



ASIC

Australian Securities & Investments Commission

REPORT 214

Review of superannuation PDSs

October 2010

About this report

This report arises from ASIC's review of superannuation Product Disclosure Statements (PDSs). It outlines our concerns, including ways superannuation PDSs and other disclosure might be improved.

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- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
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Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

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This report does not establish ASIC policy. For ASIC policy, see Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168).

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Executive summary

ASIC's review of superannuation PDSs

- 1 This report arises from the following work involving superannuation Product Disclosure Statements (PDSs):
 - (a) a review of 200 superannuation PDSs conducted by ASIC in 2010; and
 - (b) consideration of the disclosure requirements regarding illiquid investments and the portability rules.
- 2 In this report, we outline concerns identified in our review and ways superannuation PDSs and other disclosure might be improved.
- 3 The 200 superannuation PDSs we reviewed were selected using a risk-based methodology to cover different types of issuers, superannuation funds and business models.
- 4 Statutory references are to the *Corporations Act 2001* (Corporations Act) or the Corporations Regulations 2001 (Corporations Regulations), unless otherwise specified.

Key findings and recommendations

- 5 We found that some superannuation PDSs:
 - (a) are hard to understand (see Section B);
 - (b) could provide better information so consumers can make informed investment decisions (see Section C); and
 - (c) were not up-to-date or are not being updated properly (see Section D).
- 6 We also noted other disclosure issues, including some relating to illiquid investments disclosure requirements: see Section E.
- 7 Issuers can improve PDSs by:
 - (a) making them easier to understand;
 - (b) providing better information;
 - (c) ensuring they are up-to-date, using correct updating mechanisms; and
 - (d) observing illiquid investments disclosure requirements.

A The regulatory context

Key points

The shorter PDS regime requires shorter and simpler PDSs for certain financial products, including most superannuation products.

ASIC encourages PDS issuers to continue to consumer test PDSs to ensure they are easily understood.

Shorter and simpler PDSs

- 8 Our review was conducted against the possible new shorter and simpler PDS regime (shorter PDS regime), which became a reality toward the end of the review.¹
- 9 Generally, the comments in this report will be relevant in the shorter PDS regime as well. Where findings may no longer be directly relevant, these have been highlighted in the report.
- 10 The shorter PDS regime, set out in the Corporations Amendment (No. 5) Regulations 2010 in June 2010, requires shorter and simpler PDSs for certain financial products including superannuation (other than solely defined benefit funds or solely pension products).
- 11 The key features of the shorter PDS regime for superannuation are:
- (a) maximum eight-page PDSs with prescribed minimum font size;
 - (b) prescribed section headings so consumers can easily find important information in the PDS and compare across products;
 - (c) key content requirements so consumers can make informed investment decisions;
 - (d) enabling material outside the PDS to form part of the PDS, through incorporation by reference; and
 - (e) enabling additional information to be included within the PDS, provided the prescribed length is not exceeded.
- 12 The shorter PDS regime for superannuation commences on:
- (a) 22 June 2011 for all new products, as well as for existing products where a supplementary PDS would be required; and
 - (b) 22 June 2012 for all other PDSs.

¹ See Information Sheet 133 *Shorter and simpler PDSs: Superannuation, managed investment schemes and margin lending* (INFO 133) at www.asic.gov.au/infosheets.

- 13 We encourage PDS issuers to continue to consumer test PDSs so they can identify and correct factors that prevent consumers easily understanding the PDS. Under the shorter PDS regime, this will be particularly relevant for material incorporated by reference.
- 14 The comments in this report will also be relevant to superannuation products to which the shorter PDS regime does not apply, and potentially to other products, including some managed investment schemes.

B Ease of understanding

Key points

Our review found that many PDSs were hard to understand or not clear, concise and effective.

This section sets out some of the reasons for these problems.

Hard-to-understand PDSs

- 15 A number of PDSs we reviewed were hard for consumers to understand and were not worded and presented in a clear, concise and effective manner.
- 16 Hard-to-understand PDSs had one or more of the following features:
- (a) There were too many accompanying supplementary PDSs.
 - (b) They were unnecessarily long and complex, often as a result of the complex structure of the product.
 - (c) They had several parts which were not well cross-referenced.
 - (d) They contained unclear explanations of product features.
 - (e) They contained overly-technical explanations of the regulations governing superannuation (e.g. tax, conditions of release).
 - (f) There was frequent use of investment industry jargon.

