risks' before she can swipe through to the next screen. Amanda is concerned that she will not have time to finish going through the PDS. At the top of the app screen

is a menu icon. Amanda taps this icon, which drops down the following options: 'Exit PDS'; 'Show progress'; and 'Skip to'. She hits 'Show progress' and a progress bar appears at the bottom of the screen. It looks like she is half way through.

We think this is a good way to show the scope of a PDS and also, depending on how it is structured, could be a good way of showing Amanda how much time it will take her to view and understand the PDS.

Amanda uses the menu to skip straight to a section called 'Benefits of a travel card' and watches a short video where a person goes through the key points. She then shuts out of the app. Later, she opens the app again and it prompts her to view the PDS again. When she opens the PDS she is taken directly to the place she last looked at in the PDS. When she taps 'Skip to' on the menu, the sections she has already visited are in green text, while the others are in red text.

We think this is a good way for Amanda to navigate through the PDS.

When Amanda has been through all of the sections of the PDS, the app screen shows a big tick and prompts her to exit the PDS. The screen now shows a menu with the following options: 'Check your balance'; 'Upload'; 'Why travel money'; 'Product Disclosure Statement'; and 'Apply online'. Amanda clicks 'Why travel money' and a warning screen pops up saying 'You should read this in conjunction with the Product Disclosure Statement'. Amanda clicks 'yes'.

We think this clearly delineates between the PDS and the promotional material.

Navigability

- RG 221.61 Our good practice guidance in Section D suggests that electronic disclosures be readily navigable. This is to ensure that a client can easily access those parts of the disclosure that might be most important to them. Key parts of the disclosure should be available to the client without them having to see or go through the whole disclosure to locate them.
- RG 221.62 This might mean a menu feature in an app, chapters in a video or a contents sidebar or similar on a webpage, which the client can use to immediately go to sections of a PDS, such as significant benefits and risks, the cost of the product, factors affecting returns, significant taxation implications, or how to complain.

Example 3: Navigability

Investment Factory Australia is opening a new investment fund and has developed an interactive PDS. Clare is interested in the fund and opens the PDS online.

The PDS starts with a video animation highlighting the features of the fund, how it works and the benefits. This takes around four minutes. After the video finishes, text flows onto the screen, with music playing in the background. The text speeds by with headings such as 'Fees and costs',

'How funds like these are taxed' and 'Risks'. It lasts about two minutes. At the end of the PDS, there is an option to play again.

Clare is particularly interested in the taxation implications of the fund, but does not want to go through the whole presentation again. She cannot find a way to get straight to that point in the presentation, so she watches it again, but cannot stop the text speeding by and so has to take a screen shot.

We do not think this PDS is readily navigable. To meet the requirements, Investment Factory Australia should add a menu feature that would allow the user to jump to sections, enabling the presentation to be paused and using back and forward buttons.

We also think that the PDS may potentially be misleading or deceptive because it does not give equal prominence to the risks and the benefits of the product and does not highlight important information. Investment Factory Australia could ensure this is the case by including risks in the initial video and slowing down the subsequent presentation.

Distraction/diversion

- RG 221.63 As is the case for printed PDSs, we also expect providers to ensure that the method or form of the disclosure does not divert clients away from any parts of the disclosure. To ensure disclosure is clear, concise and effective, equal prominence should be given to each aspect of the product that the consumer should understand before purchasing the product.
- RG 221.64 We are concerned that the electronic environment might make it easier for a disclosure to channel a consumer away from parts of the disclosure that may be less appealing or for which it might not be in the provider's interest to draw the client's attention to. We think a provider should consider whether the disclosure flows logically in a way that aids understanding of the product.

D Good practice guidance for electronic disclosure

Key points

We have set out good practice guidance for the delivery of financial services disclosures electronically: see Table 1.

- RG 221.65 Table 1 sets out our good practice guidance for electronic disclosure. It applies to any method of delivering financial services disclosures electronically. We have given good practice guidance to help ensure clients receive clear, concise and effective information, regardless of the method by which those disclosures are delivered or the form in which they are delivered.
- RG 221.66 We encourage providers to apply our good practice guidance when delivering disclosures electronically. In some cases, our good practice guidance reflects regulatory requirements for delivering certain disclosures.

