



**ASIC**

Australian Securities & Investments Commission

# **Policy Statement 184 Superannuation: Delivery of product disclosure for investment strategies**

**Regulation impact statement (RIS)**

**August 2006**

## What this regulation impact statement is about

---

ASIC released a policy proposal paper (PPP) on 11 November 2004 concerning disclosure requirements relating to the selection of superannuation investment strategies. Submissions were received on various matters set out in the PPP. ASIC took these submissions into account in preparing its final policy and class order. This RIS sets out the options ASIC considered. These options related to methods by which product disclosure information could be provided by the trustee of a superannuation fund (superannuation trustee) to members of the superannuation fund.

The options we considered aimed to reduce the cost of duplication between multiple disclosure obligations and give superannuation trustees the flexibility to deliver product disclosure in a way that maximises consumer utility and reduces unnecessary cost.

We have deferred the application of s1012IA and other associated obligations to superannuation trustees until 30 June 2007 to allow time for the superannuation industry to transition.

---

### Contents

<b>What this regulation impact statement is about .....</b>	<b>2</b>
Issue/problem.....	3
Objectives .....	6
Options.....	6
Impact analysis.....	8
Consultation .....	15
Conclusion and recommended option .....	18
Implementation and review.....	20

---

# Issue/problem

## **Background**

1. The *Financial Services Reform Act 2001* (the *FSR Act*) introduced significant changes to the Australian financial services market. Most of those changes were required to be implemented by 11 March 2004.
2. This RIS relates to the new requirement found in s1012IA.<sup>1</sup> This section applies to the providers of particular types of custodial services, that is, custodial services enabling a retail client to select, from a menu of financial products, particular financial products that if selected by the client will be acquired and either held on trust for the client (or its nominated beneficiary) or otherwise provide a reference for the calculation of benefits for the client (or its nominated beneficiary). We call these products *accessible financial products*. Common examples of services that provide access to accessible financial products are what industry terms *master funds* or *wrap services*.
3. Section 1012IA requires the provider of the custodial arrangement to give the retail client a product disclosure statement (PDS) for an accessible financial product before acquiring the financial product in accordance with the retail client's instruction.
4. The purpose of this provision is to ensure that the retail client is able to make a fully informed decision to select an investment strategy that includes an accessible financial product.
5. Custodial services that are subject to s1012IA can be divided into two streams:
  - superannuation products; and
  - non-superannuation products.
6. Superannuation products are primarily regulated by the *Superannuation Industry (Supervision) Act 1993*. Non-superannuation products are investment products that are not subject to superannuation regulation (e.g. investor directed portfolio services).
7. Prior to the introduction of the *FSR Act* similar requirements to s1012IA applied to non-superannuation master funds and wrap

---

<sup>1</sup> Legislative references are to the *Corporations Act 2001* (which incorporates the *Financial Services Reform Act 2001*) unless otherwise stated.

services under ASIC class order relief (see ASIC Policy Statement 148 *Investor directed portfolio services*). However the obligations in that policy statement did not apply to the superannuation industry.

8. Section 1012IA applies to superannuation funds that offer certain types of investment strategies that may be selected by a member. That is, where an investment strategy available for selection by a member includes a particular financial product, the superannuation trustee will need to provide the member with the PDS for that financial product before the trustee can implement the investment strategy.

9. Because of the significance of the new disclosure obligation arising from s1012IA for the superannuation industry, ASIC has deferred the obligation for superannuation trustees to comply with the new requirement until 30 June 2007.<sup>2</sup>

### ***What is the issue/problem being addressed?***

10. ASIC has identified a number of issues associated with the application of s1012IA to superannuation trustees.

#### **Issue 1 – Restrictive delivery mechanisms<sup>3</sup>**

11. Under existing requirements, it is only possible for the PDS for the accessible financial product to be prepared by the issuer of that financial product.<sup>4</sup> However, some superannuation trustees have expressed a strong preference to prepare the information that must be provided to members about accessible financial products themselves, rather than provide the information prepared by the issuer of the accessible financial product. This is due to a number of reasons, including:

- The superannuation trustee already has ultimate responsibility for investment decisions and for providing all of the information that members need to make any decision that they are required to make – therefore, it is not unduly onerous for a superannuation trustee to take on responsibility for the preparation of this information.
- We understand that some superannuation trustees would prefer to provide information that is specifically tailored to meet the needs

---

<sup>2</sup> See: ASIC Class Order [CO 03/1097].