Too many supplementary PDSs

- 17 In our review, we saw issuers using an excessive number of supplementary PDSs to update their PDSs.
- 18 Supplementary PDSs are a problem when consumers have to do too much ‘cutting and pasting’ to update the PDS. This happens when there are many line-by-line, or page-by-page, replacements. It is made worse when there are three, four or five supplementary PDSs (depending on the number of changes).
- 19 ASIC is also aware that consumer research suggests that consumers often do not read supplementary PDSs. To counter this, supplementary PDSs need to be as useful to consumers as possible, rather than difficult to follow as discussed above.²

² See *The Provision of Consumer Research Regarding Financial Product Disclosure Statements*, Susan Bell Research, Report for the Financial Services Working Group, December 2008.

- 20 The excessive number of supplementary PDSs we saw may have been due to issuers waiting to see the shape of the new shorter PDS regime, before reissuing their PDS. If so, this problem should reduce, now that regulations for the shorter PDS regime have been released.
- 21 Issuers should consider issuing a new PDS for their products when:
- (a) it becomes too hard for consumers to ‘cut’ elements from a supplementary PDS and ‘paste’ them into the PDS; and/or
 - (b) the supplementary PDSs may result in the PDS not being worded and presented in a clear, concise and effective manner.
- 22 ASIC encourages issuers to consider issuing a new PDS or consolidating supplementary PDSs when there are more than two supplementary PDSs. Further, issuers need to ensure that each part of a PDS (including supplementary PDSs and separate parts) identifies itself as part of the overall PDS.
- 23 The following examples illustrate the poor use of supplementary PDSs and other issues:
- (a) One 98-page PDS (not including 52 pages of forms) was combined with five supplementary PDSs (totalling 21 pages). This was not clear, concise and effective disclosure.
 - (b) Information for an innovative product was contained in five documents (PDS, supplementary PDS, investment funds guide, additional information guide and a brochure) totalling more than 150 pages. This disclosure document was not worded and presented in a clear, concise and effective manner and could have been improved (e.g. by reducing the number of documents).
 - (c) In one two-part PDS, Part 2 was called an ‘Investment Strategies Booklet’. When an updated Part 2 ‘Investment Strategies Booklet’ was issued, it also described itself as a supplementary PDS and included modifications to Part 1 of the PDS at the back of the booklet. These modifications included important changes such as reduction of concessional contributions caps and government co-contributions and halving of the minimum pension payment requirement. Consumers may not have been aware of these important changes as they were in the back of a booklet that appeared to be about investment strategies.

Note: See also paragraphs 26–27 on cross-referencing parts of a PDS.
 - (d) Page numbering is an important navigational aid for consumers. One long supplementary PDS had many unnumbered pages. Of those that were numbered, some were incorrectly numbered.

Shorter PDS regime

The shorter PDS regime does not permit supplementary PDSs, so the above comments are relevant only to the current PDS regime and those products that will continue under the current PDS regime.

The transitional period for the shorter PDS regime will cease to apply for existing products after 22 June 2011 where a supplementary PDS would otherwise have been required. ASIC will be monitoring PDS disclosure to ensure that issuers are updating their PDSs appropriately, and moving into the new shorter PDS regime where necessary.

Use of hyperlinks

- 24 PDSs may refer to information in another document and purport to provide a hyperlink to that information. However, we found instances where the hyperlink took the consumer to the issuer's website or another website (e.g. for the Australian Tax Office (ATO)) where the client had to hunt for the document or information being referred to.
- 25 We encourage issuers to ensure that their hyperlinks point to, or as closely as possible to, the relevant information or document.

Cross-referencing parts of a PDS

- 26 We found a few supplementary PDSs which did not state that they should be read together with the PDS. Section 1014C(c) requires such a statement so that consumers understand the role of the supplementary PDS and, as a result, possess up-to-date information about the relevant financial product(s).
- 27 Two-part PDSs also need to be appropriately cross-referenced as required by s1013L.