Table 1: Good practice guidance

Guidance	Explanation
1 Disclosure documents should be easy to retrieve, view and understand	<p>This is currently required by law for some types of electronic disclosure, including where delivering annual superannuation information by making it available on a website or other electronic facility.</p> <p>The disclosure should be easy to access. It is up to the provider to determine which means is most appropriate for the client to easily access the disclosure.</p> <p>This also means that a disclosure should be readily navigable, so the client can easily identify particularly relevant sections, or move around in the disclosure in a way that is meaningful to them. This could be achieved by including features such as a menu on an app, chapters in a video or a contents bar on a webpage.</p> <p>If a generic website address or a hyperlink that does not take a client directly to the disclosure is given, clear instructions should be provided on how to access the disclosure online (e.g. in a document notifying a client of the availability of the disclosure, such as a letter, or on the website). The instructions should be clear and easy to understand, and should take the client directly to the disclosure or to a webpage with a direct link to the disclosure. Where possible, providers should ensure that clients can access a disclosure placed on a website or other electronic facility with no more than three clicks.</p> <p>If a specific document address or a hyperlink that takes a client directly to the disclosure is given, the address or the hyperlink must take a client to the beginning of the disclosure (e.g. the hyperlink should not take the client straight to an application form).</p>

Guidance	Explanation
<p>2 Disclosures should not distract or divert clients from relevant information</p>	<p>Disclosures should not include features that channel clients away from important information or distract them from key features of the disclosure.</p>
<p>3 Clients should be able to identify the disclosure</p>	<p>For many types of disclosure the law requires that an electronic document is clearly identified as, or as part of, a specified disclosure document. This also means that the client should be able to readily identify the whole disclosure.</p> <p>This includes FSGs, SOAs, PDSs, annual superannuation information, confirmations of transactions and periodic statements.</p>
<p>4 Providers should use their reasonable efforts to ensure that the client or their agent receives a copy of the disclosure</p>	<p>When a client has agreed to receive disclosures electronically, or has not opted in to receiving printed disclosures, where the law permits default electronic delivery of disclosure, a provider should:</p> <ul style="list-style-type: none"> • deliver the disclosure to an electronic address provided by the client; or • when a disclosure is delivered by making it available electronically, send a printed or electronic notice to an address provided by the client notifying the client that the disclosure is available and how it can be accessed. <p>If a provider becomes aware that a client has not received the disclosure (e.g. they receive an undeliverable email notice or the post is returned to sender), it should make reasonable attempts to contact the client by other means to give them the disclosure (e.g. by sending the disclosure to an alternative electronic address of the client if one has been provided or by sending a printed copy of the disclosure to the client).</p>
<p>5 Clients should be able to keep a copy so that they can access the disclosure in the future</p>	<p>This is required by law for many types of disclosure, including FSGs, SOAs, PDSs, annual superannuation information, confirmations of transactions and periodic statements.</p> <p>This could include the ability to save an electronic copy.</p> <p>When the disclosure is provided through a hyperlink or a reference to a website address or electronic facility, a provider should direct clients to take an electronic or, where practical, a printed copy of the disclosure.</p> <p>So that clients can keep a copy of the disclosure, the provider should also ensure the disclosure continues to be accessible from the link, at the website address or through the electronic facility, for a period that is reasonable for that information.</p> <p>We think that a period of two years would be reasonable for most disclosures, unless the disclosures have been superseded or updated sooner or have become out of date (e.g. because the product or service is no longer available and there are no longer any clients affected by it). If it is not possible to continue to make the disclosure available from the specified link, website address or electronic facility throughout that period, the provider should make it easy for clients to request an electronic copy of the disclosure at no cost to the client (e.g. by providing a toll-free telephone number or an electronic address or a request button clients can use to request a copy).</p>

