



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 176

Review of ASIC policy on platforms: Update to RG 148

March 2012

About this paper

This paper sets out our proposals for revising our guidance on platforms in Regulatory Guide 148 *Investor directed portfolio services* (RG 148) and accompanying class order relief. The proposals are based on our previous consultation with, and recent review of, the platforms sector.

We seek feedback on our proposals from platform operators, including operators of investor directed portfolio services (IDPSs) and responsible entities of IDPS-like schemes, dealer groups and their associate adviser networks, industry associations, financial consumer and investor advocacy groups and other interested parties such as product issuers including fund managers, custodians and trustees of superannuation master trusts.

We do not seek feedback at the current time on areas of our regulatory approach to platforms that are directly related to the Future of Financial Advice (FoFA) reforms, a key example of which is management of conflicts of interest. We will consider how these reforms may affect our final regulatory approach to platforms after enactment of the legislation and further consultation with industry.

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 paper was issued on 13 March 2012 and is based on the Corporations Act as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and may not necessarily reflect our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on platforms. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see [Section H, 'Regulatory and financial impact'](#), p. 44.

Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential.

Comments should be sent by 20 April 2012 to:

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What will happen next?

Stage 1	13 March 2012	ASIC consultation paper released
Stage 2	20 April 2012	Comments due on the consultation paper
	mid-2012	Drafting of regulatory guide and accompanying class orders
Stage 3	late 2012	Regulatory guide and accompanying class orders released

A Overview

Key points

ASIC treats IDPSs and IDPS-like schemes (platforms) as financial products under the Corporations Act. We consider that these vehicles for holding and dealing with investments selected by clients are managed investment schemes.

We apply the financial product advice provisions of the Corporations Act where advice is given about using a platform. If this advice is given as personal advice, it must be appropriate advice under the current law.

The platforms sector has changed and grown significantly and continues to develop and expand.

Based on our previous consultation with industry and recent review of the sector, we believe that there are some areas where our guidance about platforms, and our expectations of their operators, should be revised or supplemented.

We are seeking your feedback on our proposals for revising our guidance and accompanying class order relief to ensure that it covers existing and emerging issues in the sector.

We do not seek feedback at the current time on areas of our regulatory approach to platforms that are directly related to the FoFA reforms. We will consider how these reforms may affect our final regulatory approach to platforms after enactment of the legislation and further consultation with industry.

Current law and policy

- 1 ASIC treats interests in investor director portfolio services (IDPSs) and IDPS-like schemes (platforms) as financial products under the *Corporations Act 2001* (Corporations Act) and applies the financial product advice provisions of the Corporations Act where advice is given about using platforms. Under the current law, this advice must be appropriate advice if given as personal advice. Our current guidance on platforms is contained in Regulatory Guide 148 *Investor directed portfolio services* (RG 148).

Note: We recognise that industry and investors and financial consumers generically refer to and understand IDPSs and IDPS-like schemes as ‘platforms’. We have used this expression when referring to IDPSs and IDPS-like schemes, unless a distinction needs to be made given ASIC’s historical position. The expression ‘platforms’, as used in this consultation paper, does not extend to nominee and custody services as defined in Regulatory Guide 149 *Nominee and custody services* (RG 149), superannuation master trusts or other superannuation funds, self managed superannuation funds or managed discretionary account services. Unless otherwise stated, all references to ‘platform operators’ are references to both IDPS operators and responsible entities of IDPS-like schemes. We seek feedback on whether a change in terminology like this is desirable and/or appropriate: see question B1Q5.

Investor directed portfolio services

- 2 IDPSs are schemes that are managed investment schemes for holding and dealing with investments selected by clients. This is because clients have the expectation of cost savings (e.g. through the netting of transactions or the pooling of funds to acquire investments) or access to investments that would not otherwise be available to them.
- 3 In broad terms, IDPSs provide custodial, transactional and reporting services where the client makes all of the investment decisions. Specifically, IDPSs have the following features:
- (a) a custodian (which may or may not be an IDPS operator) holds assets through the IDPS;
 - (b) the client has the sole discretion to decide what (but not necessarily when) assets will be acquired or disposed of through the IDPS, with limited exceptions (e.g. an IDPS operator may rely on standing instructions where they do not exercise any discretion such as in the case of realising pre-defined assets to maintain a minimum agreed cash balance);
 - (c) a client may direct the IDPS operator to transfer assets to them or realise assets held on account for them, unless this is not possible under the law or contractual terms under which the assets were issued;
 - (d) any discretion of the holder of assets held through the IDPS may be otherwise exercised only in accordance with the directions of the client; and
 - (e) clients are led to expect, and are likely to receive, benefits from using the IDPS in the form of:
 - (i) access to investments they could not otherwise directly access; or
 - (ii) cost reductions through the pooling of client funds (which allow the IDPS operator to make large investments that can be acquired on more favourable terms) or through the netting of transactions (where directions of clients to buy and sell assets are offset against each other and a transaction for the net amount is entered into).
- 4 ASIC conditionally exempts IDPSs with these features from being required to be registered managed investment schemes: see Class Order [CO 02/294] *Investor directed portfolio services*.

IDPS-like schemes

- 5 IDPS-like schemes operate similarly to IDPSs, but are registered managed investment schemes.
- 6 An IDPS-like scheme must have a constitution that has provisions allowing members to:

- (a) direct that an amount of money be invested in specific investments available through the scheme; and
- (b) receive capital and income distributions from the scheme determined by reference to amounts received by the custodian corresponding to their interests in the scheme and acquired in accordance with their directions: see Class Order [CO 02/296] *Investor directed portfolio-like services provided through a registered managed investment scheme*.

Policy objectives and approach

7 Our overriding objectives when regulating platforms are to:

- (a) promote investor confidence in the sector and help investors make informed decisions about platforms by requiring:
 - (i) appropriate and compliant personal advice about these vehicles (if given);
 - (ii) adequate disclosure about them and investments held through them;
 - (iii) reliable client reporting;
 - (iv) effective compliance controls; and
 - (v) custodial and transactional integrity;
- (b) apply the minimum appropriate regulation to platform operators consistent with the framework for the regulation of financial services and products in the Corporations Act; and
- (c) treat IDPSs and IDPS-like schemes (as unregistered and registered platforms) similarly where there is no regulatory basis for different treatment.

8 To achieve these objectives:

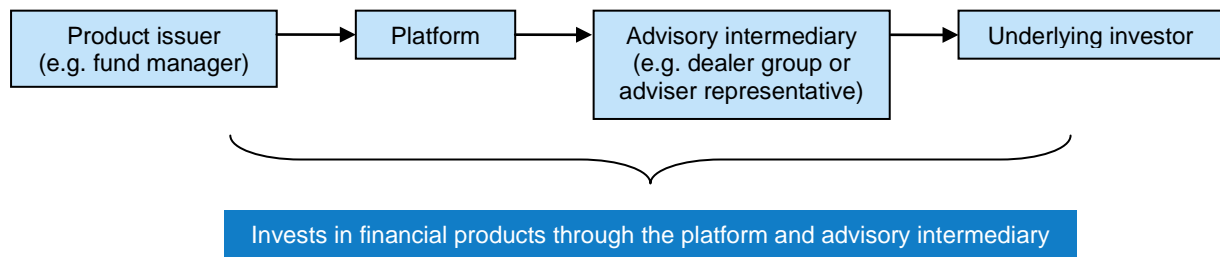
- (a) when regulating IDPSs, we require operators to comply with RG 148 and [CO 02/294]—that is, IDPS operators must hold an Australian financial services (AFS) licence with an IDPS condition requiring compliance with the conditions of the relief in [CO 02/294] and certain other IDPS-specific AFS licence conditions;
- (b) when regulating IDPS-like schemes, we give responsible entities relief from some of the managed investment scheme, fundraising, financial product disclosure and other investor rights requirements provided for in the Corporations Act where they comply with conditions in [CO 02/296]; and
- (c) when regulating advice about using platforms, we expect advisers to comply with the financial product advice provisions of the Corporations Act.

9 We adopted this regulatory approach in 2000 and it has not been updated. It pre-dates the significant reforms of the *Financial Services Reform Act 2001*.

- 10 In June 2006, the then Parliamentary Secretary to the Treasurer asked ASIC to consider reviewing IDPS regulation as a result of public consultation through the Corporations and Financial Services Regulation Review.
- 11 In June 2007, we issued Consultation Paper 83 *Review of ASIC policy on investor directed portfolio services* (CP 83). The purpose of that review was to confirm that the settings in our regulatory approach were appropriate and to simplify them to provide clarity to industry where required. We decided not to issue revised regulatory guidance and class order relief following this consultation process. This decision was taken as a result of competing priorities arising from the global financial crisis and particularly so that we could assess how these regulatory settings applied in the changed environment.
- 12 Given the growth of the platforms sector, we now consider it timely to revisit this review. We believe that recent developments in the sector are posing emerging risks that ought to be addressed.

The platforms sector

- 13 The platforms sector has changed and grown significantly since inception. In the last decade alone, the level of non-superannuation-related investment in platforms has doubled to around \$100 billion of funds under management.
- Note: As at 30 June 2000, total funds under management in the ‘wrap, platform and master trust managed funds’ sector (including super master trusts) was almost \$109 billion. Of this, non-superannuation-related investment in platforms accounted for \$23.2 billion of total funds under management in wraps and platforms. As at 30 June 2011, this sector was made up of over \$428 billion, with non-superannuation-related investment in platforms accounting for \$97.2 billion of total funds under management in wraps and platforms. (Source: Plan for Life Actuaries & Researchers)
- 14 The sector continues to develop and expand, especially with the emergence of new business models.
- 15 Platforms are used to facilitate the acquisition and holding of assets by enabling clients and members to bundle product features such as custody of assets, execution and consolidated reporting.
- 16 The typical framework in which platforms operate, including the key parties in the product–distribution chain, are represented in Figure 1. Products are issued to investors through platforms, which are often recommended by an adviser in an affiliated or non-affiliated licensed dealer group.

Figure 1: How platforms operate

- 17 There is now a trend towards new forms of vertical integration between parties in the product–distribution chain. Dealer groups are increasingly re-structuring their operations to become platform operators.

Impact of current regulatory reforms

- 18 The Australian Government’s FoFA reform package is aimed at improving the quality of financial product advice. It is guided by the overriding principles that:
- (a) financial advice must be in the client’s best interests;
 - (b) distortions to remuneration that do not align the best interests of the client and the adviser should be minimised; and
 - (c) in minimising these distortions, financial advice should be accessible to those who would benefit from it.
- 19 One of the key reforms proposes the introduction of a statutory fiduciary duty so that financial advisers must act in the best interests of their clients. This requires the adviser to place the best interests of their clients ahead of their own when providing personal advice to retail clients. The *Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011* (Bill) was introduced into Parliament on 24 November 2011 and proposes to give effect to this duty. If enacted, it will require advice given about using a platform to be:
- (a) in the best interests of the client, or to meet a set of more specific requirements that are directed towards demonstrating that the advice is consistent with acting in the best interests of the client; and
 - (b) prioritised in the interests of the client if there is a conflict between the client’s interests and the interests of the adviser or any of their associates where the adviser knows, or reasonably ought to know, about the conflict.
- 20 Another of the key reforms proposes a prospective ban on certain conflicted remuneration structures, including some forms of volume-based payment, unless it can be proven that they could not reasonably be expected to influence financial product advice to retail clients. This proposed ban is intended to apply to both the giving and receipt of conflicted remuneration.