Shorter PDS regime

This is not a requirement under the shorter PDS regime. This is because, if the PDS consists of more than one document, the other document(s) must comply with new requirements on incorporation by reference.³

Risk

- 28 The discussion of risk in some PDSs was dispersed throughout the PDS. While there might be good reasons for this, these PDSs could generally be improved by better cross-referencing to relevant paragraphs, having an upfront risk summary and putting risk disclosure in one place.

³ See substituted s1013L in the Corporations Regulations in relation to PDSs consisting of two or more parts and reg 7.9.11P(3) in relation to incorporation by reference.

Death benefits

- 29 In some PDSs, information about death benefits and death benefit nominations is located solely in the insurance section of PDS. Such information may be relevant to those who do not take out insurance. Issuers should therefore consider including this information in a different section (e.g. ‘Accessing your fund’) and where necessary, inserting relevant cross-references.

Internal consistency

- 30 It is important that there is internal consistency in PDSs. For example, in one PDS, a definition for ‘total and permanent disablement’ used in Part 1 of the PDS differed to that used in Part 2.
- 31 Another PDS referred to more than one product, making it difficult to work out which information applied to which product. We encourage issuers to take care in drafting PDSs to ensure that it is clear at all times which information relates to which product in a PDS.
- 32 However, we acknowledge that the shorter PDS regime may change disclosure practices for including multiple products in PDSs.

Lost information

- 33 Consumers are unlikely to read important information in fine print (e.g. on the inside cover of the PDS). Consumers will also have no record of important information disclosed only in an application or nomination form after they remove and submit the form.
- 34 Examples include:
- (a) disclosing information about nominating beneficiaries only in the nomination form. This is important information which issuers should also consider placing in the body of the PDS.
 - (b) placing warnings about the risk of loss of principal, capital or earnings or the risk of withdrawal or redemption delays:
 - (i) on the PDS inside cover in small print; and/or
 - (ii) in an investor acknowledgement on the application form.
- We consider that important risk information should be prominently located in the risks section of the PDS and not just in fine print on the inside cover or in an application acknowledgement.

C Better information

Key points

Our review found that some PDSs could provide better information so consumers can make more informed investment decisions.

PDSs should help consumers make decisions about the product they wish to acquire and facilitate comparison of the different options and products that are available to them.

Investments

- 35 PDSs often list the percentage of funds invested by asset class for an investment strategy or option *without* providing enough information about those asset classes. Different funds often have different approaches to classifying assets. To make an informed decision, investors need to understand what approach the issuer has adopted.
- 36 In the example below, the PDS should:
- (a) define and explain what is meant by ‘multi-strategy investments’, ‘growth’ and ‘defensive’ assets and ‘cash’; and
 - (b) in relation to ‘property’, state whether the property is listed or unlisted and Australian or overseas property.

Table 1: Example of inadequate investment information

Asset class	Allocation (%)	Asset class	Allocation (%)
Australian shares	30	Australian fixed income	10
Global shares (unhedged)	10	Global fixed income (hedged)	7
Global shares (hedged)	10	Inflation-linked bonds	0
Property	10	Cash	8
Infrastructure	5	Total defensive assets	25
Private equity	5		
Multi-strategy investments	5		
Total growth assets	75		

- 37 Some PDSs only set out investment objectives of investment options very generally, for example:
- (a) ‘Growth option: Returns mainly from capital growth’; and
 - (b) ‘Balanced option: Balanced returns from capital growth and income’.
- While these might be suitable headlines, by themselves they are insufficient. In this example, the PDS needs to explain the concepts of return, capital growth and income returns.
- 38 More generally, issuers need to ensure that investment labels do not mislead investors. For example, ‘enhanced liquidity’ should not be used for an investment option that runs the risk of being illiquid.
- 39 Further, a PDS that specifies a returns benchmark (e.g. on the basis of the expected frequency of negative returns for a strategy over a 20-year period) needs to be able to substantiate this statement to include the statement in the PDS.⁴
- 40 PDSs should also specify which investment option is the default investment option. We saw a number of PDSs which did not do this, including a PDS offering four pre-mixed investment options that did not specify which option was the default option.

Risk

- 41 Where consumers can choose from a menu of investment options, the PDS should inform them about the type of risk and return applicable to each option. The shorter PDS regime also requires this information.⁵
- 42 Many PDSs give an overview of investment risks without clearly indicating which risks apply to specific investments or investment options. This may result in consumers not knowing the practical risks they face in choosing a particular option, as well as not being able to differentiate between the different options offered to them.

