



**ASIC**

Australian Securities & Investments Commission

CONSULTATION PAPER 208

# **ASX Managed Funds Service: Relief from the application form requirement**

May 2013

## **About this paper**

This consultation paper is for investors, responsible entities, ASX market participants, ASX settlement participants, dealers, platform operators and potential providers of similar facilities to the proposed ASX Managed Funds Service (AMFS).

The AMFS is a facility through which offers to acquire and dispose of financial products can made to the issuers of financial products (products).

This paper seeks feedback on our proposal to grant relief to ASX Limited from the requirement in s1016A of the *Corporations Act 2001* (Corporations Act) that a retail investor must apply for financial products using an application form that was included in or accompanied the Product Disclosure Statement (PDS). This relief would apply to responsible entities of registered schemes for applications made through the AMFS.

### 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 30 May 2013 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 are not 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 fully 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 in our decision on the proposals set out in this consultation paper in relation to the application form requirement and the ASX Managed Funds Service. 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 C, 'Regulatory and financial impact'.

### 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 11 July 2013 to:

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## What will happen next?

<b>Stage 1</b>	30 May 2013	ASIC consultation paper released
<b>Stage 2</b>	11 July 2013	Comments due on the consultation paper
<b>Stage 3</b>	November 2013	Class order made

## A Background to the proposals

### Key points

ASX Limited is intending to implement a new service called the ASX Managed Funds Service (AMFS).

The AMFS is a facility that allows investors to electronically apply for or redeem financial products (products) in unlisted registered managed investment schemes (schemes) that have been admitted to the service through brokers authorised to participate in the service.

ASX is seeking relief from s1016A of the Corporations Act, which requires responsible entities to only issue financial products to retail investors when the application is made using an application form attached to a Product Disclosure Statement (PDS) or copied from such a form, as compliance with s1016A would prevent the efficient functioning of the AMFS. A number of requirements would be put in place to manage the risks associated with relief from the application form requirement: see paragraphs 35–48.

In addition to this relief, there are three other regulatory requirements that may need to be met before the AMFS can operate as envisaged by ASX: see paragraphs 49–53.

## ASX Managed Fund Service

### Key features

- 1 The AMFS is a facility that allows an investor to electronically apply for or request redemption of products in unlisted registered management investment schemes (schemes) through facilities operated by members of ASX Group. Instructions are placed by a settlement participant. Other than for dealings on its own account, the settlement participant may be acting on the instructions of an investor or an ASX trading participant who may be acting under an arrangement with another Australian financial services (AFS) licensee dealing on behalf of an investor.
- 2 ASX will operate the AMFS using the same settlement facility operated by ASX Settlement. There will be, however, specific rules relating to the AMFS.
- 3 The National Guarantee Fund (NGF) will not apply to transactions using the AMFS. The NGF is a compensation fund that is available to meet certain claims arising from dealings with participants of ASX and, in limited circumstances, participants of ASX Clear Pty Limited.
- 4 Certain essential features of the AMFS are currently envisaged. These are set out at paragraphs 5–16.

### What will be processed

- 5 Products in schemes will be admitted to the AMFS (in this paper, these will be referred to as ‘admitted schemes’). Schemes admitted to AMFS will not be listed and the criteria for admission to listing will not apply. The AMFS will only be open to simple managed investment schemes that are eligible to use the shorter PDS regime under Sch 10E of the Corporations Regulations 2001, as affected by any applicable ASIC modifications. This means, for example, that hedge funds and schemes with substantially illiquid assets will be excluded.

Note 1: See reg 1.0.02 for the definition of ‘simple managed investment scheme’.

Note 2: Certain registered schemes, including hedge funds, are excluded from the shorter PDS regime by Class Order [12/749] *Relief from the shorter PDS regime*.

- 6 The AMFS does not allow for secondary trading of products—that is, there will be no bids or offers, or matching bids or offers, and prices for transactions will not be set by the AMFS but by the responsible entities. Investors will see clear and prominent messages on the AMFS that aim to reduce the risk of investors confusing the service for a secondary trading market.