- 21 The Bill proposes to give effect to this ban and, if enacted, will (among other things) prohibit:
- (a) platform operators from giving, and dealer groups from receiving, volume rebates, unless it can be shown that they could not reasonably be expected to influence financial product advice to retail clients; and
 - (b) platform operators from receiving certain volume-based shelf-space fees.
- Note: Reasonable fees for services provided to product issuers by platform operators, or discounts/rebates offered to platform operators if the benefit does not exceed the reasonable value of efficiencies gained by the product issuer because of the volume of funds under management, are not prohibited under the Bill.
- 22 The Bill also proposes to include anti-avoidance provisions. For example, arrangements that are developed with the sole or non-incidental purpose of avoiding the ban on conflicted remuneration structures will not be permitted. These anti-avoidance provisions will not operate retrospectively.
- 23 We expect that the FoFA reforms, if enacted as proposed, will be a significant change for the platforms sector. This consultation paper does not address areas of our regulatory approach that are directly related to the FoFA reforms (e.g. management of conflicts of interest: see proposal B2). We will consider how these reforms may affect our final regulatory approach to platforms after enactment of the legislation and further consultation with industry.

ASIC's review of the platforms sector

- 24 In late 2011, we engaged with the platforms sector on key existing and emerging issues and risks, including the impact of current regulatory reforms.
- 25 We visited nine established or emerging platform operators representing different business models within the sector, including:
- (a) established operators with leading platforms (in which most total funds under management in platforms are concentrated);
 - (b) operators who have recently restructured their operations to become platform operators or have increased focus on their platform operations; and
 - (c) financial services providers who are intending to restructure their operations to become platform operators.
- 26 After these visits, we reviewed responses from platform operators to questionnaires designed to explore existing and emerging issues. We also reviewed examples of disclosure provided to clients about the platforms (as opposed to investments available through the platforms). This included reviews of IDPS Guides—that is, documents provided by an IDPS operator instead of a Product Disclosure Statement (PDS) to help retail clients decide if they should use the IDPS—and marketing material provided to clients (or their advisers).

- 27 In addition, we met with two industry associations to further explore regulatory issues in the sector.
- 28 Generally, our engagement with and review of the platforms sector indicated that there was a sound awareness, understanding and application of ASIC's current regulatory guidance on platforms. However, we found a general consensus on key existing and emerging issues and risks, which could be addressed through different or improved regulatory responses.

29 Emerging issues and risks arising in the market that were identified include:

- (a) the emergence of less mature and less experienced platform operators, particularly through 'private labelling' arrangements in response to the FoFA reforms (see paragraphs 18–23);

Note: There was a general consensus among the stakeholders we consulted on the distinction between 'private labelling' arrangements and the more traditional 'white labelling' arrangements in the platforms sector. In 'white labelling' arrangements the platform operator enters into contractual arrangements with a third party (typically a licensed dealer group), who rebrands the platform to make it appear as its own and often uses its own pricing structure. Put another way, the platform is 'badged' or 'promoted' by the third party as its own product. 'Private labelling' arrangements differ in that the third party itself becomes a platform operator and must fulfil its obligations in this capacity, although it typically outsources the administration of the platform to a leading platform operator. As significant scale is required to operate a platform, smaller dealer group AFS licensees appear to be aggregating as buying groups to enter into these types of arrangements.

- (b) changing investor behaviour with increasing demand for new investment types on platforms (e.g. structured capital protected products) and new means of interacting with platforms (e.g. self-directed investment without an adviser);
- (c) the inability to take full advantage of options for delivering disclosure documents electronically;
- (d) the lack of specific experience, knowledge and/or training requirements advisers are obliged to have to give advice about platforms;
- (e) illiquid investments resulting in clients on platforms having restrictions in redeeming investments and/or moving to alternate platforms without adequate information about open windows for redemptions;
- (f) portability obstacles arising from aging technology and industry consolidation through increased mergers and acquisitions activity;
- (g) increased use of outsourcing for infrastructure and technology, including offshore, with corresponding heightened needs for appropriate monitoring and supervision; and
- (h) for larger players, inconsistency in compliance requirements between products offered (e.g. platforms and superannuation master trusts), which creates the need for stringent processes to ensure that all requirements are met through administration.

- 30 In addition, there are existing issues with our current regulatory approach based on our previous consultation in 2007 that remain of concern. These include:
- (a) the complexity of the regulatory settings;
 - (b) the automatic inability for operators to rely on [CO 02/294] and [CO 02/296] if a condition of the relief is breached, which was again raised through our most recent stakeholder engagement with the platforms sector;
 - (c) the disclosure of fees and costs not being aligned with the enhanced fee disclosure regime;
 - (d) the provision of inconsistent information to platform clients and superannuation master trust members about investments through those vehicles and the inability to give documents through their agents (e.g. advisers); and
 - (e) the inability of clients to withdraw from acquiring investments through platforms where disclosure for the investments becomes defective before issue.

Review of RG 148 and class order relief

- 31 Based on our previous consultation and recent review of the platforms sector, we believe that there are some areas where our current guidance on platforms, and expectations of their operators, should be revised or supplemented.
- 32 The proposals in this paper focus primarily on:
- (a) existing issues on which we consulted in 2007, including a review of our regulatory approach to platforms; and
 - (b) key emerging themes and issues arising from our most recent stakeholder engagement with the platforms sector, including operating requirements for IDPSs and enhancing investor rights.
- 33 We seek feedback on our proposed regulatory responses to these themes and issues, including whether transition periods may be required where any final regulatory position differs from our current regulatory approach.
- 34 This feedback will help us to strengthen our regulatory guidance in RG 148 and accompanying class order relief in [CO 02/294] and [CO 02/296] to ensure that our guidance and relief covers existing and emerging issues in the platforms sector.

B Scope of ASIC's proposals

Key points

We propose to revise and supplement our guidance in RG 148 and accompanying class order relief to address key themes and issues arising from our previous consultation with industry and recent review of the platforms sector. Unless otherwise stated, our proposals affect both IDPSs and IDPS-like schemes.

We propose not to:

- specifically address how platform operators and licensed dealer groups or their associated advisers can meet their obligation to have adequate arrangements in place to manage conflicts of interest at the current time;
- extend our review of RG 148 to complementary regulatory guidance on, for example, nominee and custody services or managed discretionary account services; or
- address the issue of portability obstacles for platform operators arising from aging technology and industry consolidation.

RG 148 and class order relief

Proposal

- B1** We propose to revise and supplement our guidance in RG 148 and accompanying class order relief to address key themes and issues in the platforms sector. This includes:
- (a) reviewing our regulatory approach to platforms (see Section C);
 - (b) strengthening requirements for operating IDPSs (see Section D);
 - (c) promoting informed investor decision making about using platforms (see Section E);
 - (d) enhancing investor rights in platforms (see Section F); and
 - (e) setting an implementation and transition period for new and established platform operators (see Section G).

Your feedback

B1Q1 Do you agree with this approach? If not, why not?

B1Q2 Are there any other existing and emerging themes and issues in the platforms sector that warrant a potential regulatory response as part of this review? Please give details.

B1Q3 Does this approach raise any practical problems for platform operators and people who provide advice on using platforms? Please give details.

- B1Q4 If we continue to adopt this approach, how can we provide increased certainty for platform operators through RG 148 and accompanying class order relief? Please provide detailed suggestions.
- B1Q5 Should we adopt different terminology when referring to IDPSs and IDPS-like schemes in our regulatory guidance? Is 'platforms' a more appropriate generic name? If not, why not, and what alternatives would you suggest? Please give details.

Rationale

- 35 Our recent stakeholder engagement with the platforms sector indicates a sound awareness, understanding and application of our current regulatory approach to these products. Given the absence of any significant failures of platform operators, our preference is to continue to regulate platforms through RG 148 and accompanying class order relief: see paragraphs 1–8.
- 36 However, we recognise that RG 148, [CO 02/294] and [CO 02/296] could be simplified, have not been updated and consequently do not necessarily address existing and emerging issues and risks in platforms. Therefore, we propose to revise and supplement our existing guidance and class order relief. This will allow us to modify our regulatory approach as the sector continues to develop and expand.
- 37 Unless otherwise stated, our proposals apply to both IDPSs and IDPS-like schemes. This ensures that we continue to meet our objective to treat IDPSs and IDPS-like schemes similarly where there is no regulatory basis for different treatment: see paragraph 7(c).

Conflicts of interest

Proposal

- B2 We propose not to provide specific guidance to platform operators and licensed dealer groups and their associated advisers on how to meet their obligation to have adequate arrangements in place to manage conflicts of interest at the current time.

Your feedback

- B2Q1 Do you agree with this proposal? If not, why not?
- B2Q2 Are there any practical consequences flowing from this approach that need to be addressed as part of our review? Please give details.

Rationale

- 38 Under the Corporations Act, AFS licensees are obliged (among other things) to have adequate arrangements in place to manage conflicts of interest. These conflicts may arise wholly or partly in relation to activities undertaken in the provision of financial services by the licensee, or a representative of the licensee, as part of the financial services business of the licensee or the representative (conflicts management obligation): s912A(1)(aa).
- 39 All licensees are required to comply with the conflicts management obligation, including platform operators and licensed dealer groups and their representatives. Our general approach to compliance with this obligation is set out in Regulatory Guide 181 *Licensing: Managing conflicts of interest* (RG 181).
- 40 In our view, the business model typically adopted for platforms (see paragraph 16) often establishes circumstances that may give rise to actual, apparent and/or potential conflicts of interest for platform operators and licensed dealer groups and their representatives. Our recent engagement with the platforms sector indicates that these conflicts may arise primarily as a result of:
- (a) relationships between those in the product–distribution chain; and
 - (b) remuneration and other benefit flows between those parties.
- 41 We consider that these relationships and the subsequent remuneration and benefits that flow between the parties are likely to influence:
- (a) how platform operators select products available through the platform;
 - (b) the actual selection of products available through platforms by clients; and/or
 - (c) advisers recommending the use of platforms (as opposed to direct investment) or one platform over another.
- 42 We expect that the FoFA reforms, if enacted as proposed, will limit some of the circumstances that may give rise to conflicts of interest in the platforms and advice sectors.
- 43 Accordingly, we do not propose to provide specific guidance to platform operators and licensed dealer groups and their associated advisers on how to meet their obligation to have adequate arrangements in place to manage conflicts of interest at the current time.
- 44 We will review this position in light of the FoFA reforms, and will consult with industry when considering how these reforms may affect our final approach.