⁴ See also the Appendix to this report for the letter from the Australian Prudential Regulation Authority (APRA) to trustees, dated 29 June 2010, regarding investment risk descriptions.

⁵ See Sch 10D of the Corporations Regulations: cl 7(3)(c) for returns and cl 7(3)(e) for risk, together with cl 7(8).

- 43 Issuers trying to shorten PDSs by avoiding repetition of risks might consider using a table indicating the risks applying to each investment or investment option: see Table 2.

Table 2: Example of table showing risks for each investment or investment option

	Investment or investment option				
	A	B	C	D	E
Description of Risk 1	✓	✓	✓	✓	
Description of Risk 2				✓	✓
Description of Risk 3	✓	✓			✓
Description of Risk 4	✓		✓		✓

- 44 Some PDSs disclose the risk that members who leave the fund early may receive less than they have put in because of poor returns. This appears to be standard wording, as it was common across a range of PDSs. In ASIC's view, issuers need to be cautious about suggesting that the only people who may lose money are those who take their money out shortly after joining. The global financial crisis demonstrated that long-time members may also end up receiving less than they have contributed, and that this is a high impact risk with a greater-than-negligible probability of occurring. We consider that this risk, which is potentially applicable to all members, should be disclosed in the risks section of the PDS.
- 45 Some PDSs did not disclose risks which should have been disclosed (e.g. liquidity risks). In one case, the PDS discussed liquidity risk for accessible investments but did not discuss this risk for pre-mixed investment options, leaving readers unsure about whether liquidity risk applied to these options. PDSs should not leave consumers in doubt about such risk and whether it applies to the investment options offered by the issuer.

Insurance

- 46 We found PDSs that lacked detail about the insurance cover being offered. We suggest that in discussing insurance, superannuation PDSs should disclose:
- whether a member must provide health information to obtain insurance cover;
 - when insurance cover commences (e.g. on joining the fund or on successfully applying for insurance); and

- (c) if insurance cover is automatic, what ‘opt-out’ arrangements apply if members do not want insurance cover at all.
- 47 This sort of information is relevant to consumers in joining a superannuation fund or deciding whether to acquire insurance and should be disclosed in a PDS.
- 48 We also saw that some product issuers provide website-based insurance calculators, so consumers can calculate the cost of different levels of insurance cover. As this is a useful consumer feature, issuers who do not currently have calculators might wish to consider providing them.

Past performance warnings

- 49 In Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168), we indicate that a statement about past performance should be accompanied by a *prominent* warning that past performance is not necessarily a guide to future performance: see RG 168.143.
- 50 Some PDSs with past performance statements did not contain past performance warnings at all.
- 51 Some past performance warnings were not prominent (e.g. they were in footnotes or small font), while others were not located near the past performance information.

Socially responsible investing (SRI)

- 52 Under s1013D(1)(l) and reg 7.9.14C, PDSs must explicitly state whether or not the product issuer takes into account labour standards or environmental, social or ethical considerations (SRI considerations) when selecting, retaining or realising investments. Some PDSs did not do this.
- 53 Where issuers take SRI considerations into account, under s1013DA and Regulatory Guide 65 *Section 1013DA disclosure guidelines* (RG 65), a product issuer must disclose:
- (a) if SRI considerations are taken into account in selecting, retaining and realising an investment;
 - (b) the extent to which these considerations are taken into account in selecting an investment, including methodology and any weighting system used; and
 - (c) a description of the retention and realisation policies.

- 54 In some cases, where issuers took SRI considerations into account, the PDS did not specify weightings for the methodology employed. In one case, this information was included in fact sheets not incorporated by reference in the PDS and so was not included in the PDS.
- 55 In other instances, PDSs referred to issuers' adherence to general ethical or other standards, but did not clearly state whether the issuer took SRI considerations into account. In some cases, this may even be misleading, as it may imply that SRI considerations are taken into account when this is not the case.

Shorter PDS regime

The shorter PDS regime requires superannuation trustees to summarise the extent to which SRI considerations are taken into account in the selection, retention or realisation of investments relating to the superannuation product.