### Who can use the AMFS

- 7 The AMFS is open to settlement participants who are authorised to participate in the Clearing House Electronic Subregister System (CHES).
- 8 Investors will be able to apply for, or request redemption of, products in an admitted scheme through an ASX trading participant that is also a settlement participant (or has a settlement participant as its agent). These trading participants are referred to as ‘AMFS brokers’ in this paper.

### How the AMFS will operate

- 9 Unlike ASX trading markets, the AMFS will not display any prices for the admitted scheme on its trading system. This is because admitted schemes must be forward priced. ‘Forward pricing’ means that the daily prices used for accepted applications and redemptions are determined based on the scheme’s net asset value at the end of the day.
- 10 Responsible entities of the admitted schemes will be required under the ASX Operating Rules to provide ASX, via the market announcement platform, all PDSs, supplementary PDSs and other communications that they are legally required to make available to investors.
- 11 ASX will maintain an up-to-date library of all the PDSs of the admitted schemes, to support giving an investor an up-to-date PDS when the investor applies for products.

- 12 Investors will be able to apply for or redeem the admitted scheme products through an AMFS broker by interacting directly or through their agent in one of two ways:
- (a) online, by submitting through the broker's automated client order system; or
  - (b) issuing instructions in person or by telephone, fax or email to the representative of the broker, who then takes steps to execute the instructions through the broker
- 13 If relief is granted, the policy objective of the s1016A(2) requirement (to ensure that a retail investor is given a PDS before they are issued with products will be fulfilled in an alternative manner. The responsible entity will not be restricted from issuing without an application form if the AMFS broker involved with the order accepts responsibility (in the manner set out in paragraphs 31–48) to give the retail investor the current PDS or ensure the retail investor has been given the current PDS.
- 14 An application (or redemption) that is accepted will result in a payment (or receipt) via CHESS and a corresponding increase (or decrease) in the investor's CHESS holding balance of products in the admitted scheme.
- 15 In operating the AMFS, the ASX Group members will:
- (a) route the applications for issue and redemption, and acceptance and rejection messages, between the settlement participants (either the AMFS brokers that act for the investor or the settlement agents of those brokers) and the settlement participants acting for the responsible entities;
  - (b) schedule and monitor the status of settlement instructions from accepted applications for issue and redemption; and
  - (c) notify settlement participants and the responsible entities of their aggregate payment obligations.
- 16 The AMFS will operate as an exempt financial market if a declaration is made to that effect by the Minister.

### **Key benefits**

- 17 The key benefits of the AMFS, as submitted by ASX, are set out in Table 1.



**Table 1: Key claimed benefits of the AMFS for responsible entities and investors**

<b>Responsible entities</b>	<p>Enhanced product distributions through capitalising on the existing relationships between AFS licensees accustomed to using the ASX market (if relevant via settlement participants) and their clients.</p> <p>Operational efficiencies (leading to lower costs and risks) resulting from electronic application straight-through processing and daily batch processing of associated payments.</p>
<b>Investors</b>	<p>Enhanced asset management through consolidation of AMFS holdings and ASX equities holdings through a single CHESS holding.</p> <p>Potentially lower management fees and/or faster delivery of products arising from the potential flow-on consequences of responsible entities' operational efficiency.</p> <p>Greater transparency and certainty on the status of applications for issue.</p>

- 18 ASX commissioned Rice Warner Actuaries to produce a report to determine the cost implications of the new service: see Attachment 1. Rice Warner has also confirmed in a supplementary report that removing the price displays from the ASX trading system does not alter the conclusions of the original report: see Attachment 2.

### Key risks and controls to manage them

- 19 ASX has identified two key risks of the AMFS that are relevant to the requirements of s1016A. It has also suggested controls to manage these risks: see Table 2.

**Table 2: Key risks and controls to manage them**

<b>Retail investors may not be provided with PDSs prior to making the application via the AMFS</b>	<p>When confirming the issue of the product to the investor, the responsible entity will advise the investor that a PDS exists for the admitted scheme and, if the investor has not received a PDS before making the application, advise the investor to contact the responsible entity.</p> <p>If the responsible entity becomes aware that an investor was not given a PDS before making an application, they will advise ASX.</p> <p>ASX will investigate any systemic non-compliance by AMFS brokers who may not be giving PDSs, and may suspend them from using the AMFS and report them to ASIC. ASX will be required to implement a process in its compliance framework for this purpose, which may be reviewed as part of ASX's annual assessment by ASIC.</p> <p>AMFS brokers will have obligations under the Corporations Act and the ASX Operating Rules, enforced by ASIC and ASX, to ensure that a retail investor's application is not processed unless they have been given a current PDS (as shown in ASX's library). We will also impose obligations on responsible entities to not issue any product without confirmation through the AMFS (by messages received by the responsible entity's settlement participants) that a current PDS has been given (unless in compliance with s1016A).</p>
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**Consumers may confuse the AMFS with a trading market**