Complementary regulatory guidance

Proposal

- B3** We propose not to extend our review of RG 148 to a review of complementary regulatory guidance on, for example, nominee and custody services and managed discretionary account services.

Your feedback

- B3Q1 Do you agree with this proposal? If not, why not?
- B3Q2 Are there any practical consequences flowing from this approach that need to be addressed as part of our review? Please give details.

Rationale

- 45 We have issued regulatory guidance that complements our guidance for platforms in RG 148—for example, Regulatory Guide 149 *Nominee and custody services* (RG 149) and Regulatory Guide 179 *Managed discretionary account services* (RG 179).
- 46 However, we do not intend to include a review of these regulatory guides as part of our review of RG 148. The financial products and services covered by these guides are different. Nominee and custody services do not have the characteristics of a managed investment scheme and RG 149 does not apply to custody arrangements that form part of an IDPS. RG 179 covers managed discretionary account services, not platforms.
- 47 We will:
- (a) consult with industry on revising RG 179 later in 2012 following a review of the managed discretionary account services sector that is presently underway; and
 - (b) consider consulting with industry on revising RG 149 on nominee and custody services in 2012–13.

Portability obstacles

Proposal

- B4** We propose not to address portability obstacles for platform operators that arise from aging technology and industry consolidation.

Your feedback

- B4Q1 Do you agree with this proposal? If not, why not?
- B4Q2 Can these issues be autonomously resolved by platform operators? Is this desirable and in the interests of platform clients, or is regulatory intervention warranted? For example, should ASIC permit the contractual ability of platform operators to sell down or cash out investments through platforms in wider circumstances without client instructions?

B4Q3 Alternatively, should we facilitate portability in some other way, ensuring the maintenance of adequate investor rights? Please give details.

Rationale

- 48 Portability obstacles arise for platform operators, as well as their clients.
- 49 Our recent stakeholder engagement with the platforms sector highlights that the incidence of portability obstacles for platform operators is escalating due to:
- (a) *industry consolidation*—increased mergers and acquisitions do not easily result in the changing of platform operators for particular platforms given that client consent is required; and
 - (b) *aging technological platforms*—as it becomes administratively impractical or cost-prohibitive for platform operators to continue to administer investments through the platforms, diminished client servicing results.
- 50 These challenges are exacerbated by portability obstacles that platform clients themselves face when investing through these vehicles. The tax implications and other costs involved in transitioning to another platform and/or investment mean that platform clients may be likely to continue using the platform for long periods of time. We propose to address the portability obstacles through advice and disclosure so that platform clients are aware of relevant risks in investing through platforms: see Table 2, proposal C2.9.
- 51 Subject to feedback we receive through this consultation process, we do not propose to address portability obstacles in platforms as they affect platform operators. One reason for our approach is the ongoing consideration the Australian Government is giving to product rationalisation in the managed investments and life insurance market.
- 52 Last year, the Australian Government released its response to the Productivity Commission’s 2010 Annual Review of Regulatory Burdens on Business in Business and Consumer Services. As part of this review, the Productivity Commission recommended that:
- The Treasury should resolve any outstanding issues associated with legacy products and then implement the product rationalisation mechanism for managed investment schemes and life insurance policies as soon as possible. (Recommendation 2.7)

- 53 The Government noted this recommendation, indicating:
- The Government has undertaken extensive work on product rationalisation ... The proposed rationalisation mechanism spans both life insurance and management investments scheme products ... Introducing the reform package may involve significant changes to existing legal contracts, and to the rights of consumers under those contracts. This task is complex and needs to be done in a way which does not disadvantage consumers ... [F]urther consideration will be needed, taking into account all relevant factors ... before deciding whether, when and in what form reform in this area will proceed. (Source: <http://www.finance.gov.au/publications/response-to-pc-bcs/docs/government-response.pdf>)
- 54 Accordingly, we do not propose to address product rationalisation as it affects platform operators through this consultation process.
- 55 We appreciate that the sole discretion afforded to clients to make investment decisions (with limited exceptions) poses portability obstacles in operating platforms. Therefore, we seek feedback on whether and, if so, how ASIC could facilitate portability in the absence of a product rationalisation mechanism to assist the sector.

C Reviewing our regulatory approach to platforms

Key points

We have reviewed our regulatory guidance and accompanying class order relief. We propose to:

- retain key elements of our current approach as described in Table 1; and
- change other elements of our current approach as described in Table 2.

Our proposed approach reflects the following aims:

- simplifying our regulatory approach where possible;
- reducing regulatory burden as appropriate;
- adopting a more principles-based approach to regulating platforms;
- treating IDPSs and IDPS-like schemes similarly where there is no regulatory basis for different treatment; and
- supporting confident and informed investor decision making by promoting appropriate advice about using platforms, adequate disclosure about platforms and the investments available through them, effective compliance controls and custodial and transactional integrity.

The proposals in this section do not cover the issues and risks addressed elsewhere in this consultation paper.

Proposed continuing guidance and relief

Proposal

- C1 We propose to retain key elements of our current approach as described in Table 1.

Table 1: Proposed continuing guidance and relief

Proposal	Reference
C1.1 We propose to continue to give relief from the requirements that: <ul style="list-style-type: none"> • an IDPS be operated as a registered managed investment scheme; and • a Product Disclosure Statement (PDS) be given before a retail client uses an IDPS where the IDPS operator gives an IDPS Guide to prospective clients. 	RG 148.29–RG 148.31
C1.2 We propose that PDSs for IDPS-like schemes will continue to be required. We propose to continue to give conditional relief to responsible entities of IDPS-like schemes from the requirement for such PDSs to include details of investments available through the IDPS-like schemes where a list of these investments is available to scheme members free of charge on request.	RG 148.109
C1.3 We propose that platform clients continue to have access to the same standards of information about products available through platforms that they would have had if they were acquiring those products directly.	RG 148.50–RG 148.51 See also Section F

Proposal	Reference
C1.4 We propose that recommendations to use a platform continue to be regulated as financial product advice under the Corporations Act.	RG 148.94–RG 148.99
C1.5 We propose to continue prohibiting investment in a scheme where the custodian is a related body corporate of the promoter and other members.	RG 148.52(b)
C1.6 We propose to continue to: <ul style="list-style-type: none"> • apply the requirements in Regulatory Guide 132 <i>Managed investments: Compliance plans</i> (RG 132) to IDPS operators who perform transactional functions and the requirements in Regulatory Guide 133 <i>Managed investments: Scheme property arrangements</i> (RG 133) to IDPS operators that are responsible for custody; and • require IDPS operators to have a specific AFS licence authorisation. 	RG 148.21–RG 148.24
C1.7 We propose that platform operators must continue to maintain professional indemnity insurance and insurance against fraud by their officers and agents.	RG 148.23
C1.8 We propose that platform operators must continue to lodge an audit report on internal controls designed to ensure compliance with the Corporations Act and the conditions of ASIC’s relief.	RG 148.63–RG148.65
C1.9 We propose to retain particular conditions in the IDPS contract relating to the conduct of the IDPS operator.	RG 148.29–RG148.34
C1.10 We propose that platform clients must continue to be provided with an annual report, quarterly reports or continuous electronic access to client account information and reports by an auditor about the client account information.	RG 148.56–RG 148.62
C1.11 We propose that a written agreement continue to be required between an IDPS operator and any party performing the custodial or transactional functions for the IDPS.	Pro Forma 209 <i>Australian financial services licence conditions</i> (PF 209), conditions 34 and 38
C1.12 We propose that all investments held through IDPSs must continue to be held on trust for the relevant client and that all money received from clients must be paid into a trust account.	RG 148.36
C1.13 Subject to the implementation of any proposals in this consultation paper, we propose to continue to provide relief for responsible entities of IDPS-like schemes from certain provisions of Ch 5C.	RG 148.112

Your feedback

- C1Q1 Do you agree with our proposal for continuing guidance and relief? If not, why not?
- C1Q2 Are there any other current requirements that ought to be retained? Please give details.
- C1Q3 Do you consider that retaining any of these requirements, together with others proposed in this consultation paper, is cumulatively burdensome, complex or lacking in transparency? If so, please explain and suggest how the requirements might be lessened or simplified.

Rationale

- 56 We propose to continue to retain key aspects of our current regulatory approach to platforms as described in Table 1, including all aspects of our current regulatory approach not otherwise addressed in this consultation paper.
- 57 Generally, our recent engagement with the platforms sector indicated that there is a sound awareness, understanding and application of our current regulatory guidance on platforms.
- 58 Accordingly, we do not intend to alter the primary foundations on which that regulatory approach is established.

Proposed changes to our regulatory approach

Proposal

- c2 We propose to change our current regulatory approach as outlined in Table 2 primarily as it affects disclosure requirements and some operating requirements.

Table 2: Proposed changes to our regulatory approach

Proposal	Rationale
Disclosure	
<p>C2.1 Subject to any exceptions set out in this consultation paper, we propose to:</p> <ul style="list-style-type: none"> replace the current specific content requirements for IDPS Guides with a general obligation to disclose and present in a clear, concise and effective manner any information that might reasonably be expected to materially influence a retail client's decision to use a platform; and remove the current specific disclosure requirements for PDSs for IDPS-like schemes. 	<p>While some managed investment schemes must comply with disclosure under the shorter PDS regime from 22 June 2012, IDPS-like schemes have been specifically excluded. We think it would therefore be inappropriate to apply the shorter PDS regime to IDPSs.</p> <p>Accordingly, this proposal for platforms reflects general PDS disclosure requirements: see s1013C(3) and 1013E.</p>
<p>C2.2 We propose to allow IDPS Guides to incorporate information by reference to other documents.</p>	<p>This proposal reflects the general principles for incorporation by reference in PDSs: see reg 7.9.15DA of the Corporations Regulations 2001 (Corporations Regulations).</p> <p>Subject to feedback we receive, we do not propose to adopt the principles for incorporation by reference in the shorter PDS regime: see Sch 10E of the Corporations Regulations.</p>
<p>C2.3 We propose to allow non-materially adverse information that would otherwise have to be included in a new IDPS Guide or Supplementary IDPS Guide to be provided through a facility like a website.</p>	<p>This proposal reflects the same approach that applies to PDSs. If implemented, it would mean that an IDPS Guide would not need to be corrected or withdrawn where there is a change to its content unless the change is materially adverse for clients deciding whether to use the IDPS.</p>