Super is for retirement

- 56 For those in the early-to-mid stages of accumulating superannuation, superannuation is a long-term investment designed for retirement.
- 57 In ASIC's view, accumulation PDSs should explicitly state this near the beginning of the PDS to:
- (a) convey to consumers the long-term nature of superannuation; and
 - (b) make sense of the need to satisfy a condition of release to access their superannuation.

Shorter PDS regime

The shorter PDS regime requires the PDS to include a statement to the effect that '*superannuation is a means of saving for retirement which is, in part, compulsory*'.⁶

Temporary residents

- 58 Where temporary residents (e.g. those on a working holiday) permanently leave Australia and do not claim their superannuation benefits within six months, the ATO may require the superannuation fund trustee to pay the benefits to the ATO.⁷ These provisions do not apply to citizens of New Zealand or those applying for permanent resident status.

⁶ Clause 4(1)(a) of Sch 10D to the Corporations Regulations.

⁷ Division 3 of Pt 3A of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

- 59 ASIC Class Order [CO 09/437] *Departed former temporary residents' superannuation—disclosure relief* relieves trustees from notifying such persons that their benefits have been transferred to the ATO and from giving them an exit statement, providing the PDS and website disclose certain things, including that the issuer is relying on the class order.
- 60 In addition to the class order requirements, it would be desirable for the PDS to prominently advise temporary residents that:
- (a) after they have permanently left Australia, they may obtain their benefits in cash (net of tax) by applying to the fund, or to the ATO when, after six months, the benefits have been transferred to the ATO; and
 - (b) any amount transferred to the ATO will not thereafter earn interest, so it is in their interests to quickly claim the benefit and avoid erosion of its value.
- 61 Some PDSs discuss superannuation benefits for permanently departed temporary residents in a way that consumers are unlikely to understand (e.g. in highly technical discussions about conditions of release). These discussions should be simpler and explain why it is in members' interests to quickly claim their benefits after permanently leaving Australia.

Bold claims

- 62 If issuers make bold claims about a product, they must not be misleading and the issuer must be able to support them. For example:
- (a) If you (the issuer) say '*Our fees are lower*', you need to specify what you are comparing them with (e.g. '*Our fees are lower than the eight largest superannuation funds as at [date]*').
 - (b) If you say '*Our costs are the lowest*', you must make sure that in making the comparison with *all* other superannuation funds, you are not excluding a fees and costs component (e.g. transaction costs) or that you are clear as to the fee types you are using in your comparison (e.g. '*Our administration costs are the lowest*').
 - (c) If you say '*We have the lowest [fee type] costs*', you must ensure that this remains true (e.g. if you increase your administration fee by 50 cents a week and your fees are no longer the lowest, you need to cease making the claim).
 - (d) If you say '*One low annual fee of 0.8%*' when your management fee is 0.8% pa *and* you have a buy–sell spread or other transaction costs, then the 'one fee' claim is misleading.

D Updating PDSs

Key points

Our review found that some superannuation PDSs were not up-to-date or are not being updated properly.

Out-of-date contribution caps

- 63 The most concerning thing we found in our review was PDSs with out-of-date taxation information, including contribution caps information.
- 64 In financial year 2009–2010, concessional contribution caps halved from \$50,000 (indexed) to \$25,000 and from \$100,000 to \$50,000 for those aged 50 or older.
- 65 Correct information about contribution caps is important so that fund members do not over-contribute superannuation and incur tax on excess contributions. In the worst-case scenario, an excess contribution could be taxed at 93%.

Adverse information updates

- 66 A PDS must be up-to-date when given to a consumer: s1012J. If a PDS becomes out of date, it can be updated by:
- (a) reissuing the PDS;
 - (b) issuing a supplementary PDS; or
 - (c) if the updated information *includes no materially adverse information*, giving the updated information free (e.g. on a website or toll-free telephone service) under Class Order [CO 03/237] *Updated information in product disclosure statements*.
- 67 Some PDS issuers are purporting to update PDSs under [CO 03/237] when the updating information includes potentially materially adverse information. Examples include:
- (a) halving of concessional contribution caps;
 - (b) negative investment option earning rates; and
 - (c) negative crediting rates.

Materially adverse information should be updated by reissuing the PDS or issuing a supplementary PDS rather than relying on [CO 03/237].