<sup>3</sup> In the PPP this issue is described as *Relief proposition A – PDS Disclosure Relief*.

<sup>4</sup> For example, if the accessible financial product is XYZ Cash Management Fund and company XYZ is the responsible entity for that fund then XYZ will be the issuer of that product and the only one that can prepare the PDS to satisfy s1012IA.

of their members rather than PDSs that are prepared more generally for the needs of the population at large (including for persons who are investing directly rather than through a superannuation fund).

- We understand that some superannuation trustees would prefer to keep all documentation that is provided to their members in a consistent style and format.

## Issue 2 – Duplication of disclosure obligations<sup>5</sup>

12. A superannuation trustee's obligation to provide disclosure about an accessible financial product under s1012IA overlaps with its obligation to provide disclosure about the investment strategies that the member may select as part of its superannuation product disclosure under s1013D and 1013E. This means the superannuation trustee needs to provide information about the accessible financial product twice, firstly in the PDS for the superannuation fund that the superannuation trustee prepares and secondly in the PDS for the accessible financial product which is prepared by the issuer of that financial product and delivered by the superannuation trustee to its members.

13. ASIC has already recognised this issue for non-superannuation master fund and wrap services and removed the legislative duplication.<sup>6</sup>

## Issue 3 – Disclosure obligations for additional acquisitions<sup>7</sup>

14. After a member of a superannuation fund selects an investment strategy, s1012IA requires that the member be given a PDS (subject to any exceptions in the law) *each* time a contribution is made to that strategy or income is applied to further invest in that strategy. This may occur very frequently, for example, if contributions were applied to the strategy on a fortnightly basis, a strict reading of s1012IA would lead to the conclusion that a PDS for the accessible financial product would be required to be provided by the trustee to the member each fortnight in advance of the application of that contribution (i.e. in a 12 month period, the member would be given a PDS on 26 separate occasions). As the nature of superannuation is that contributions are made and allocated on a frequent and ongoing basis (e.g. whenever

---

<sup>5</sup> In the PPP this issue is described as *Relief proposition B – IDPS like relief*.

<sup>6</sup> See: ASIC Policy Statement 148 *Investor Directed Portfolio Services* and ASIC Class Orders [CO 02/294] *Investor directed portfolio services* and [CO 02/296] *Investor directed portfolio-like services provided through a registered managed investment scheme*.

<sup>7</sup> In the PPP this issue is described as *Approach to continuing contributions*.

the member is paid by their employer) it is unlikely that a member would routinely review the allocation of each new contribution.

15. Conditional relief has already been granted from this obligation for non-superannuation master funds and wrap services.<sup>8</sup>

## Objectives

16. ASIC's overall objective is to reduce the duplication between multiple disclosure obligations and to give superannuation trustees the flexibility to deliver product disclosure in a way that maximises consumer utility and reduces costs.

17. More specifically ASIC aims to:

- enable the superannuation trustee to take responsibility for the information provided to members of the superannuation fund about accessible financial products;
- remove duplication between multiple disclosure obligations; and
- recognise that contributions to an investment strategy that is selected by a member generally occur at frequent intervals over a lengthy period of time, therefore, the disclosure obligations need to be practicable in that context.

## Options

18. The options for each of the issues that we seek to resolve are set out below.

### ***Issue 1 – Restrictive delivery mechanism***

19. *Option 1* – Grant relief to permit the superannuation trustee to prepare the necessary disclosure for members about accessible financial products. This option would enable the superannuation trustee to prepare and include product disclosure information for accessible financial products in an accessible product PDS prepared by the trustee. We refer to this as the *Trustee's accessible product PDS* option.