ASX will manage this risk by issuing appropriate consumer warnings, which are consumer tested prior to implementation, and educational materials.

**Application form requirement**

- 20 Section 1016A(2) generally requires that the issuer of a managed investment product in a scheme may only issue the product to a retail investor if the application was made using an application form that:
- (a) was included in or accompanied by a PDS that was given to the client and was not defective at the time the application was made, unless a PDS would not be required to give to the client in some circumstances; or
  - (b) copied or directly derived from such a form.

**How the requirement is currently met**

- 21 Currently, a responsible entity meets the application form requirement by only issuing products to retail investors who apply using an application form that accompanied the PDS, or an application form prepared and partly completed by an AFS licensee (licensee form), as permitted by Class Order [CO 02/260] *Product Disclosure Statements—application forms created by a licensee*.
- 22 Licensee forms are usually issued by the licensee providing advice to its clients. The use of these forms is permitted if certain requirements are met, including that the AFS licensee has notified the responsible entity that it has given the relevant PDS. In addition, the form must be partly completed by the investor.
- 23 [CO 02/260] provides an analogous situation where relief is already provided from s1016A(2). Effectively, [CO 02/260] exempts an issuer from having to comply with s1016A(2) when:
- (a) the application form is a licensee form;
  - (b) the issuer has reasonable grounds to believe that the licensee form was distributed with a PDS;
  - (c) the issuer has reasonable grounds to believe that the licensee form contains:
    - (i) particulars of the relevant financial product and the PDS, as well as any supplementary PDSs, including its date;

- (ii) a prominent warning that:
  - (A) there is a PDS with information about the relevant financial product;
  - (B) it is advisable to read the PDS before applying for the relevant financial product; and
  - (C) a person who gives another person access to the licensee form must at the same time and by the same means give the other person access to the PDS, including any supplementary PDS; and
- (iii) a statement that the issuer or AFS licensee who has provided the licensee form will send paper copies of the PDS (including any supplementary PDS) and the application form on request and without charge; and
- (d) if the licensee form is issued as software which generates an application for the relevant financial product, the software must display the matters mentioned in paragraphs 23(c)(i)–23(c)(iii) to a person using the software to apply for financial products.

### Why relief is required

- 24 The interpretation section of [CO 02/260] explains that where the class order requires one person (Person A) to have reasonable grounds for a belief that a fact exists, or to take reasonable measures to ensure that a fact exists at a particular time, Person A may rely on a representation or agreement by another person (Person B) that the fact exists or will exist at the proper time, if:
- (a) Person B is more directly responsible than Person A for ensuring that the fact exists at the proper time; and
  - (b) Person A has no reason to doubt that the fact exists or will exist at the proper time.
- 25 In the case of the AMFS, ASX considers that a key benefit of the system is a more efficient application process, because the requirement for the investor to complete an application form has been replaced with electronic messages from the settlement participant (placed on the client's instructions) that will flow through CHES.
- 26 The messages will contain the required investor information the responsible entity needs to issue a product in its scheme. The CHES message will also indicate whether the investor has downloaded the current PDS from the AMFS broker's website or otherwise been given the current PDS (including any relevant supplementary PDS) before making their application.
- 27 This message is to satisfy the responsible entity that the investor has obtained a copy of the PDS and ensure the policy objective of s1016A is

met. A settlement participant participating in the AMFS, who is responsible for the CHESS message, will be providing the responsible entity with the comfort that a PDS has been given to each retail investor.