Guidance	Explanation
<p>6 Clients should be able to prove which version of the disclosure they relied on</p>	<p>The provider must retain a copy of all versions of the disclosure and use technology, where possible, to maintain records of when each version was available. As a matter of good practice, these records should be kept for a period of at least seven years (or as required by law).</p> <p>When the disclosure is provided through a hyperlink or a reference to a website address or electronic facility, the provider should make it clear to clients that they can request a copy of the disclosure at no cost to the client during this period.</p>
<p>7 Clients should be able to change their mind about receiving electronic disclosures at any time and at no cost</p>	<p>Except for fully online products, providers must make it easy for clients to request printed copies of disclosures at no cost to themselves.</p> <p>Where a disclosure is sent to a client electronically, the message should include a clear statement to the effect that the client may use an electronic address set out in the message to send an opt-out message to the provider.</p>
<p>8 Disclosure documents should be delivered in a way that does not unreasonably expose clients to security risks (e.g. phishing or identity theft)</p>	<p>When a provider delivers a generic disclosure via an email with a hyperlink to the disclosure, the email should state that the client will not be asked to provide their personal details online (e.g. in order to access the disclosure). This is to mitigate the risk of phishing.</p> <p>If a disclosure contains personal information, providers should ensure that the information is adequately protected (e.g. via password protection and encryption).</p> <p>Providers should continue efforts to educate clients about internet scams and other security risks and may wish to direct clients to www.staysmartonline.gov.au and www.moneysmart.gov.au.</p>

Appendix: Summary of how providers can use electronic disclosure

Table 2: Summary of how different types of disclosures can be delivered online under Pts 7.6–7.9

Type of disclosure	Disclosure delivery requirements	Legislation	Notes
FSG	<p>An FSG must be:</p> <ul style="list-style-type: none"> • given personally to a client or their agent; or • sent to the client or their agent at an address (including an email address) or a fax number nominated by the client or agent; or • otherwise made available to the client or their agent as agreed; or • published electronically and notified in accordance with [CO 15/XXX]. <p>If sent to an address, the envelope or container must be addressed to the client or agent or the accompanying message must be addressed to the client or agent.</p> <p>If electronic (including where published and notified), it must be presented in a way that:</p> <ul style="list-style-type: none"> • as far as practicable allows the client to keep a copy and access it in the future; and • clearly identifies the information that is part of the document. 	<p>s940C</p> <p>[CO 15/XXX]</p> <p>reg 7.7.01(3)</p>	<p>[CO 15/XXX] 'switches off' the requirement in reg 7.7.01(2) that would otherwise require a provider to make the FSG available in a way that is agreed, and be reasonably satisfied that the client or agent has received a copy in the case of electronic FSGs.</p>
	SOA	<p>An SOA must be:</p> <ul style="list-style-type: none"> • given personally to a client or their agent; or • sent to the client or their agent at an address (including an email address) or a fax number nominated by the client or agent; or • otherwise made available to the agent or their client as agreed; or • published electronically and notified in accordance with [CO 15/XXX]. <p>If sent to an address, the envelope or container must be addressed to the client or agent or the accompanying message must be addressed to the client or agent.</p> <p>If electronic, it must be presented in a way that:</p> <ul style="list-style-type: none"> • as far as practicable allows the client to keep a copy and access it in the future; and • clearly identifies the information that is part of the document. 	<p>s940C</p> <p>[CO 15/XXX]</p> <p>reg 7.7.01(3)</p>

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Type of disclosure	Disclosure delivery requirements	Legislation	Notes
PDS	<p>A PDS must be:</p> <ul style="list-style-type: none"> • given personally to a client or their agent; or • sent to the client or their agent at an address (including an email address) or a fax number nominated by the client or agent; or • otherwise made available to the agent or their client as agreed; or • published electronically and notified in accordance with [CO 15/XXX]. <p>If sent to an address, the envelope or container must be addressed to the client or agent or the accompanying message must be addressed to the client or agent.</p> <p>If electronic, it must be presented in a way that:</p> <ul style="list-style-type: none"> • as far as practicable allows the client to keep a copy and access it in the future; and • clearly identifies the information that is part of the document. 	<p>s1015C</p> <p>reg 7.9.02A</p> <p>[CO 15/XXX]</p> <p>reg 7.9.02B</p>	<p>[CO 15/XXX] 'switches off' the requirement in reg 7.9.02A that, if the PDS is made available in a way that is agreed, would otherwise require the provider to be reasonably satisfied that the client or agent has received a copy of the PDS.</p>
CGS depository interest information	<p>A CGS depository interest statement must be:</p> <ul style="list-style-type: none"> • given personally to a client or their agent; or • sent to the client or their agent at an address (including an email address) or a fax number nominated by the client or agent; or • otherwise made available to the agent or their client as agreed; or • published electronically and notified in accordance with [CO 15/XXX]. <p>If sent to an address, the envelope or container must be addressed to the client or agent or the accompanying message must be addressed to the client or agent.</p>	<p>s1020AK(1)</p> <p>[CO 15/XXX]</p>	<p>A CGS depository interest statement is prepared by the Commonwealth. For the 'publish and notify' method of delivery, the regulated person may give the reference to the relevant Australian Government website.</p> <p>[CO 15/XXX] allows a CGS depository interest statement to be provided to the client or the agent in any way agreed.</p>