Proposal	Rationale
<p>C2.4 We propose:</p> <ul style="list-style-type: none"> that fees and costs associated with an IDPS be disclosed in a manner consistent with Sch 10 of the Corporations Regulations (enhanced fee disclosure regulations) as if the client's rights in the IDPS were a managed investment product; to clarify our view that costs incurred within investment products that a client seeks to hold are not management costs of the IDPS; and that the IDPS Guide no longer be specifically required to include: <ul style="list-style-type: none"> a statement about the importance to investors of understanding the fees and costs associated with the IDPS; or disclosure of fees for investments available through the IDPS. 	<p>We think that understanding the fees and costs associated with an IDPS is an important part of a prospective client's decision to use an IDPS.</p> <p>Applying the enhanced fee disclosure regulations by including a fees and costs template, a worked dollar example of annual fees and costs, and a boxed consumer advisory warning, would assist consumer understanding.</p> <p>We expect the IDPS Guide would explain that the client will bear the fees and costs at the IDPS level and at the level of investments available through the IDPS, as well as any fees they pay for financial product advice under the general disclosure requirement proposed. We expect this explanation would be reflected in a worked dollar example.</p>
<p>C2.5 We propose to allow a single Financial Services Guide (FSG) to be used when many providing entities provide financial services as part of an IDPS.</p>	<p>The IDPS Guide is often contained in the FSG of an IDPS operator.</p> <p>Each person who provides financial services to retail clients must generally also provide an FSG to the client. We propose to allow a single FSG to be used in these circumstances.</p> <p>We propose to allow each person involved in operating the IDPS to accept responsibility only for those parts of the FSG that relate to their activity if the FSG clearly identifies the person responsible for each disclosure made or required.</p>
<p>C2.6 We propose that:</p> <ul style="list-style-type: none"> the general requirement for a PDS or Ch 6D disclosure document to be given before financial products or securities are acquired through a platform will not apply to dividend or distribution reinvestment plans and regular savings plans; and under the terms of a regular savings plan, the client be given access to disclosures which the platform operator reasonably believes are current, as soon as reasonably practicable and in any event within five business days of acquisition. The client must be informed that they have access to these disclosures. 	<p>The proposed exemption for dividend or distribution reinvestment plans and regular savings plans is a continuation of our current position under [CO 02/294]. This relief allows for investments to proceed on the client's standing instructions, even if the platform operator is aware that the client does not have documents that contain disclosure information that is materially adverse from their perspective.</p> <p>The proposal about the terms of a regular saving plan is a change in our regulatory approach.</p>
<p>C2.7 We propose that a client who already holds financial products or securities through a platform need not be given a PDS or Ch 6D disclosure document for those financial products or securities if the platform operator reasonably believes that:</p> <ul style="list-style-type: none"> the client has access to and knows that they have access to the relevant PDS or Ch 6D disclosure document; and the relevant PDS or Ch 6D disclosure document the clients have access to is the most current on issue or does not differ from the most current PDS or Ch 6D disclosure document on issue in a way that is materially adverse to the client. 	<p>We appreciate that it may be difficult for platform operators to form a reasonable belief about the content of information contained in a disclosure document because these documents are prepared by the relevant product issuers. Our proposal seeks to assist platform operators by only requiring them to form a reasonable belief that the PDS or Ch 6D disclosure document the client can access is the most current document (or differs from the most current only in a way that is not materially adverse to the client).</p>

Proposal	Rationale
<p>We do not propose to apply this exemption if the platform operator is aware that the PDS or Ch 6D disclosure document does not meet the requirements of the Corporations Act in a way that is materially adverse to the client.</p>	
<p>C2.8 We propose to allow platform operators and trustees of superannuation master trusts to give clients documents by giving the documents to another person who is acting as agent of the client where the documents are also provided electronically to the client. This will apply even if the agent is an associate of the platform operator.</p> <p>We also propose to give relief so that an AFS licensee or an authorised representative of an AFS licensee can act as an agent to receive documents and that the authorising licensee would need to consent to its authorised representative acting as agent to receive disclosures on a case-by-case basis or generally.</p> <p>We propose that such arrangements would need to be agreed by the agent and the client and evidence of this agreement would need to be given to the platform operator or trustee.</p> <p>In addition, to reduce the risk that the disclosure will not be passed on to clients, we propose to modify the Corporations Act so that where an AFS licensee or authorised representative agrees to act as agent in receiving the disclosures, it must give the disclosures to the client; otherwise it contravenes the Corporations Act.</p> <p>This proposal applies to disclosure documents about investments held through platforms and superannuation master trusts. It is not intended to apply to IDPS Guides, PDSs for IDPS-like schemes or superannuation master trusts, or annual client statements and reports from auditors.</p>	<p>Currently, an IDPS operator performing transactional functions and the responsible entity of an IDPS-like scheme must be reasonably satisfied that certain disclosures have been made. Those responsible for giving disclosures currently use a range of practices to satisfy themselves that disclosures have been passed on by agents to clients.</p> <p>This proposal would shift responsibility for passing on disclosures to those who accept responsibility to act as an agent, although documents would still need to be provided electronically to clients.</p> <p>A superannuation trustee must give a PDS when required by s1012IA as modified by relief under Regulatory Guide 184 <i>Superannuation: Delivery of product disclosure for investment strategies</i> (RG 184) in Class Order [CO 06/636] <i>Superannuation: Delivery of product disclosure for investment strategies</i>. If this proposal is adopted, we may amend our guidance in RG 184, as appropriate, on passing disclosures through an agent. We do not intend to otherwise review RG 184 at this time.</p>
<p>C2.9 We propose to provide regulatory guidance that we expect personal financial product advice about a platform and subsequent content in Statements of Advice (SOA) would generally include advice about:</p> <ul style="list-style-type: none"> • the service offered by the platform and how that service will benefit the client in comparison to the client investing directly or through other platforms; • the range of investments offered through the platform and whether they are appropriate for the client; • the fees and costs associated with the platform and how they relate to other fees and costs; • any significant tax implications of using the platform; and • any significant implications if the client later wishes to leave the platform. 	<p>Where personal advice is provided to clients about a platform, advisers are required to comply with conduct and disclosure requirements. These include the requirement to provide an SOA under s946A.</p> <p>Advice provided to clients ought to address potential portability obstacles clients may encounter in the future if they use a platform or invest through these vehicles: see paragraph 50.</p>

Proposal	Rationale
C2.10 We propose that IDPS operators can give documents to clients electronically, including by providing hyperlinks, if the client has agreed.	This proposal reflects ASIC's approach to facilitating online PDS disclosures generally in Regulatory Guide 221 <i>Facilitating online financial services disclosures</i> (RG 221).
Other operating requirements	
C2.11 We propose that contravention of a condition of relief under [CO 02/294] or [CO 02/296] would not automatically result in the loss of relief.	<p>We appreciate the practical difficulties that arise from the current wording of [CO 02/294] and [CO 02/296] where there has not been compliance with a condition of the relief.</p> <p>The obligation of a platform operator as an AFS licensee to report significant breaches will apply.</p> <p>We intend to provide guidance to the effect that we will consider the nature, scope and effect of any breach to determine a proportionate regulatory response, which may include exclusion from relief.</p> <p>We will apply considerations set out in Regulatory Guide 98 <i>Licensing: Administrative action against financial services providers</i> (RG 98) in exercising these types of administrative powers.</p>

Your feedback

- C2Q1 Do you agree with our proposal for changes to our regulatory approach to platforms? If not, why not?
- C2Q2 Are there any other current requirements that ought to be changed? Please give details.
- C2Q3 Are there any practical problems with the implementation of any of these changes? Please give details.
- C2Q4 What additional costs will be incurred by your platforms business as a result of these changes? Please give details.
- C2Q5 Are there any circumstances in which any of these changes should not apply? Please specify.
- C2Q6 Do you consider that changing these requirements, which may apply in addition to other requirements proposed in this consultation paper, would be cumulatively burdensome, complex or lacking in transparency? If so, please explain and suggest how they might be lessened or simplified.

D Requirements for operating an IDPS

Key points

We propose to strengthen operating requirements for IDPS operators by:

- increasing the financial requirements for these operators; and
- restricting IDPS operators to public companies only.

The proposals in this section apply only to IDPS operators. Responsible entities of IDPS-like schemes are already required to comply with equivalent obligations.

- 59 As the platforms sector continues to develop and expand, the proposals in this section aim to ensure that IDPS operators are robust and have appropriate levels of financial capacity and strong corporate structures to support the conduct of their financial services businesses.
- 60 Responsible entities of IDPS-like schemes:
- (a) will be required to comply with new financial requirements from 1 November 2012 (see ASIC Media Release 11–242 *ASIC releases new financial requirements for responsible entities*, 7 November 2011); and
 - (b) must be public companies (s601FA).
- 61 IDPS operators are not currently subject to equivalent requirements.
- 62 The proposals in this section would apply to IDPS operators to further our objective of treating IDPSs and IDPS-like schemes similarly where there is no regulatory basis for different treatment.

Financial requirements

Proposal

- D1 We propose to align the financial requirements of IDPS operators with those that will apply to responsible entities from 1 November 2012. This means that IDPS operators that are not also responsible entities would need to (applying the same definitions as apply to responsible entities):
- (a) prepare 12-month cash-flow projections approved by directors at least quarterly;
 - (b) meet new NTA capital requirements to hold the greater of:
 - (i) \$150,000;
 - (ii) 0.5% of the average value of property held through any IDPS it operates (other than by clients) capped at \$5 million; or
 - (iii) 10% of their average gross revenue defined as applying to responsible entities (with no maximum);

- (c) where they perform custodial functions, hold a minimum NTA capital requirement the greater of \$5 million or the amount required under proposal D1(b); and
- (d) comply with new liquidity requirements so that they hold at least 50% of their NTA capital requirement under proposal D1(b) in cash or cash equivalents and an amount equal to that NTA capital requirement in liquid assets.

Your feedback

- D1Q1 Do you agree with this proposal? If not, why not?
- D1Q2 Do you think that this proposal appropriately measures the level of risk carried by IDPS operators? Why or why not?
- D1Q3 Are there any practical problems with the implementation of these proposals? Please give details.
- D1Q4 What additional costs will be incurred by your business as a result of this proposal? Please give details.
- D1Q5 Are there any circumstances in which this proposal should not apply? Please specify.
- D1Q6 Do you have any concerns with ASIC giving effect to this proposal by class order, if adopted? Please give details.
- D1Q7 Should ASIC also provide additional regulatory guidance on the obligation for IDPS operators to have adequate risk management arrangements in place under s912A(1)(h)? Why or why not? Please give details.

Rationale

- 63 Under the Corporations Act, AFS licensees are obliged (among other things) to have adequate financial resources available to provide the financial services covered by their AFS licence and to carry out supervisory arrangements, unless they are a body regulated by the Australian Prudential Regulation Authority (APRA): s912A(1)(d).

Note: We will not apply the requirements in proposal D1 to IDPS operators that are bodies regulated by APRA and that are not required to have adequate financial resources under s912(1)(d). However, the proposed requirements will apply if an IDPS operator is a subsidiary or related body corporate of a body regulated by APRA. For further details, see RG 166 *Licensing: Financial requirements* (RG 166) at RG 166.16–RG 166.18.