- 28 During consultation with prospective AMFS brokers and settlement participants, ASX found that the application form requirement was likely to materially impede the use of the AMFS by responsible entities. Streamlining the application process was regarded by responsible entities as a critical element of the AMFS.
- 29 The issuers are unable to rely on [CO 02/260] for the AMFS because:
- (a) the class order refers to the use of licensee forms rather than the forms generated through the AMFS; and
  - (b) in the case of AMFS, there would not necessarily be a bilateral distribution agreement between a responsible entity and an AMFS broker to help in complying with the condition that an AMFS broker is more responsible than a responsible entity to provide a PDS, as required by [CO 02/260].
- 30 Therefore, ASX is seeking class order modification under s926A(2), and relief from s1020F(1), to exempt responsible entities of admitted schemes from the requirements of s1016A(2). The ASX relief application is therefore calling for an extension of the principles underpinning [CO 02/260] in modified circumstances.

### **Form and condition of relief**

- 31 ASX considers that the policy objective behind s1016A(2) can be fulfilled by having an AMFS broker confirm to the responsible entity that a PDS has been given to an investor.
- 32 Based on this requirement, the responsible entity will be allowed to issue products when it has reasonable grounds to believe that an investor has been given a PDS by an AMFS broker at or before the time an application was made, if:
- (a) the AMFS broker has represented to the responsible entity that the current PDS has been given to the client; and
  - (b) the responsible entity has no reason to doubt that the AMFS broker has not done so.
- 33 ASIC also intends to require as conditions of relief that, to provide further assurance for disclosure:
- (a) the responsible entity must, within five business days of the issue of products in an admitted scheme to an investor, send a notice to the retail investor to the effect that:

- (i) there is a PDS with information about the admitted scheme, specifying the date of the PDS and any supplementary PDS;
  - (ii) if the investor has not received that PDS or any supplementary PDS, the investor should obtain a soft copy or hard copy from the responsible entity and this will be provided free of charge;
- (b) if the responsible entity receives a request for a PDS from a retail investor that it believes may indicate that the retail investor was not provided with the current PDS and any supplementary PDS, it must promptly inform ASX in writing; and
- (c) the responsible entity must keep, for seven years:
- (i) records to demonstrate that it has complied with paragraph 33(a);
  - (ii) an electronic copy of all applications received via CHESS; and
  - (iii) any requests for a PDS by a retail investor.

34 To complement this, ASX has asked ASIC to make a declaration under s926A(2)(c), imposing a requirement on AMFS brokers who deal with retail investors to ensure that retail investors are given the current PDS before the time an application is made. Our proposal on the method of imposing this requirement, should we decide to provide the relief requested by ASX, is set out in proposal B2.

### **How the PDS will be given in the proposed system**

35 To give effect to the system of providing the PDS to an investor, the ASX will be modifying the ASX Operating Rules and Procedures and the ASX Settlement Rules and Procedures to incorporate the following requirements for different users and parts of the AMFS.

36 The proposed rule changes in paragraphs 37–48 ensure that, in the four different ways in which an investor can access the AMFS to apply for products, there will always be an obligation under the ASX Operating and ASX Settlement Rules to provide the PDS and a confirmation message generated by CHESS to indicate that this has been done. See Figure 1 in the appendix for a diagram of these four different ways to access the AMFS.

### **Requirements for responsible entities**

37 For products that are settled through the AMFS, responsible entities are required to provide to ASX, via the market announcement platform, all PDSs, supplementary PDSs and other communications that are required by law to be made available to investors generally. Responsible entities must notify ASX of all situations where an investor in the AMFS has indicated to the responsible entity that a current version of the PDS has not been given to the investor. ASX will notify ASIC when the number of such instances in relation to any AMFS broker exceed certain thresholds determined by ASX.

**Requirements for AMFS brokers**

- 38 AMFS brokers who wish to use the AMFS must comply with the requirements setting out the form and content of the information to be provided to a client. These requirements will be prescribed under ASX Operating Rules. For the avoidance of doubt, any reference to ‘AMFS broker’, ‘trading participant’ or ‘settlement participant’ may refer to the same person who may be acting in different capacities.