20. This relief would be subject to the following conditions relating to the superannuation entity's PDS. The superannuation entity's PDS must:

---

<sup>8</sup> See: ASIC Policy Statement 148 *Investor directed portfolio services*.

- contain general information about the nature and range of available investment strategies;
- explain the differences between investing directly and investing through the superannuation fund; and
- invite the member to request further information about any investment strategy that includes an accessible financial product.

21. *Option 2* – Do nothing, require superannuation trustees to provide information about accessible financial products in the way prescribed by s1012IA.

### ***Issue 2 – Duplication of disclosure obligations***

22. *Option 1* – Grant relief to reduce duplication of information in the PDS for the superannuation fund and in the PDS for accessible financial products; and clarify the interaction between s1012IA and the general PDS disclosure requirements.

23. Under this option, the superannuation trustee would be permitted to make product disclosure about accessible financial products by giving a member a PDS that has been prepared by the product issuer (the issuer's accessible product PDS), rather than by duplicating that product information in the superannuation entity's PDS. A member will be given the issuer's accessible product PDS, on request, in addition to the superannuation entity's PDS. We call this the *Issuer's accessible product PDS* option. This option is modelled on the relief we have provided investor directed portfolio services (see ASIC class orders [CO 02/294] and [CO 02/296]). This relief would be subject to the conditions relating to the superannuation entity's PDS set out at paragraph 20 above.

24. *Option 2* – Do nothing, require superannuation trustees to satisfy both the requirements of s1012IA and s1013D and 1013E without modification.

### ***Issue 3 – Disclosure obligations for ongoing contributions and investment income allocations (additional acquisitions)***

25. *Option 1* – Grant relief from s1012IA for additional acquisitions. Under this option, a member will not receive product disclosure each time an accessible financial product is acquired in accordance with the member's selected investment strategy. However, the member will receive disclosure about significant events and material changes affecting the accessible financial product as required by s1017B. This option would be subject to the following conditions:

- Prior to or at the time that the member selected an investment strategy, the member must have been told that at the time that an ongoing contribution is allocated in accordance with the member's selected investment strategy (i.e. an additional acquisition of an accessible financial product takes place) the member may not have the current disclosure document, or have received disclosure about significant events or material changes.
- Where a disclosure document previously provided to a member becomes defective, the member must be given updated disclosure information and be given an opportunity to select a new investment strategy.

We call this *Relief for additional acquisitions*.

26. *Option 2* – Grant unconditional relief from s1012IA for additional acquisitions under an investment strategy.

27. *Option 3* – Do nothing, require superannuation trustees to provide a PDS for an accessible financial product prior to each additional acquisition of the product under the relevant investment strategy (subject to any existing exemptions in the law from the obligation to provide a PDS).

## Impact analysis

### ***Affected parties***

28. These policy proposals are relevant to the superannuation industry as a whole (including both trustees and members) as the proposals affect the ability of the trustee of the superannuation fund to offer investment strategy choice to fund members. During the March 2006 quarter, total superannuation assets rose “by 6.6 per cent to \$905.4 billion.”<sup>9</sup> These assets were managed through 325,109 superannuation funds. Some of these funds, particularly the smaller ones, may not offer investment strategies that involve accessible financial products, and, if so, s1012IA will not apply to those funds.

---

<sup>9</sup> See: Australian Prudential Regulation Authority, *Superannuation Market Statistics*, <http://www.apra.gov.au/Statistics/Quarterly-Superannuation-Performance.cfm>.