- 64 Regulatory Guide 166 *Licensing: Financial requirements* (RG 166) sets out the financial requirements for AFS licensees including IDPS operators. These requirements are generally applied through AFS licence conditions.
- 65 There has not been a significant review of the financial requirements for IDPS operators since implementation of the financial services reform legislation in 2002.

- 66 The platforms sector is developing and expanding, including in response to current regulatory reform through new forms of vertical integration. In this market, we consider it important to ensure that platform operators have adequate resources and in particular, financial capacity to conduct their financial services businesses. We also consider it important that platform operators have in place risk management arrangements that address the risk that they will not have adequate financial resources to conduct their financial services businesses: see Regulatory Guide 104 *Licensing: Meeting the general obligations* (RG 104) at RG 104.66.
- 67 The events of recent years have highlighted the need for review of the capital adequacy requirements of IDPS operators. Failure of an IDPS operator could have a significant impact on many investors and flow-on effects through the broader market. We aim to provide some level of assurance that if an IDPS operator fails, there is sufficient money available for the orderly transition to a new IDPS operator or to wind up the IDPS in the interests of its clients.
- 68 This approach is consistent with RG 166, which recognises that we have financial requirements for AFS licensees to ensure that:
- (a) they have sufficient financial resources to conduct their financial services business in compliance with the Corporations Act;
 - (b) there is a financial buffer that decreases the risk of a disorderly or non-compliant wind-up if the licensee fails; and
 - (c) there are incentives for owners to comply with the Corporations Act through risk of financial loss: see RG 166.13.

Corporate structure requirements

Proposal

- D2 We propose that an IDPS operator must be a public company.

Your feedback

- D2Q1 Do you agree with this proposal? If not, why not?
- D2Q2 What benefits and disadvantages do you think will result from the implementation of this proposal? Please explain.
- D2Q3 Are there any practical problems with the implementation of this proposal? What would be the financial impact of this proposal on your business? Please give details.
- D2Q4 Would there be an effect on market competition as a result of the implementation of this proposal? Please explain.
- D2Q5 Should ASIC consider alternatives to addressing corporate structure requirements for IDPS operators? For example, should we retain our current position but include additional conditions on IDPS operators that are private companies? Please provide detailed suggestions.

Rationale

- 69 Platform operators are generally required to be public companies. However, ASIC allows IDPS operators to be proprietary companies in limited circumstances: see Pro Forma 209 *Australian financial services licence conditions* (PF 209), conditions 36 and 37.
- 70 Most established platform operators are public companies. However, our recent review of the platforms sector highlighted the emergence of less mature and less experienced platform operators through new forms of vertical integration. For example, we are aware of growth in ‘private labelling’ arrangements where dealer groups are restructuring to become platform operators themselves. Our consideration of recent AFS licence applications in this context indicates that some of these new platform operators are proprietary companies.
- 71 We appreciate that our proposal is a change from our current position but we do not believe that our present approach takes into account the risks emerging in the market. We also do not perceive a regulatory basis for different treatment of platform operators. In addition, we consider that our current regulatory approach unnecessarily increases complexity given that we expect proprietary companies operating IDPSs to satisfy certain obligations as if they are public companies (e.g. lodgement of financial reports, directors’ reports and audit reports with ASIC, and a minimum of three directors).
- 72 Accordingly, we believe that IDPS operators should be public companies to ensure that they have suitable operating structures to conduct their financial services businesses, promote greater transparency with their clients and enhance confidence in the platforms sector.
- 73 Public companies are required to be more transparent than their proprietary counterparts. Stronger governance measures apply to them through increased financial accountability requirements, as well as disclosure requirements about any related party transactions.

E Investment menu selection

Key points

We expect licensed platform operators and dealer groups and their associated adviser networks to inform investor decision making about using platforms and investing through them, including by making certain disclosures, and when providing advice to platform clients.

We specifically propose to require platform operators to disclose how they select financial products for inclusion on investment menus or in model portfolios in their IDPS Guides or PDSs for IDPS-like schemes.

Disclosure about selection of investments

Proposal

E1 We propose to:

- (a) require platform operators to disclose how they select financial products for inclusion on investment menus or in model portfolios in their IDPS Guides or PDSs for IDPS-like schemes; and
- (b) set out our expectation of licensed dealer groups and their adviser representatives to consider investment selection processes when recommending the use of one platform over another, or a platform at all.

Your feedback

E1Q1 Do you agree with this proposal? If not, why not?

E1Q2 What benefits and disadvantages do you think will result from the implementation of this proposal? Please explain.

E1Q3 Are there any practical problems with the implementation of this proposal? Please give details.

E1Q4 Would there be an effect on market competition as a result of the implementation of this proposal? Please explain.

E1Q5 Are there alternative and/or additional options we could consider to help inform investor decision making about using platforms? Please give details.

Rationale

74 One of the key features and benefits of platforms are their investment menus or model portfolios. These can provide clients access to a potentially wide range of financial products they could not otherwise directly access.

75 Our recent stakeholder engagement with the platforms sector revealed that practices for selecting financial products for inclusion on investment menus

or in model portfolios vary significantly among platform operators. For example, some platform operators make investment selection decisions on a purely technological and/or administrative basis (i.e. ‘can the product be administered on our platform?’).

- 76 In contrast, others undertake a rigorous process to scrutinise investments to be included on an investment menu (e.g. some platform operators have established research methodologies that underpin their investment committees’ assessments of whether investments are suitable for inclusion). Licensed dealer groups affiliated with platform operators can typically propose inclusions on an investment menu, which become subject to the platform operator’s investment selection process.
- 77 We believe it is appropriate that the proposed disclosure on investment selection process be made in the IDPS Guide or PDS for an IDPS-like scheme. We consider this to be information that might reasonably be expected to have a material influence on the decision of a client about:
- (a) whether or not to use a platform rather than invest directly in financial products;
 - (b) which platform to use; and
 - (c) ultimately, what products to invest in through the platform.
- 78 We do not consider disclosure is alone enough to ensure informed investor decision making in these circumstances. We also expect that licensed dealer groups and their adviser representatives will consider the investment selection processes of platform operators in providing personal financial product advice to clients about these types of matters: see Table 2, proposal C2.9.

F Investor rights

Key points

We propose additional requirements for platform operators to enhance investor rights associated with investments made through platforms so they are the same as for investing directly.

These proposals specifically cover investor rights for:

- a cooling-off period;
- withdrawing from an investment;
- voting on company and scheme resolutions and information on corporate actions generally; and
- dispute resolution.

- 79 Investor behaviour in the platforms sector is shifting with increasing demand for new investment types and greater self-direction through platforms.
- 80 The proposals in this section are based on the premise that platform clients should be entitled to the same rights for investments through those vehicles as for investing directly. This view is consistent with our current approach that platform clients ought to be entitled to the same disclosure standards in these circumstances.
- 81 We appreciate that there may be practical impediments that arise in adopting this approach. In each case, we seek feedback on how these impediments may be overcome, balancing the need for confident and informed investor decision-making in the platforms sector with appropriate facilitation of activity within that sector.

Enhancing investor rights

Proposal

- F1 We propose that platform clients be entitled to the same investor rights for investing through those vehicles as for investing directly: see proposals F2–F5.

Your feedback

- F1Q1 Do you agree with this proposal? If not, why not?
- F1Q2 Do you agree that platform clients should have the same rights for investments made through these vehicles as if they had invested directly? If not, why not?

- F1Q3 Would implementation of this proposal raise any practical problems given the custodial nature of investment holdings through platforms, or be impeded by the netting of transactions or the pooling of funds? How can these problems and impediments be addressed? Please give details.
- F1Q4 Are there alternative options we should consider to address investor rights given the custodial nature of investment holdings through platforms? For example, can advice on using platforms adequately address this issue, and/or should disclosure indicate that investors may not have the same rights with investments through platforms as if they invested directly? Is this in the interests of platform clients? Please provide detailed suggestions and rationale.
- F1Q5 Are there any additional investor rights we should consider in the context of the proposals in this section? For example, should the requirement on licensed product issuers (providing financial services to retail clients) to have adequate compensation arrangements for liabilities be extended to liabilities of platform operators (or their appointed custodians) as if they were retail clients? Should platform operators be permitted to only acquire financial products if product issuers comply with the significant event disclosure requirements under s1017B as if the platform clients had acquired the financial products directly? Please give details.

Rationale

- 82 The platforms sector will continue to develop and expand, particularly in response to changing investor behaviour where investors may be more inclined to direct their investments without the benefit of financial product advice. We therefore believe that platform clients should be entitled to the same rights concerning their investments through those vehicles that they would have had if they had invested directly.
- 83 Our recent engagement with the platforms sector suggested that generally, there would be support for measures designed to provide platform clients with rights that they do not currently have given the nature of the custodial holding of their investments through these vehicles. It was generally recognised that investors' beneficial ownership should not compromise the rights associated with their investments through platforms.
- 84 We appreciate that, in some cases, there are practical barriers that may make this approach difficult. This is due to the nature of the custodial holding of the assets (which often treat the platform operator as a wholesale client not entitled to the relevant investor rights) and the netting of transactions and the pooling of funds through platforms. However, we anticipate that technological advances in recent years may address some of these barriers so that platform clients are not disadvantaged by investing through a platform instead of directly.

Cooling-off rights

Proposal

- F2 We propose that platform operators ensure that platform clients have cooling-off rights when acquiring financial products through their platforms as if the client were acquiring the financial product directly.

Your feedback

- F2Q1 Do you agree with this proposal? If not, why not?
- F2Q2 What benefits and disadvantages do you think will result from the implementation of this proposal? Please explain.
- F2Q3 Are there any practical problems with the implementation of this proposal? For example, are there any circumstances where it would not be possible to provide cooling-off rights for financial products acquired through platforms? Is the provision of cooling-off rights to platform clients impeded by the netting of transactions or the pooling of funds? Please give details.
- F2Q4 Are there alternative options that we should consider to address an investor's right to a cooling-off period? Please provide detailed suggestions and rationale.
- F2Q5 Are there any circumstances in which cooling-off rights apply to financial products available through platforms, but should not be extended to clients? If so, what are they and why?

Rationale

- 85 Platform operators do not typically provide cooling-off rights as they are often treated as wholesale clients. This means that rights to cooling-off periods for financial products acquired through platforms are not typically provided to platform clients, given their beneficial ownership of their investments. We also acknowledge that clients employing the services of advisers may be less likely to exercise cooling-off rights due to the time and attention given to the investment decision-making process.
- 86 We nonetheless propose that platform operators ensure that their clients have cooling-off rights when acquiring financial products through their platforms as if the client were acquiring the financial product directly and s1019B applied. We do not perceive any regulatory basis for different treatment of direct or indirect investment. For example, where investors obtain financial product advice generally from an adviser and subsequently invest in financial products directly, they remain entitled to exercise their cooling-off rights.
- 87 We appreciate that there may be circumstances in which it is not possible or appropriate to provide cooling-off rights to platform clients. Subject to feedback we receive, we will give consideration to:
- (a) whether cooling-off rights for platform clients should be subject to exemptions in circumstances drawn to our attention; and

- (b) whether we should continue to provide exemptions for responsible entities of IDPS-like schemes to the extent currently provided under [CO 02/296]—for example, where it is not possible to dispose of underlying investments given minimum holding or transaction requirements.