Shorter PDS regime

Under the shorter PDS regime, the mechanics of updating PDSs have changed. Supplementary PDSs are not permitted, so if information in the PDS changes, the PDS will need to be updated.

Information in an external document, incorporated by reference in the PDS, must be updated by providing a new version of the external document: reg 7.9.11P.

Frozen funds

- 68 The list of accessible investments in one PDS included a managed investment scheme being wound up after having been frozen. This investment should have been removed from the investment list, as it was no longer available as an investment choice.
- 69 More generally, we are concerned by the lack of updated information in PDSs in relation to frozen funds, or funds that are no longer being offered as options.

Reduced asset values

- 70 If issuers' asset values have been revised down, they may need to consider whether they should change any aspects of their PDS, such as performance return information (if applicable) and asset allocation ranges.
- 71 Failing to include up-to-date performance and asset allocation information may be misleading in some circumstances. We have taken action in individual cases to remedy such inaccuracy.

Incorporation by reference

- 72 A PDS may refer to publicly available information so the information is deemed to be included in the PDS if the requirements in reg 7.9.15DA are satisfied. Among other things, the PDS must sufficiently summarise the information to be incorporated so that a consumer can decide whether to read it.
- 73 However, issuers *cannot* incorporate by reference certain key information. For example, the PDS must contain the following information about fees and costs:
- (a) the Sch 10 fee template;
 - (b) the adviser remuneration explanation and worked examples;
 - (c) the example of annual fees and costs; and
 - (d) the consumer advisory warning.

- 74 The PDS must also contain and may *not* incorporate by reference:
- (a) a summary of the purpose and key features and risks of the product;
 - (b) the name and contact details of the issuer or seller;
 - (c) information about the dispute resolution system and accessing it; and
 - (d) information about any cooling-off regime.
- 75 We found instances where PDSs wrongly purported to incorporate by reference *adviser remuneration* and *dispute resolution* information.
- 76 One PDS incorporated a lot of information by reference in a Facts Guide, housed in the non-public part of the website that was inaccessible to potential consumers. *We consider that where a PDS is publicly available, website material it incorporates by reference should also be publicly accessible.*

Shorter PDS regime

The shorter PDS regime has different provisions for incorporation by reference, principally set out in reg 7.9.11P. The basic content requirements for the PDS are in Sch 10D of the Corporations Regulations.

Different information may be incorporated by reference. However, the matter being incorporated must be publicly available, unless the superannuation product is issued to a standard employer-sponsored member.

E Other issues

Key points

This section summarises other disclosure issues arising from our review, including comments on observing illiquid investment requirements.

PDS notifications

- 77 Although superannuation PDSs are not required to be lodged with ASIC, s1015D requires issuers to tell ASIC when:
- (a) the PDS is first given to someone in a recommendation, issue or sale situation, by lodging a Form FS88 *PDS in-use notice*;
 - (b) a change is made to fees and charges in the PDS, by lodging a Form FS89 *Notice of change to fees and charges in a PDS*; or
 - (c) the financial product to which the PDS relates ceases to be available to be recommended or offered to new clients in a recommendation, issue or sale situation, by lodging a Form FS90 *Notice that a product in a PDS has ceased to be available*.⁸
- 78 We observed the following errors with PDS notifications:
- (a) Some notifications were not lodged when the PDS was first used or when fees and charges changed.⁹
 - (b) Some notifications were lodged late (i.e. more than five business days after the PDS was first given in a recommendation, sale or issue situation, or there was a change to fees and charges set out in the PDS).

Shorter PDS regime

Under the shorter PDS regime, relevant parts of s1015D remain. However, supplementary PDSs are not permitted, so many issuers will no longer need to use Form FS89.

⁸ ASIC forms are available on our website at www.asic.gov.au/forms.

⁹ See reg 7.9.16T, which states that notification is required when a change is made to the fees and charges set out in the enhanced fee disclosure table in the PDS. See also items 201 and 202 of Sch 10 to the Corporations Regulations.