**Requirements for trading participants**

- 39 Trading participants must give an investor a current version of the PDS at or before the time that any application is made for the issue of a scheme product.
- 40 The current legal requirement is only to provide a PDS to be given to certain retail investors or to certain current retail investors where the PDS has been modified since becoming a member of the scheme. However, should we decide to provide the relief requested by ASX, we would require trading participants to give an investor a PDS whenever an application is made, to manage the risk of a retail investor not being given a PDS before making an application.
- 41 This risk may arise, for example, in circumstances where an investor could be using different brokers to apply for, redeem and then reapply for products in a particular admitted scheme. In these circumstances, the different AMFS brokers could have difficulties maintaining ongoing accurate and up-to-date membership information, which would allow an AMFS broker to establish whether a particular investor is an existing member (so that, if it might be assumed that the investor has been given the current PDS, a new PDS need not be given).
- 42 Trading participants must establish procedures (and ensure compliance with such procedures) to ensure that an application is not submitted via the AMFS until the investor has been given the PDS and the investor has acknowledged, in written form (including through electronic mediums), that they have been given a PDS.
- 43 Trading participants who receive an application for the issue of a product in an admitted scheme through an intermediary need to ensure that the intermediary has given the current PDS to the investor. Where the trading participant is not the same entity as the settlement participant, the trading participant must give a representation to the settlement participant that the trading participant gave the PDS to the investor before submitting the application. Trading participants must retain records of the investor acknowledgment for a period of seven years and must provide such records to ASX if they are requested. ASX will impose initial and ongoing certification requirements on AMFS brokers in relation to complying with

the ASX Operating and ASX Settlement Rules relating to the provision of the PDS.

#### **Requirements for settlement participants**

- 44 Messages for applications or redemptions transmitted by settlement participants must involve a confirmation that the investor has received a copy of the current PDS.
- 45 When a settlement participant transmits a message in relation to an application, it will be taken to represent that:
- (a) where it is also the trading participant, that it has given the PDS to the investor; and
  - (b) where the settlement participant is not also the trading participant, that it has received confirmation from the trading participant that they have given the PDS to the investor.
- 46 Under the ASX Settlement Rules, a settlement participant has the requirement to keep accurate records in connection with the obligations of the settlement participant.

#### **Requirements for online broker interfaces**

- 47 In addition, to ensure that an investor will not mistake the AMFS for a trading platform, the ASX Operating Rules will require that any online broker interface prominently display information to the effect that managed fund products settled through the AMFS are not able to be traded on the ASX market and can only be redeemed by applying to the issuer.
- 48 ASX will be consumer testing the effectiveness of the warning messages on the online broker interface and the contents of the forms to be provided to the investors by the AMFS brokers. We may take into account the results of the consumer testing when making our relief application decision.

### **Other regulatory and compliance requirements**

- 49 Before the AMFS commences, in addition to the relief application considered in this consultation paper, ASX may need to fulfil three other regulatory and compliance requirements, which are set out in paragraphs 50–53

#### **Australian market licence exemption**

- 50 The first requirement arises because the AMFS falls in the broad definition of ‘financial market’ in the Corporations Act. Both ASX Settlement and ASX Limited play a role in the operation of the AMFS and would need either an Australian market licence or an exemption from that requirement.

- 51 ASX Limited already holds a market licence. ASX Settlement holds a clearing and settlement facility licence, but does not hold a market licence and applied in May 2013 for an exemption under s791C for its part in the operation of the AMFS. The Minister has the power to grant both market licences and exemptions. We have determined that, given the specific nature of ASX Settlement's role in the AMFS and given that ASX Limited already holds a market licence which covers the part it plays, we are minded to recommend that the Minister grant the exemption.

### **ASX Operating and ASX Settlement Rules amendments**

- 52 The second requirement is that the ASX will amend the ASX Operating Rules and ASX Settlement Rules to accommodate the AMFS. These changes will have to be consistent with the relief application and not to be disallowed by the Minister. The Minister will decide whether to disallow the rules after having received a recommendation from ASIC.

### ***Anti-Money Laundering and Counter-Terrorism Financing Act 2006 exemption***

- 53 Subject to any existing exemptions, entities that carry on a business of issuing securities (which for this purpose would include interests in a scheme) are generally providing a designated service and are therefore reporting entities under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). Reporting entities have a number of obligations under the AML/CTF Act, including the obligation to identify customers. ASX is liaising with the regulator responsible for the AML/CTF Act, the Australian Transaction Reports and Analysis Centre (AUSTRAC), about whether an existing Anti-Money Laundering and Counter-Terrorism Financing Rule would exempt an entity issuing, via the AMFS, from the AML/CTF Act in relation to the issuing of the product.