88 Our proposal is limited to providing cooling-off rights to platform clients where they would have been entitled to them if they had invested directly in the products. We expect that equivalent rights will apply to platform clients whether they invest directly or indirectly in particular financial products. This means, for example, that we do not intend to extend cooling-off rights to securities acquired through platforms as such rights do not apply to securities acquired directly.

Withdrawal rights

Proposal

F3 We propose that:

- (a) platform clients should have withdrawal rights for investments acquired through these vehicles where:
 - (i) disclosure for those investments—in a PDS or disclosure document (as relevant)—becomes defective before issue; and
 - (ii) a product issuer provides notification of an option to withdraw under s724 or 1016E; and
- (b) in the circumstances outlined in proposal F3(a), IDPS operators performing transactional functions and responsible entities of IDPS-like schemes must:
 - (i) ensure that notification of the option to withdraw is communicated to clients as soon as practicable;
 - (ii) give clients access to any supplementary or replacement disclosure and inform them of how it may be accessed; and
 - (iii) act on the clients' instructions as to how to exercise the option.

Your feedback

- F3Q1 Do you agree with this proposal? If not, why not?
- F3Q2 What benefits and disadvantages do you think will result from the implementation of this proposal? Please explain.
- F3Q3 Are there any practical problems with the implementation of this proposal? For example, do you think it is necessary to require that the defective disclosure is materially adverse to clients' interests? Please give details.
- F3Q4 Are there any additional costs that will be incurred by your business as a result of the implementation of these proposals? Please give details.

F3Q5 Are there alternative options that ASIC should consider to address a client's right to withdrawal? Please provide detailed suggestions and rationale.

Rationale

- 89 The nature of the custodial holding of investments through platforms means that clients also do not receive the benefit of remedies under the Corporations Act where disclosure about investments in financial products or securities becomes defective before the issue of the investment.
- 90 As these remedies apply where disclosure documents are materially adverse to investors' interests (e.g. by means of misleading and deceptive statements or omission of particular information), we believe that it is important and desirable that at least equivalent rights are provided to investors regardless of whether they invest directly or indirectly.
- 91 From our consultation on this issue in 2007, we appreciate the practical impediments that arise, particularly as a result of the netting of transactions and the pooling of funds in platforms. However, we anticipate that technological advances in recent years may address some of these barriers so that platform clients are not disadvantaged by investing through a platform.

Voting rights

Proposal

F4 We propose that IDPS operators who are responsible for transactional functions have in place a voting policy for company and scheme resolutions and other corporate actions: see Table 3.

Note: We do not propose that the voting policy requirements in Table 3 apply to responsible entities of IDPS-like schemes, as responsible entities already have an obligation to act in the best interests of the scheme members in the exercise of any power to vote arising from holding scheme property.

Table 3: Voting policy

Issue	Description
Voting rights	Under the voting policy, IDPS operators responsible for transactional functions must: <ul style="list-style-type: none"> • take reasonable steps to obtain client instructions (including through an adviser) about the exercise of voting rights for company or scheme resolutions in relation to assets held through the IDPS; and • act on those instructions when they are received from clients on time.
Company and scheme resolutions	For company and scheme resolutions, reasonable steps means giving to clients (including through electronic communication where the client has provided consent): <ul style="list-style-type: none"> • the voting policy on request; • any information made available to the custodian as asset holder about a vote on the occasion of each resolution sought; and • a facility that is easy for clients to use to provide instructions on voting.

Issue	Description
Other corporate actions	For all other corporate actions, IDPS operators responsible for transactional functions must give clients (including through electronic communication where the client has provided consent) any information about these actions that is made available to the custodian (as asset holder).
Disclosure	Information about the voting policy for company and scheme resolutions and other corporate actions (and how this policy can be accessed) must be specifically disclosed in the IDPS Guide.

Your feedback

- F4Q1 Do you agree with this proposal? If not, why not?
- F4Q2 What benefits and disadvantages do you think will result from the implementation of this proposal? Please explain.
- F4Q3 Should the requirements for the exercise of votes on company or scheme resolutions also apply to all other corporate actions? Or is the requirement to simply provide information about all other corporate actions sufficient? Please explain.
- F4Q4 Are there any practical problems with the implementation of this proposal? For example, what effect will this proposal have on current contractual arrangements? Please give details.
- F4Q5 What would be the financial impact of this proposal on your business and would any additional costs be passed through to investors (e.g. a charge for the voting facility)? Please give details.
- F4Q6 Are there alternative options we should consider that would help to optimise clients' voting rights in investments held through IDPSs and prevent the frustration of votes on company or scheme resolutions? Please give details.
- F4Q7 Do you agree that this proposal should not apply to responsible entities of IDPS-like schemes? If not, why not?

Rationale

- 92 We acknowledge that contractual arrangements between IDPS operators and clients currently govern how the IDPS operator exercises its rights as a member of a scheme or shareholder of a company in any vote on a resolution.
- 93 However, our recent engagement with the platforms sector drew to our attention the varied voting practices among platform operators. While many platform operators already provide information about corporate actions generally to clients, some platform operators have no formal policy for exercising voting rights for platform holdings. Some platform operators receive information about votes on resolutions but choose not to forward this information to clients. Other platform operators decide on behalf of the

client that they will abstain from voting altogether, while some platform operators seek to obtain client instructions.

- 94 We appreciate that practical issues may arise in obtaining instructions from platform clients who are beneficial owners of investments through platforms and hold an indirect interest in them. The platform operator (or appointed custodian) receives information directly about votes on resolutions and/or corporate actions. To obtain instructions, this information would need to be passed on to clients (or their agents) before the instructions can be communicated back to the company or scheme holding the vote or undertaking the corporate action.
- 95 Nonetheless, we consider that clients' rights in investments held through platforms can be significantly impacted by votes on company or scheme resolutions or by participation in other corporate actions. Abstaining from voting on behalf of platform clients or abstaining from facilitating participation devalues clients' rights associated with those investments (e.g. an active decision about whether to remain in a particular investment or participate in a share buyback). We consider it is important to make clients aware of the ability to vote on company and scheme resolutions, or to participate in other corporate actions.
- 96 We are also aware that abstaining from voting can have flow-on effects for companies or schemes seeking resolutions. For example, replacing a responsible entity requires an extraordinary resolution to be passed by at least 50% of members entitled to vote. Voting on these types of resolutions can be frustrated where platform operators, as the members of a scheme, abstain from voting often resulting in the need for robust commercial negotiations.
- 97 We believe that our proposals on voting policies will improve clients' abilities to exercise their rights in investments held through platforms while enhancing market efficiencies in delivering resolutions in a commercially viable and desirable way.
- 98 We consider that key information about the relevant platform operator's voting policy for company or scheme resolutions and dealings with corporate actions generally, ought to be disclosed to clients in the IDPS Guide. We believe that this is information clients need to know in understanding their investments through the platform and exercising rights in those investments as beneficial owners.
- 99 We do not intend for this proposal to apply to responsible entities of IDPS-like schemes. In exercising their powers and carrying out their duties, we expect responsible entities to act in the best interests of the members of the IDPS-like schemes (s601FC(1)(c)) in the exercise of any power to vote arising from holding scheme property.

Dispute resolution

Proposal

- F5 We propose to provide additional regulatory guidance to clarify that:
- (a) platform clients must have access to a product issuer's internal and external dispute resolution system when they have concerns about investments made through platforms; and
 - (b) platform operators must include a statement in the IDPS Guide or PDS for IDPS-like schemes outlining who investors can approach about different types of complaints (see Table 4).

Table 4: Dispute resolution channels

Nature of complaint	Who to approach
Platform operation	Platform operator
Investments acquired through platforms	Product issuers
Financial product advice about using platforms and investments acquired through them	Licensed dealer group or adviser representative

Your feedback

- F5Q1 Do you agree with this proposal? If not, why not?
- F5Q2 What benefits and disadvantages do you think will result from the implementation of this proposal? Please explain.
- F5Q3 Are there any practical problems with the implementation of this proposal? For example, are there any legal or other obstacles to platform clients, as beneficial owners, approaching product issuers directly to access internal and external dispute resolution schemes about their investments through platforms? Please give details.
- F5Q4 Should we consider alternative options and, if so, what are they and why? For example, should platform operators be recognised as retail clients for the purposes of providing access to internal and external dispute resolution schemes and be required to take reasonable steps to act on complaints of their clients? Please give details.

Rationale

- 100 AFS licensees providing financial services to retail clients have an obligation to have a dispute resolution system in place consisting of:
- (a) an internal dispute resolution procedure; and
 - (b) membership of one or more external dispute resolution schemes: s912A(1)(g) and 912A(2).

101 As AFS licensees, this obligation extends to platform operators, product issuers and licensed dealer groups if they provide financial services to retail clients. It is appropriate that retail clients for whom financial products are held through platforms have the same rights of complaint as they would have had if they had acquired the financial products directly.

102 Given the nature of the custodial holding of investments through platforms, we think it is important that platform clients clearly understand:

- (a) the roles and responsibilities of the parties in the product–distribution chain responsible for resolving disputes;
- (b) the avenues for making complaints depending on the subject; and
- (c) how both internal and external dispute resolution procedures can be accessed.

This is particularly so given shifting investor behaviour in the platforms sector, which makes it more likely that internal and external dispute resolution systems will be accessed by active, engaged, self-directed investors.

G Implementation and transition period

Key points

We propose that new platform operators comply with our revised regulatory guidance and accompanying class order relief from the date on which that guidance is released.

We appreciate that, in response to any revised requirements, established platform operators may need to recapitalise, restructure and/or reconsider how to meet their compliance obligations where they change. We therefore propose giving these operators staged transition periods to meet any revised requirements.

New operators

Proposal

- G1 We propose that new platform operators comply with any revised regulatory guidance and accompanying class order relief from the date on which that guidance is released.

Your feedback

G1Q1 Do you agree with this proposal? If not, why not?

G1Q2 Is the proposed implementation date for new operators reasonable? If not, why not?

Rationale

- 103 We consider that our proposals are important to promote the stability and integrity of the platforms sector and investor confidence in it. This is particularly so given increasing numbers of new platform operators entering the sector against the background of current regulatory reforms.
- 104 Accordingly, we believe that our proposed requirements should apply to new platform operators from the date on which our revised regulatory guidance is released later in 2012.