Illiquid investments

Portability rule

- 79 If a superannuation fund member requests a rollover or transfer of their superannuation benefit to another superannuation fund, the trustee must roll over or transfer the benefit within 30 days of the request.¹⁰

Exception

- 80 If the member requests a rollover or transfer from an illiquid investment,¹¹ the trustee may take more than 30 days (exception) where:
- (a) the member chose the investment on or after 1 July 2007 and it was illiquid when the member chose it;¹² and
 - (b) the trustee informs the member of:
 - (i) the effect of the exception before the member makes their choice (i.e. that the trustee may not be able to roll over or transfer the benefit within 30 days);
 - (ii) the reasons the investment is illiquid; and
 - (iii) the maximum period in which the transfer will be made. The trustee should expressly state what this period is (e.g. in days).
- 81 ASIC expects trustees to make these disclosures in:
- (a) the superannuation fund PDS; or
 - (b) an accessible product PDS, providing the superannuation fund PDS clearly refers to the exception and the accessible product PDS is given with the superannuation fund PDS (not merely on request or via website links).
- 82 ASIC is concerned that an accessible product PDS that refers to the exception may not always be given with the fund's PDS. In these cases, the trustee may be unable to rely on the exception.

Written consent

- 83 To take advantage of the exception, the trustee must also obtain the member's written consent when the member chooses the investment, that they understand and accept the longer transfer period due to the investment's

¹⁰ See Div 5 of the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations) '*Compulsory rollover and transfer of superannuation benefits in regulated superannuation funds and approved deposit funds*' (reg 6.30–6.38).

¹¹ Defined in reg 6.31(3) of the SIS Regulations.

¹² For members who were invested in the illiquid investment before 1 July 2007, the trustee must have notified the member in writing before 1 July 2008 of the investment's illiquid status and the maximum rollover/transfer period to rely on the exception.

illiquidity. Trustees should expressly obtain this consent for each illiquid investment, not just illiquid investments generally.

- 84 The trustee should outline this consent requirement in the superannuation fund's application and switching forms.
- 85 Trustees also need to ensure that the declarations of consent contained in their application forms clearly explain the effect of the portability exception or identify the relevant illiquid investments.

Shorter PDS regime

Trustees' disclosure obligations for illiquid investments remain unchanged under the shorter PDS regime.

Up-to-date information about illiquid investments

- 86 As discussed in paragraphs 68–69, if underlying or accessible investments become illiquid or are frozen, trustees should consider updating the PDS to ensure that it is not misleading.

Key terms

Term	Meaning in this document
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
Corporations Act	<i>Corporations Act 2001</i> (Cth)
Corporations Regulations	Corporations Regulations 2001
current PDS regime	The PDS regime that applies as at the date of this report as set out in Pt 7.9 of the Corporations Act
PDS	Product Disclosure Statement
reg 7.9.14C (for example)	A regulation of the Corporations Regulations (in this example numbered 7.9.14C), unless otherwise specified
review	ASIC's review of 200 superannuation PDSs conducted in 2010
s1013D (for example)	A section of the Corporations act (in this example numbered 1013D), unless otherwise specified
Sch 10	Schedule 10 to the Corporations Regulations <i>Disclosure of fees and other costs</i>
shorter PDS regime	The shorter and simpler PDS regime set out in Corporations Amendment (No. 5) Regulations 2010
SIS Regulations	Superannuation Industry (Supervision) Regulations 1994
SRI	Socially responsible investing
SRI considerations	Labour standards or environmental, social or ethical considerations
supplementary PDS	A supplementary Product Disclosure Statement under s1014A of the current PDS regime

Related information

Headnotes

Product Disclosure Statement, superannuation, shorter and simpler PDSs

Class orders and pro formas

[CO 03/237] *Updated information in product disclosure statements*

[CO 09/437] *Departed former temporary residents' superannuation—disclosure relief*

Regulatory guides

RG 65 *Section 1013DA disclosure guidelines*

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

Legislation

Corporations Act, s1012J, 1013D(1)(l), 1013DA, 1013L, 1014C(c), 1015D

Corporations Regulations, reg 7.9.11P, 7.9.11P(3), 7.9.14C, 7.9.15DA, 7.9.16T, Sch 10 items 201, 202, Sch 10D cl 4(1)(a), 7(3)(c), 7(3)(e), 7(8)