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Type of disclosure	Disclosure delivery requirements	Legislation	Notes
Annual superannuation information	<p>The information must be:</p> <ul style="list-style-type: none"> • given in writing; or • given electronically; or • made available in any way as agreed with the client or their agent; or • published on a website and notified in accordance with the requirements of reg 7.9.75BA. <p>If electronic, it must be presented in a way that:</p> <ul style="list-style-type: none"> • as far as practicable allows the client to keep a copy and access it in the future; and • clearly identifies the information that is part of the document. 	<p>s1017DA(3) and reg 7.9.75A(3)</p> <p>reg 7.9.75BA</p> <p>reg 7.9.75B</p>	<p>[CO 15/XXX] does not apply to annual superannuation information because reg 7.9.75BA already allows annual superannuation information to be published on a website.</p>
Periodic statements	<p>A periodic statement must be:</p> <ul style="list-style-type: none"> • given in writing; or • given electronically; or • made available in any way as agreed with the client or their agent; or • published electronically and notified in accordance with [CO 15/XXX]. <p>If electronic, it must be presented in a way that:</p> <ul style="list-style-type: none"> • as far as practicable allows the client to keep a copy and access it in the future; and • clearly identifies the information that is part of the document. 	<p>s1017D(6) and reg 7.9.75A</p> <p>[CO 15/XXX]</p> <p>reg 7.9.75B</p>	
Ongoing disclosure of material changes and significant events	<p>The provider must notify the client:</p> <ul style="list-style-type: none"> • in writing; or • electronically; or • in any way as agreed with the client or their agent; or • by publishing electronically and notifying in accordance with [CO 15/XXX]. <p>If electronic, notification must be presented in a way that:</p> <ul style="list-style-type: none"> • as far as practicable allows the client to keep a copy and access it in the future; and • clearly identifies the information that is part of the document. 	<p>s1017B(3)</p> <p>[CO 15/XXX]</p> <p>regs 7.9.75A(1) and 7.9.75B</p>	

Type of disclosure	Disclosure delivery requirements	Legislation	Notes
Confirmation of transactions	<p>Confirmation must be provided to the client:</p> <ul style="list-style-type: none"> • in writing; or • electronically; or • by access to a facility through which they can, for themselves, get a confirmation of a transaction in writing or electronically. <p>If electronic, it must be presented in a way that:</p> <ul style="list-style-type: none"> • as far as practicable allows the client to keep a copy and access it in the future; and • clearly identifies the information that is part of the document. 	<p>s1017F(6), 1017F(5)(b) and 1017F(5A)</p> <p>regs 7.9.63I and 7.9.61D</p>	<p>For most products, the client must have agreed to accessing confirmations via the facility or have been informed about the facility, and not advised the provider that the client does not agree to use the facility. That is, the client can opt out of accessing a facility to confirm transactions themselves.</p> <p>For transactions involving certain superannuation products (see reg 7.9.61D) the facility made available can allow the client to access by telephone, writing or some other method that the responsible person knows, or reasonably believes the client is able to use. There is no opt-out option for these products.</p>
Additional information on request	<p>The information must be:</p> <ul style="list-style-type: none"> • given by making it available for inspection by the client at a suitable place during business hours (with photocopying facilities); or • given in some other way that is agreed with the client; or • published electronically and notified in accordance with [CO 15/XXX]. 	<p>s1017A(4)–(6)</p> <p>[CO 15/XXX]</p>	<p>The client may be required to pay a reasonable charge.</p>
Additional information provided by superannuation trustees	<p>The information must be:</p> <ul style="list-style-type: none"> • given in writing; or • given electronically; or • given in any way that is agreed with the client or their agent; or • published electronically and notified in accordance with [CO 15/XXX]. <p>If electronic, it must be presented in a way that:</p> <ul style="list-style-type: none"> • as far as practicable allows the client to keep a copy and access it in the future; and • clearly identifies the information that is part of the document. 	<p>s1017DA and reg 7.9.75A(3)</p> <p>[CO 15/XXX]</p> <p>reg 7.9.75B(1)(c)</p>	