## B Relief from application form requirement

### Key points

We propose to consider the relief requested by ASX to facilitate the development of the AMFS, despite the three other regulatory hurdles set out in paragraphs 50–53 not yet being resolved. Any relief will only be given when it is clear that the other regulatory issues will be resolved, including the final form of the rules under which the AMFS will be conducted.

We would like to receive feedback from a public consultation on the proposal and incorporate the feedback in its decision.

## Our proposal

### Proposal

- B1** We propose to grant relief from s1016A, as requested by ASX, for responsible entities of schemes in relation to applications made through AMFS, and modify the Corporations Act to impose obligations on AMFS brokers (and settlement participants) who choose to give instructions or make applications through AMFS to ensure that investors are provided with a PDS.

The form and conditions of relief proposed to address the application by ASX are outlined in paragraphs 31–48.

#### *Your feedback*

- B1Q1 Do you agree with our proposal to grant relief to responsible entities? If not, why not?
- B1Q2 Do you consider that the conditions for relief are appropriate compared to the conditions outlined in [CO 02/260]?
- B1Q3 Are there any other conditions that should be imposed on the responsible entities?
- B1Q4 Are the proposed changes to the ASX Operating and ASX Settlement Rules, in relation to responsible entities (see paragraph 37), adequate as a basis for giving relief?
- B1Q5 How would the proposed relief affect your compliance costs?

- B2** We propose that, if we grant the relief as requested by the ASX, we will modify Pt 7.6 by class order to impose an obligation on AMFS brokers and settlement participants) to ensure that retail investors have been given the current PDS (including any supplementary PDS) that appears on the ASX's market announcement platform before transmitting instructions for a request to be issued products.

In ASX's proposals, the AMFS broker (and any settlement participant) will be required to ensure that the current PDS has been given to an investor and the CHES system will capture the information that the investor has been given the current PDS and other details, including the date of birth of the investor. This information will be electronically relayed to the responsible entity and the responsible entity will rely on the CHES message to determine that the obligation to provide a PDS to an investor has been fulfilled.

*Your feedback*

- B2Q1 Do you consider that the conditions imposed on the AMFS brokers (and any settlement participants) are unduly burdensome?
- B2Q2 Are there any other conditions that should be imposed on the settlement participants or on the AMFS brokers?
- B2Q3 Are the proposed changes to the ASX Operating and ASX Settlement Rules, in relation to AMFS brokers, settlement participants and online brokers (see paragraphs 38–48), adequate as a basis for giving relief?
- B2Q4 Should, and how would, compliance with the requirement to provide a current PDS for the managed investment product to an investor be more effectively enforced in the context of the AMFS?
- B2Q5 As the AMFS is not covered by the NGF, do you consider that the risk of inadequate compensation or inaccurate perceptions about compensation arrangements should be addressed in PDSs, and that this should be a requirement for relief? Please explain why or why not.

- B3** When deciding whether to grant relief, we propose to consider (among other things), whether:
- (a) the AMFS represents a net benefit to the industry and investors that outweighs any reduction of regulatory protection for investors;
  - (b) the arrangements proposed by ASX would be effective to ensure that an investor will be given a PDS by the AMFS broker before or at the time the investor invests;
  - (c) an investor will understand when using the AMFS that the investor is applying or requesting redemption of products from the issuer and is not able to buy or sell products through a financial market;
  - (d) the arrangements will result in a current PDS (and not an outdated PDS) being provided to the investor;
  - (e) there is any mechanism to identify when an investor is not given a PDS and, when this happens, what rectification measures will follow;
  - (f) there is sufficient record keeping to ensure that the policy objectives of s1016A are achieved through the system proposed by the ASX; and

- (g) investors utilising the service to invest in admitted schemes will have diminished rights or be treated differently to investors in registered schemes that are not admitted schemes. We note investors using the AMFS will continue to have cooling-off rights under s1019B.