Corporations Amendment (No. 5) Regulations 2010

SIS Regulations, Div 5, reg 6.30–6.38

Superannuation (Unclaimed Money and Lost Members) Act 1999, Pt 3A, Div 3

Information sheets

INFO 133 *Shorter and simpler PDSs: Superannuation, managed investment schemes and margin lending*

ASIC forms

FS88 *PDS in-use notice*

FS89 *Notice of change to fees and charges in a PDS*

FS90 *Notice that a product in a PDS has ceased to be available*

Appendix: Letter from APRA to trustees

Australian Prudential Regulation Authority

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 GPO Box 9836 W www.apra.gov.au
 Sydney NSW 2001



Ross Jones
 DEPUTY CHAIRMAN

Ref No IRD

29 June 2010

Letter to Trustees
 APRA Regulated Superannuation Fund(s)

Dear Trustee

INVESTMENT RISK DESCRIPTION

I am writing to advise that APRA is releasing guidance for RSE licensees ('trustees') on the labelling of investment options offered by superannuation funds.

PURPOSE

Objective criteria are necessary to allow superannuation fund members to understand and compare the key characteristics of investment options. At present there are no standard risk descriptors and there has been no industry-wide standard asset allocation for different "labels", such as "balanced" "conservative" or "growth". This leads to confusion on the part of fund members and makes it difficult to properly compare investment performance.

In consultation with the industry associations and the Australian Securities and Investments Commission (ASIC), APRA has developed the attached guidance on appropriate descriptors of risk for investment offerings. The approach focuses on outcomes, expressed as the probability of negative returns in x out of y years, at a given confidence level. It also will ensure a strengthening of trustee risk management processes in this important area.

APRA has discussed this approach with the Investment and Financial Services Association (IFSA), Association of Superannuation Funds of Australia (ASFA) and ASIC who all support this approach. This outcome is seen as a first step in developing and achieving industry standards for disclosure and data collection purposes.

GUIDANCE FOR TRUSTEES

It has been agreed that the best way forward is for APRA to provide brief, early guidance. In due course, this will be followed up with more detail in a suitable form, including a possible prudential practice guide (PPG). ASFA and IFSA have indicated they will work with their membership to develop industry-based good practice guidance around modelling and confidence levels that should be used to enhance comparability further.

Australian Prudential Regulation Authority

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Given the lead time to change disclosure documentation, it is important that this first step be taken now rather than deferring it until APRA develops more comprehensive material. Releasing guidance on the descriptors now will allow industry to move to a consistent approach in a timely fashion. This initial guidance is set out in the Attachment to this letter.

We look forward to the further development of industry standards in co-operation with your industry associations, and to your support for this important initiative. If you have any queries we encourage you to communicate with your industry association.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kee J', with a long horizontal flourish extending to the right.

Attachment

ATTACHMENT

GOOD PRACTICE GUIDANCE - INVESTMENT RISK DESCRIPTION

Labelling of investment options offered by superannuation funds

Guidance

APRA considers it would be good practice for trustees to adopt a suitable classification process that would ensure that members can more readily distinguish the characteristics of each investment strategy offered by the trustee. This can be assisted by trustees ensuring that, for each strategy offered, it is clearly stated what the expected frequency of negative returns of that strategy is over a 20 year period.

Substantiation

In determining the expected frequency of negative returns, trustees need to be able to demonstrate that they have a proper basis for the conclusion reached.

APRA would expect trustees to have access to robust data, systems and processes which substantiate the decisions to categorise investment strategies in this fashion.

It is not enough for trustees to make an assertion - there is a need to justify the classification decision, for example through use of appropriate modelling. Professional assistance might well be required.

APRA is not, currently, suggesting guidance on the risk level appropriate for labels such as "conservative", "balanced", "growth" etc. This is something we would expect the industry to develop good practice material around over time.

Reporting

APRA is not currently proposing to require reporting against such classifications. Rather, in the course of normal supervision, APRA would be looking at the trustee's processes that lead to the determination of the risk categorisation of particular investment strategies.

ASIC will be considering this issue as part of their monitoring of trustees' disclosure obligations. It is envisaged that Regulatory Guidance will be issued by ASIC in the first year of transition to the shorter PDS requirements under the *Corporations Amendment Regulations 2010 No. 5*. This guidance will take into account the requirements of APRA and joint industry guidance in this regard.

Dated: 29 June 2010