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Type of disclosure	Disclosure delivery requirements	Legislation	Notes
Unsolicited offers to purchase financial products off-market	<p>The offer document must be addressed and sent to an address (including an email address) of the offeree.</p> <p>A supplementary offer document or a withdrawal offer must also be addressed and sent to an address (including an email address).</p> <p>If sent to an address, the envelope or container must be addressed to the client or agent or the accompanying message must be addressed to the client or agent.</p>	<p>s1019E(1)</p> <p>s1019J(2) and 1019G(3)</p>	<p>The 'publish and notify' method of disclosure under [CO 15/XXX] is not available for unsolicited offers to purchase financial products.</p>

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Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
annual superannuation information	Information that a trustee of a superannuation entity must provide under s1017DA (does not include private disclosures)
ASIC	Australian Securities and Investments Commission
CGS depository interests	Commonwealth Government Securities depository interests
client	A retail client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of Ch 7 of the Corporations Regulations
[CO 10/1219] (for example)	An ASIC class order (in this example numbered 10/1219)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
default method of delivery of disclosures	The provider's first choice of communication method for financial services disclosures, where the consumer has provided or nominated details for one or more methods of communication (e.g. if a provider chooses default electronic delivery, it would deliver disclosures electronically as a matter of course and allow clients or consumers to opt in to printed and posted delivery)
disclosures	Financial services disclosures
electronic facility	An electronic medium for accessing or sending information
financial services disclosure	A disclosure required under Pts 7.6–7.9 of the Corporations Act
Financial Services Guide (FSG)	A document required by s941A or 941B of the Corporations Act to be given in accordance with Div 2 of Pt 7.7 Note: This is a definition contained in s761A.

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Term	Meaning in this document
private disclosure	A disclosure that providers give to members or clients that contains personal information relating to the member or client or their investment. Examples include SOAs, periodic statements of a client's holding under s1017D and confirmations of transactions under s1017F of the Corporations Act
Product Disclosure Statement (PDS)	A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s761A for the exact definition.
provider	Any person (including a responsible entity, product issuer, AFS licensee or authorised representative) who is required to give a financial services disclosure to a client under the Corporations Act or an instrument of relief
Pt 7.6 (for example)	A part of the Corporations Act (in this example numbered 7.6)
reg 7.7.01 (for example)	A regulation in the Corporations Regulations (in this example numbered 7.7.01)
REP 391 (for example)	An ASIC report (in this example numbered 391)
s1017F (for example)	A section of the Corporations Act (in this example numbered 1017F)
shorter PDS regime	The requirements set out in Div 3A of Pt 7.9 of the Corporations Act as modified by Subdivs 4.2 to 4.2C and Schs 10B, 10C, 10D and 10E of the Corporations Regulations, which prescribe the content and length of the PDS for first home saver accounts, margin loans, superannuation products and simple managed investment schemes
Statement of Advice (SOA)	A document that must be given to a retail client for the provision of personal advice under Subdivs C and D of Div 3 of Pt 7.7 of the Corporations Act Note: See s761A for the exact definition.

Related information

Headnotes

consent, electronic PDS, interactive PDS, financial services disclosure, Financial Services Guide, FSG, PDS, Product Disclosure Statement, SOA, Statement of Advice

Class orders

[CO 13/763] *Investor directed portfolio services*

[CO 15/XXX] *Facilitating electronic delivery of financial services disclosure*

[CO 15/YYYY] *Electronic disclosure documents*

Legislation

Corporations Act, Ch 7, s940C, 1013C, 1014B, 1015B, 1015C, 1017A, 1017B, 1017D, 1017DA, 1017F, 1019E, 1019G, 1019J, 1020AK

Corporations Regulations, Schs 10C, 10D and 10E, regs 7.7.01, 7.9.02A, 7.9.02B, 7.7.08A, 7.9.61D, 7.9.63I, 7.9.75A, 7.9.75B, 7.9.75BA

Regulatory guide

RG 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)*

Consultation papers and reports

CP 93 *Facilitating online financial services disclosures*

CP 121 *Facilitating online financial services disclosures*

REP 223 *Response to submissions on CP 121 Facilitating online financial services disclosures*

CP 224 *Facilitating electronic financial services disclosures*

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