Established operators

Proposal

- G2 We propose to provide established platform operators with staged transition periods to comply with any revised regulatory guidance and accompanying class order relief. Specifically, we propose that:
- (a) established IDPS operators providing transactional functions comply with any revised financial requirements from 1 November 2012, and with any other revised operating requirements by 1 January 2013;

- (b) other established IDPS operators comply with any revised operating requirements (including financial requirements) by 1 July 2013; and
- (c) all established platform operators comply with any other revised regulatory guidance and accompanying class order relief by 1 July 2013.

Your feedback

- G2Q1 Do you agree with this proposal? If not, why not?
- G2Q2 Do established platform operators need a transition period to ensure that adequate arrangements are in place to meet any proposed revised requirements? If so, are the proposed transition periods reasonable? If not, why not?
- G2Q3 Is it appropriate to distinguish between IDPS operators providing transactional functions and other IDPS operators? If not, why not?
- G2Q4 Should we have a formal 'opt-in' process where established platform operators notify us of intended compliance with any revised requirements before the expiry of the transition period?

Rationale

- 105 We consider that our proposals are important to promote the stability and integrity of the platforms sector and investor confidence in it.
- 106 We appreciate that established IDPS operators may need to:
- (a) recapitalise to meet the proposed revised financial requirements; and/or
 - (b) restructure to meet the proposed revised operating requirements for company structure and the exercise of voting rights.
- 107 We also appreciate that established platform operators may need to reconsider how they meet their compliance obligations in response to any changes.
- 108 We therefore think it is appropriate to provide staged transition periods to address existing and emerging risks in the platforms sector. Specifically, we expect:
- (a) established IDPS operators providing transactional functions to comply with any revised financial requirements from 1 November 2012 to align with those that will apply to responsible entities from that date, and with any other revised operating requirements by 1 January 2013;
 - (b) other established IDPS operators to comply with any revised operating requirements (including financial requirements) by 1 July 2013; and
 - (c) all established platform operators to comply with any other revised regulatory guidance and accompanying class order relief by 1 July 2013 to allow adequate time for any required review and updating of policies, procedures, processes and disclosure documents.

- 109 We understand that the proposed transition periods for IDPS operators providing transactional functions are more onerous. We are proposing to adopt this approach because of the nature of the financial services they provide, which are currently subject to more stringent financial requirements that are more closely aligned with our proposed requirements. Therefore, we consider that they are in a position to comply sooner, and should do so.
- 110 We believe that a staged approach to allow for the transition of established platform operators will help to promote the stability and integrity of the platforms sector. It will allow these operators to continue to conduct their financial services businesses while preparing for compliance with any revised regulatory requirements.
- 111 Established platform operators will also be able to comply with any revised regulatory requirements before the expiry of the proposed transition periods where they seek the benefits of doing so. We seek feedback on whether a formal process is necessary for notifying ASIC of an intention to adopt this approach.

H Regulatory and financial impact

- 112 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:
- (a) promoting confident and informed investors, including by ensuring that they receive adequate disclosure and advice about platforms and investments available through them, and by appropriate regulation of platform operators; and
 - (b) facilitating activity within the platforms sector taking into account existing and emerging issues and risks in that sector and simplifying the manner in which platforms are regulated to reduce compliance costs.
- 113 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:
- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
 - (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR);
 - (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).
- 114 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.
- 115 To ensure that we are in a position to properly complete any required RIS, we ask you to provide us with as much information as you can about our proposals or any alternative approaches, including:
- (a) the likely compliance costs;
 - (b) the likely effects on competition; and
 - (c) other impacts, costs and benefits.

See 'The consultation process' p. 4.

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 out a financial services business to provide financial services Note: This is a definition contained in s761A of the Corporations Act.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A of the Corporations Act.
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
Bill	<i>Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011</i>
Ch 6D (for example)	A chapter of the Corporations Act (in this example numbered 6D)
Ch 6D disclosure document	A prospectus, short form prospectus, profile statement or offer information statement as referred to in s705 that would be able to be used for an offer of the securities to the client of the platform
[CO 07/428] (for example)	An ASIC class order (in this example numbered 07/428)
complaint	Has the meaning given in AS ISO 10002-2006
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
custodian (in relation to a platform)	The person (who may be the platform operator, but not the platform client) that holds property through the platform
disclosure document	For an offer of securities, this includes a prospectus, a profile statement and an offer information statement
dispute	Has the same meaning as complaint
Div 3 (for example)	A division of a part of the Corporations Act (in this example numbered 3), unless otherwise specified
financial product	Generally a facility through which, or through the acquisition of which, a person does one or more of the following: <ul style="list-style-type: none"> • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D) Note: See Div 3 of Pt 7.1 of the Corporations Act for the exact definition.

Term	Meaning in this document
financial service	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act
Financial Services Guide (FSG)	A document that must be given to a retail client in relation to the provision of a financial service in accordance with Div 2 of Pt 7.7 of the Corporations Act Note: See s761A of the Corporations Act for the exact definition.
financial services provider	A person who provides a financial service
financial services business	A business of providing financial services Note: This is a definition contained in s761A. The meaning of 'carry on a financial services business' is affected by s761C.
FSG	Financial Services Guide
Future of Financial Advice (FoFA) reforms	A package of proposed reforms to the regulation of financial advice issued by the Australian Government in response to the PJC report <i>Inquiry into financial products and services in Australia</i> , November 2009
IDPS	Investor directed portfolio service, as defined in [CO 02/294]
IDPS Guide	A document provided by an IDPS operator instead of a PDS to help retail clients decide if they should use the IDPS
IDPS-like scheme	Investor directed portfolio services-like scheme, as defined in [CO 02/296]
licensee	An AFS licensee or a credit licensee
NTA	Net tangible assets, as defined in Regulatory Guide 166 <i>Licensing: Financial requirements</i> (RG 166)
operator (of a platform)	A person that contracts to provide services that comprise the platform (in whole or part)
PDS	Product Disclosure Statement
personal advice	Financial product advice given or directed to a person (including by electronic means) in circumstances where: <ul style="list-style-type: none"> the provider of the advice has considered one or more of the person's objectives, financial situation and needs; or a reasonable person might expect the provider to have considered one or more of those matters Note: This is the definition contained in s766B(3) of the Corporations Act.
platform	For the purposes of this consultation paper, IDPS and IDPS-like schemes, but does not extend to nominee and custody services, as defined in RG 149, superannuation master trusts or other superannuation funds, self-managed superannuation funds or managed discretionary account services

Term	Meaning in this document
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.
Pt 7.12 (for example)	A part of the Corporations Act (in this example numbered 7.12), unless otherwise specified
reg 7.6.04 (for example)	A regulation of the Corporations Regulations 2001 (in this example numbered 7.6.04)
retail client	A client as defined in s761G of the Corporations Act and Ch 7, Pt 7.1, Div 2 of the Corporations Regulations
RG 148 (for example)	An ASIC regulatory guide (in this example numbered 148)
s766E (for example)	A section of the Corporations Act (in this example numbered 766E), unless otherwise specified
SOA	Statement of Advice
Statement of Advice (SOA)	A document that must be given to a retail client for the provision of personal advice under Subdivisions C and D of Div 3 of Pt 7.7 of the Corporations Act Note: See s761A for the exact definition.
superannuation master trust	A superannuation fund that has an obligation to give documents to retail clients under s1012IA
transactional functions	Either: <ul style="list-style-type: none"> the acquisition and disposal of financial products or securities through the platform in accordance with the instructions of the client or otherwise in accordance with the terms of the platform contract; or the maintenance of records of investments of clients for the purposes of consolidated reporting functions under the platform

List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to revise and supplement our guidance in RG 148 and accompanying class order relief to address key themes and issues in the platforms sector. This includes:</p> <ul style="list-style-type: none"> (a) reviewing our regulatory approach to platforms (see Section C); (b) strengthening requirements for operating IDPSs (see Section D); (c) promoting informed investor decision making about using platforms (see Section E); (d) enhancing investor rights in platforms (see Section F); and (e) setting an implementation and transition period for new and established platform operators (see Section G). 	<p>B1Q1 Do you agree with this approach? If not, why not?</p> <p>B1Q2 Are there any other existing and emerging themes and issues in the platforms sector that warrant a potential regulatory response as part of this review? Please give details.</p> <p>B1Q3 Does this approach raise any practical problems for platform operators and people who provide advice on using platforms? Please give details.</p> <p>B1Q4 If we continue to adopt this approach, how can we provide increased certainty for platform operators through RG 148 and accompanying class order relief? Please provide detailed suggestions.</p> <p>B1Q5 Should we adopt different terminology when referring to IDPSs and IDPS-like schemes in our regulatory guidance? Is 'platforms' is a more appropriate generic name? If not, why not, and what alternatives would you suggest? Please give details.</p>
<p>B2 We propose not to provide specific guidance to platform operators and licensed dealer groups and their associated advisers on how to meet their obligation to have adequate arrangements in place to manage conflicts of interest at the current time.</p>	<p>B2Q1 Do you agree with this proposal? If not, why not?</p> <p>B2Q2 Are there any practical consequences flowing from this approach that need to be addressed as part of our review? Please give details.</p>
<p>B3 We propose not to extend our review of RG 148 to a review of complementary regulatory guidance on, for example, nominee and custody services and managed discretionary account services.</p>	<p>B3Q1 Do you agree with this proposal? If not, why not?</p> <p>B3Q2 Are there any practical consequences flowing from this approach that need to be addressed as part of our review? Please give details.</p>
<p>B4 We propose not to address portability obstacles for platform operators that arise from aging technology and industry consolidation.</p>	<p>B4Q1 Do you agree with this proposal? If not, why not?</p> <p>B4Q2 Can these issues be autonomously resolved by platform operators? Is this desirable and in the interests of platform clients, or is regulatory intervention warranted? For example, should ASIC permit the contractual ability of platform operators to sell down or cash out investments through platforms in wider circumstances without client instructions?</p> <p>B4Q3 Alternatively, should we facilitate portability in some other way, ensuring the maintenance of adequate investor rights? Please give details.</p>
<p>C1 We propose to retain key elements of our current approach as described in Table 1.</p>	<p>C1Q1 Do you agree with our proposal for continuing guidance and relief? If not, why not?</p> <p>C1Q2 Are there any other current requirements that ought to be retained? Please give details.</p> <p>C1Q3 Do you consider that retaining any of these requirements, together with others proposed in this consultation paper, is cumulatively burdensome, complex or lacking in transparency? If so, please explain and suggest how the requirements might be lessened or simplified.</p>