*Your feedback*

- B3Q1 Are there any other factors that we should consider when granting relief, and why should the factors be considered?
- B3Q2 Do you consider that investors are likely to confuse the AMFS with a trading platform? If yes, what changes to the AMFS should be made to reduce this likelihood of confusion?
- B3Q3 What effects do you foresee on the distribution arrangements of schemes as a result of implementing the AMFS?
- B3Q4 What effects do you foresee the AMFS will have on the use of financial advice by investors in simple managed investment schemes?
- B3Q5 What other negative or positive effect, if any, do you foresee the AMFS may have on investors or industry participants?
- B3Q6 What do you foresee the net direct and indirect cost impacts of the AMFS and specifically the proposed relief will be on your organisation?

## Rationale

- 54 We consider that there may be merit in the argument that the AMFS, as a new system for investors to apply for and redeem products in the primary market in the admitted schemes through the AMFS brokers, will provide net benefits that outweigh the costs and any negative consequences.
- 55 ASX has submitted that, because of the AMFS, there will be potential cost savings and other efficiency gains for both responsible entities and investors. ASX envisages that the AMFS will increase access to simple managed investment schemes by making these products available through a broader network of dealers in addition to current access through product platforms and other financial advisors. It has provided some support for this view through the preliminary research conducted by Rice Warner.
- 56 We consider that the AMFS proposal is a new alternative that might compete with existing arrangements and might be a more cost efficient way to apply and redeem products.
- 57 We are also mindful that an investor should be equipped with current information in the form of an up-to-date PDS before the investor decides whether or not to invest.

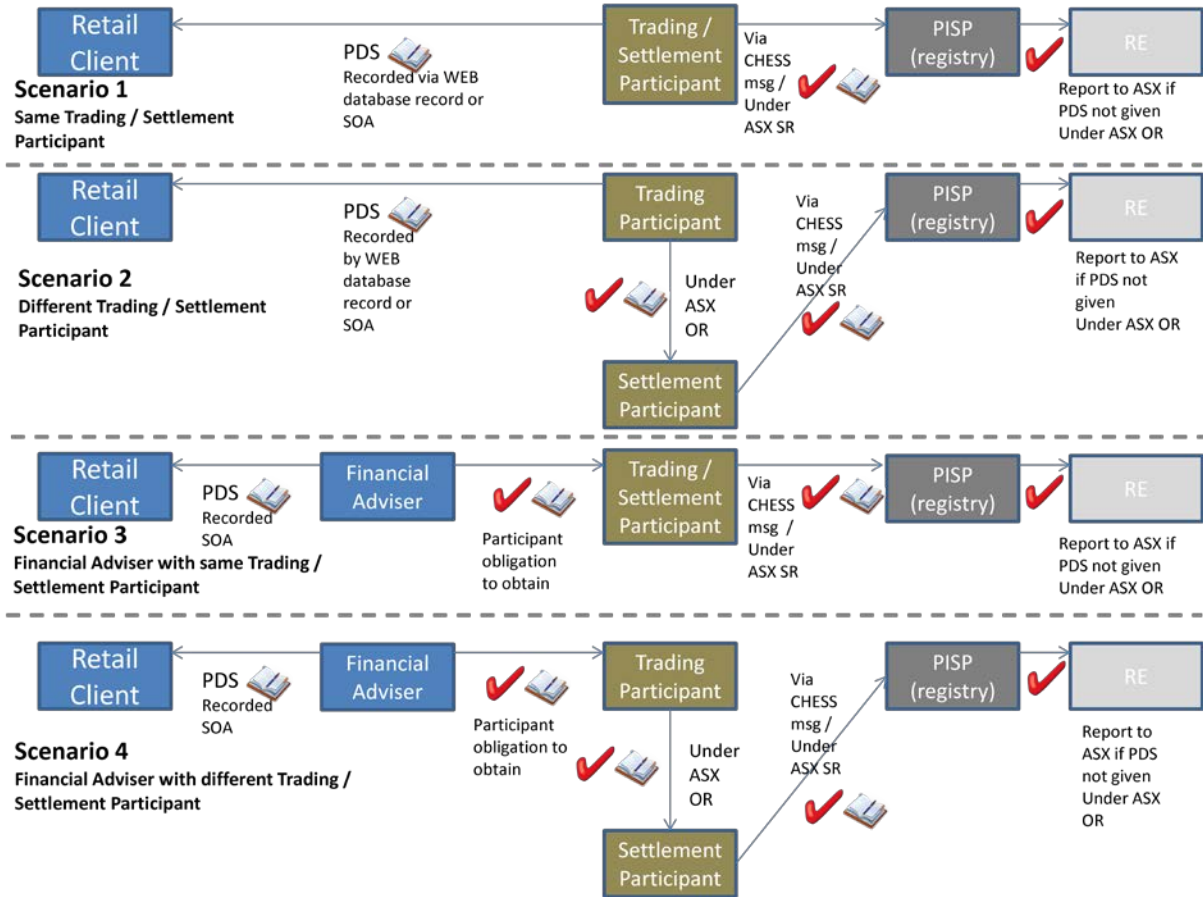
- 58 We consider that the relief sought is analogous to that provided under an existing exemption given under [CO 02/260].
- 59 We consider that the ASX proposal provides an alternative method where the assurance that an investor is in fact given a PDS (before or at the point of transaction) can be satisfied by making the AMFS brokers responsible for ensuring that each investor has been given a PDS. We see an argument that this alternative method is consistent with having confident and informed investors.

## C Regulatory and financial impact

- 60 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) confident and informed investors by holding ASX and the AMFS brokers to account and by empowering investors through appropriate information and disclosures; and
  - (b) fair and efficient financial markets by allowing the proposed use of a mechanism for transacting in products in admitted schemes that can compete with existing distribution arrangements.
- 61 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); and
  - (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).
- 62 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.
- 63 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:
- (a) the likely compliance costs;
  - (b) the likely effect on competition; and
  - (c) other impacts, costs and benefits.
- See 'The consultation process', p. 4.

# Appendix: Ways in which confirmation that a PDS has been downloaded will be achieved

Figure 1: Four scenarios for confirming that a PDS has been given to the investor



Source: ASX

## Key terms

Term	Meaning in this document
admitted scheme	A simple managed investment scheme that is admitted to the AMFS
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.
AMFS	ASX Managed Funds Service
AMFS brokers	Participants of financial markets operated by ASX who are able to process managed investment product applications and redemptions through the AMFS
AML/CTF Act	<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>
application form requirement	The requirement contained in s1016A, which requires a responsible entity to only issue products to retail investors who apply using an application form that is accompanied by a PDS, or an application form that is prepared and completed by an AFS licensee (as permitted by [CO 02/260])
ASX	ASX Limited or the exchange market operated by ASX Limited
ASX Settlement	ASX Settlement Pty Limited (formerly known as ASX Settlement and Transfer Corporation Pty Limited)
AUSTRAC	Australian Transaction Reports and Analysis Centre
Australian market licence	Australian market licence under s795B of the Corporations Act that authorises a person to operate a financial market
CHESS	Clearing House Electronic Subregister System
clearing and settlement facility licence	An Australian clearing and settlement facility licence under s824B of the Corporations Act that authorises a person to operate a clearing and settlement facility in Australia
Corporations Act	<i>Corporations Act 2001</i> , including any regulations made for the purposes of that Act
licensee form	The application form issued by an AFS licensee to fulfil one of the conditions of [CO 02/260]
managed investment scheme	Has the definition given in s9 of the Corporations Act

Term	Meaning in this document
market announcement platform	The information technology systems used by ASX to electronically process, release and store announcements by or about listed entities and the issuers of other ASX quoted products
NGF (National Guarantee Fund)	A compensation fund that is available to meet certain claims arising from dealings with participants of ASX and, in limited circumstances, participants of ASX Clear Pty Limited
PDS (Product Disclosure Statement)	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.
product	A financial product issued by a responsible entity which is a unit in a scheme
reg 1.0.02	A regulation of the Corporations Regulations 2001 (in this example numbered 1.0.02), unless otherwise specified
responsible entity	The issuer of the managed investment products transacted through the AMFS
retail investor	A retail client as defined in s761G of the Corporations Act
s1016A	A section of the Corporations Act (in this example numbered 1016A), unless otherwise specified
scheme	An unlisted registered managed investment scheme
settlement participant	A participant of the settlement facility operated by ASX Settlement
trading participant	A participant of the market operated by ASX Limited, which has trading permission for one or more financial products