Proposal	Your feedback
<p>C2 We propose to change our current regulatory approach as outlined in Table 2 primarily as it affects disclosure requirements and some operating requirements.</p>	<p>C2Q1 Do you agree with our proposal for changes to our regulatory approach to platforms? If not, why not?</p> <p>C2Q2 Are there any other current requirements that ought to be changed? Please give details.</p> <p>C2Q3 Are there any practical problems with the implementation of any of these changes? Please give details.</p> <p>C2Q4 What additional costs will be incurred by your platforms business as a result of these changes? Please give details.</p> <p>C2Q5 Are there any circumstances in which any of these changes should not apply? Please specify.</p> <p>C2Q6 Do you consider that changing these requirements, which may apply in addition to other requirements proposed in this consultation paper, would be cumulatively burdensome, complex or lacking in transparency? If so, please explain and suggest how they might be lessened or simplified.</p>
<p>D1 We propose to align the financial requirements of IDPS operators with those that will apply to responsible entities from 1 November 2012. This means that IDPS operators that are not also responsible entities would need to (applying the same definitions as apply to responsible entities):</p> <ul style="list-style-type: none"> (a) prepare 12-month cash-flow projections approved by directors at least quarterly; (b) meet new NTA capital requirements to hold the greater of: <ul style="list-style-type: none"> (i) \$150,000; (ii) 0.5% of the average value of property held through any IDPS it operates (other than by clients) capped at \$5 million; or (iii) 10% of their average gross revenue defined as applying to responsible entities (with no maximum); (c) where they perform custodial functions, hold a minimum NTA capital requirement the greater of \$5 million or the amount required under proposal D1(b); and (d) comply with new liquidity requirements so that they hold at least 50% of their NTA capital requirement under proposal D1(b) in cash or cash equivalents and an amount equal to that NTA capital requirement in liquid assets. 	<p>D1Q1 Do you agree with this proposal? If not, why not?</p> <p>D1Q2 Do you think that this proposal appropriately measures the level of risk carried by IDPS operators? Why or why not?</p> <p>D1Q3 Are there any practical problems with the implementation of these proposals? Please give details.</p> <p>D1Q4 What additional costs will be incurred by your business as a result of this proposal? Please give details.</p> <p>D1Q5 Are there any circumstances in which this proposal should not apply? Please specify.</p> <p>D1Q6 Do you have any concerns with ASIC giving effect to this proposal by class order, if adopted? Please give details.</p> <p>D1Q7 Should ASIC also provide additional regulatory guidance on the obligation for IDPS operators to have adequate risk management arrangements in place under s912A(1)(h)? Why or why not? Please give details.</p>

Proposal	Your feedback
<p>D2 We propose that an IDPS operator must be a public company.</p>	<p>D2Q1 Do you agree with this proposal? If not, why not?</p> <p>D2Q2 What benefits and disadvantages do you think will result from the implementation of this proposal? Please explain.</p> <p>D2Q3 Are there any practical problems with the implementation of this proposal? What would be the financial impact of this proposal on your business? Please give details.</p> <p>D2Q4 Would there be an effect on market competition as a result of the implementation of this proposal? Please explain.</p> <p>D2Q5 Should ASIC consider alternatives to addressing corporate structure requirements for IDPS operators? For example, should we retain our current position but include additional conditions on IDPS operators that are private companies? Please provide detailed suggestions.</p>
<p>E1 We propose to:</p> <p>(a) require platform operators to disclose how they select financial products for inclusion on investment menus or in model portfolios in their IDPS Guides or PDSs for IDPS-like schemes; and</p> <p>(b) set out our expectation of licensed dealer groups and their adviser representatives to consider investment selection processes when recommending the use of one platform over another, or a platform at all.</p>	<p>E1Q1 Do you agree with this proposal? If not, why not?</p> <p>E1Q2 What benefits and disadvantages do you think will result from the implementation of this proposal? Please explain.</p> <p>E1Q3 Are there any practical problems with the implementation of this proposal? Please give details.</p> <p>E1Q4 Would there be an effect on market competition as a result of the implementation of this proposal? Please explain.</p> <p>E1Q5 Are there alternative and/or additional options we could consider to help inform investor decision making about using platforms? Please give details.</p>
<p>F1 We propose that platform clients be entitled to the same investor rights for investing through those vehicles as for investing directly: see proposals F2–F5.</p>	<p>F1Q1 Do you agree with this proposal? If not, why not?</p> <p>F1Q2 Do you agree that platform clients should have the same rights for investments made through these vehicles as if they had invested directly? If not, why not?</p> <p>F1Q3 Would implementation of this proposal raise any practical problems given the custodial nature of investment holdings through platforms, or be impeded by the netting of transactions or the pooling of funds? How can these problems and impediments be addressed? Please give details.</p> <p>F1Q4 Are there alternative options we should consider to address investor rights given the custodial nature of investment holdings through platforms? For example, can advice on using platforms adequately address this issue, and/or should disclosure indicate that investors may not have the same rights with investments through platforms as if they invested directly? Is this in the interests of platform clients? Please provide detailed suggestions and rationale.</p>

Proposal	Your feedback
	<p>F1Q5 Are there any additional investor rights we should consider in the context of the proposals in this section? For example, should the requirement on licensed product issuers (providing financial services to retail clients) to have adequate compensation arrangements for liabilities be extended to liabilities of platform operators (or their appointed custodians) as if they were retail clients? Should platform operators be permitted to only acquire financial products if product issuers comply with the significant event disclosure requirements under s1017B as if the platform clients had acquired the financial products directly? Please give details.</p>
<p>F2 We propose that platform operators ensure that platform clients have cooling-off rights when acquiring financial products through their platforms as if the client were acquiring the financial product directly.</p>	<p>F2Q1 Do you agree with this proposal? If not, why not?</p> <p>F2Q2 What benefits and disadvantages do you think will result from the implementation of this proposal? Please explain.</p> <p>F2Q3 Are there any practical problems with the implementation of this proposal? For example, are there any circumstances where it would not be possible to provide cooling-off rights for financial products acquired through platforms? Is the provision of cooling-off rights to platform clients impeded by the netting of transactions or the pooling of funds? Please give details.</p> <p>F2Q4 Are there alternative options that we should consider to address an investor's right to a cooling-off period? Please provide detailed suggestions and rationale.</p> <p>F2Q5 Are there any circumstances in which cooling-off rights apply to financial products available through platforms, but should not be extended to clients? If so, what are they and why?</p>
<p>F3 We propose that:</p> <p>(a) platform clients should have withdrawal rights for investments acquired through these vehicles where:</p> <p>(i) disclosure for those investments—in a PDS or disclosure document (as relevant)—becomes defective before issue; and</p> <p>(ii) a product issuer provides notification of an option to withdraw under s724 or 1016E; and</p> <p>(b) in the circumstances outlined in proposal F3(a), IDPS operators performing transactional functions and responsible entities of IDPS-like schemes must:</p> <p>(i) ensure that notification of the option to withdraw is communicated to clients as soon as practicable;</p> <p>(ii) give clients access to any supplementary or replacement disclosure and inform them of how it may be accessed; and</p> <p>(iii) act on the clients' instructions as to how to exercise the option.</p>	<p>F3Q1 Do you agree with this proposal? If not, why not?</p> <p>F3Q2 What benefits and disadvantages do you think will result from the implementation of this proposal? Please explain.</p> <p>F3Q3 Are there any practical problems with the implementation of this proposal? For example, do you think it is necessary to require that the defective disclosure is materially adverse to clients' interests? Please give details.</p> <p>F3Q4 Are there any additional costs that will be incurred by your business as a result of the implementation of these proposals? Please give details.</p> <p>F3Q5 Are there alternative options that ASIC should consider to address a client's right to withdrawal? Please provide detailed suggestions and rationale.</p>

Proposal	Your feedback
<p>F4 We propose that IDPS operators who are responsible for transactional functions have in place a voting policy for company and scheme resolutions and other corporate actions: see Table 3.</p> <p>Note: We do not propose that the voting policy requirements in Table 3 apply to responsible entities of IDPS-like schemes, as responsible entities already have an obligation to act in the best interests of the scheme members in the exercise of any power to vote arising from holding scheme property.</p>	<p>F4Q1 Do you agree with this proposal? If not, why not?</p> <p>F4Q2 What benefits and disadvantages do you think will result from the implementation of this proposal? Please explain.</p> <p>F4Q3 Should the requirements for the exercise of votes on company or scheme resolutions also apply to all other corporate actions? Or is the requirement to simply provide information about all other corporate actions sufficient? Please explain.</p> <p>F4Q4 Are there any practical problems with the implementation of this proposal? For example, what effect will this proposal have on current contractual arrangements? Please give details.</p> <p>F4Q5 What would be the financial impact of this proposal on your business and would any additional costs be passed through to investors (e.g. a charge for the voting facility)? Please give details.</p> <p>F4Q6 Are there alternative options we should consider that would help to optimise clients' voting rights in investments held through IDPSs and prevent the frustration of votes on company or scheme resolutions? Please give details.</p> <p>F4Q7 Do you agree that this proposal should not apply to responsible entities of IDPS-like schemes? If not, why not?</p>
<p>F5 We propose to provide additional regulatory guidance to clarify that:</p> <p>(a) platform clients must have access to a product issuer's internal and external dispute resolution system when they have concerns about investments made through platforms; and</p> <p>(b) platform operators must include a statement in the IDPS Guide or PDS for IDPS-like schemes outlining who investors can approach about different types of complaints (see Table 4).</p>	<p>F5Q1 Do you agree with this proposal? If not, why not?</p> <p>F5Q2 What benefits and disadvantages do you think will result from the implementation of this proposal? Please explain.</p> <p>F5Q3 Are there any practical problems with the implementation of this proposal? For example, are there any legal or other obstacles to platform clients, as beneficial owners, approaching product issuers directly to access internal and external dispute resolution schemes about their investments through platforms? Please give details.</p> <p>F5Q4 Should we consider alternative options and, if so, what are they and why? For example, should platform operators be recognised as retail clients for the purposes of providing access to internal and external dispute resolution schemes and be required to take reasonable steps to act on complaints of their clients? Please give details.</p>
<p>G1 We propose that new platform operators comply with any revised regulatory guidance and accompanying class order relief from the date on which that guidance is released.</p>	<p>G1Q1 Do you agree with this proposal? If not, why not?</p> <p>G1Q2 Is the proposed implementation date for new operators reasonable? If not, why not?</p>

Proposal	Your feedback
<p>G2 We propose to provide established platform operators with staged transition periods to comply with any revised regulatory guidance and accompanying class order relief. Specifically, we propose that:</p> <ul style="list-style-type: none"> (a) established IDPS operators providing transactional functions comply with any revised financial requirements from 1 November 2012 and with any other revised operating requirements by 1 January 2013; (b) other established IDPS operators comply with any revised operating requirements (including financial requirements) by 1 July 2013; and (c) all established platform operators comply with any other revised regulatory guidance and accompanying class order relief by 1 July 2013. 	<p>G2Q1 Do you agree with this proposal? If not, why not?</p> <p>G2Q2 Do established platform operators need a transition period to ensure that adequate arrangements are in place to meet any proposed revised requirements? If so, are the proposed transition periods reasonable? If not, why not?</p> <p>G2Q3 Is it appropriate to distinguish between IDPS operators providing transactional functions and other IDPS operators? If not, why not?</p> <p>G2Q4 Should we have a formal 'opt-in' process where established platform operators notify us of intended compliance with any revised requirements before the expiry of the transition period?</p>