## ***Costs and benefits of each option***

### ***Issue 1 – Restrictive delivery mechanisms***

#### ***Option 1 –Trustee’s accessible product PDS option***

##### **Costs**

29. Under this option, the superannuation trustee would bear the cost of preparing the disclosure about the accessible financial product, which may increase the cost of offering that product. This cost would involve additional work for the superannuation trustee in addition to the work of preparing the superannuation entity’s PDS. This additional work would include obtaining product information from the issuer; assessing the relevance of that information to its fund members; organising and presenting this information in a PDS; printing costs and the ongoing compliance cost of ensuring the information remains accurate and up to date. The quantum of this cost is unknown, but as this relief is optional it may be assumed that only entities that predict a net reduction in cost will take it up. We also understand that this option represents the current practices of some superannuation trustees.

30. Superannuation trustees are already required by the Superannuation Industry (Supervision) Regulations 1994 reg 4.02 to disclose information to members concerning investment strategies offered through a superannuation fund. Accordingly, there may be a reduction of costs where a trustee’s existing disclosure to members concerning investment strategy choice is close to or at the required level of disclosure under s1013D and 1013E of the Corporations Act. In this situation, the trustee will incur no or limited additional compliance costs associated with complying with s1012IA.

##### **Benefits**

31. This option would give superannuation trustees increased flexibility to deliver product disclosure in a way that maximises consumer utility and reduces costs. The trustee would have the choice whether to:

- prepare the information about the accessible financial product under this option; or
- comply with the law without modification; or
- comply with the proposal described at *Issue 2 – Duplication of disclosure obligations*.

Therefore, if the benefits of this option did not outweigh its costs the trustee need not rely on it.

32. This option would enable the superannuation trustee to make available accessible financial products that do not have a current product issuer PDS (e.g. because the products are only available to wholesale clients). This would not be possible without modification of the law because s1012IA requires the PDS for the accessible financial product (which must be prepared by the issuer of the financial product) to be provided to the member *before* the trustee can implement the member's selected investment strategy (i.e. before an accessible financial product is acquired). This increased flexibility about how product disclosure may be provided may lead to a wider range of financial products being made available to members.

33. The trustee would have the benefit of controlling the preparation and distribution of the PDS rather than being reliant on a third party. Members should receive information that is more tailored to their information needs. For example, information that is not relevant to an investment through a superannuation fund could be deleted. In addition, any special communication needs of the fund membership could be met.

### ***Option 2 – Do nothing***

#### Costs

34. The benefits described at *Option 1* (above) would be lost as they are dependent on relief being granted to enable the trustee of the superannuation fund to prepare the necessary disclosure for members about accessible financial products.

#### Benefits

35. ASIC would not bear the cost of developing a policy statement describing the relief (and a class order implementing the relief).

### ***Issue 2 – Duplication of disclosure obligations***

#### ***Option 1 – Issuer's accessible product PDS option***

#### Costs

36. This option would permit substantive disclosure to be made concerning an accessible financial product to which s1012IA applies

in a PDS prepared by the product issuer. Costs involved for a superannuation trustee in complying with this option would include costs involved in creating and maintaining distribution processes to enable the issuer's accessible product PDS to be provided to members where requested. This cost for the superannuation trustee is common to all options as, regardless of the option chosen, the trustee is still required to give the member an accessible product PDS.

37. Superannuation trustees would also need to review the superannuation entity's PDS to ensure that it complied with the conditions for this option, set out at paragraph 20 above. If the superannuation entity's PDS did not include the required information, it would need to be amended.

38. Additionally, there may be costs involved in entering into or amending contractual relationships between the superannuation trustee and product issuer to reflect the role of the underlying issuer, including to give the trustee the product issuer's PDS and to inform the trustee if it discovers that its PDS is defective or it issues a supplementary or replacement PDS.

39. Reviewing the superannuation entity's PDS and relationships with product issuers would involve some one-off costs for superannuation trustees. No information was available to quantify these costs. As this relief is optional, it is assumed that only entities that anticipate a net cost reduction will take it up. We also understand that this option represents the current practices of some superannuation trustees.

## Benefits

40. If the superannuation trustee chooses to give product disclosure by providing an issuer's accessible product PDS then the proposed relief will result in a significant net reduction in the information that the superannuation trustee must include in the superannuation entity's PDS.<sup>10</sup> This is expected to reduce the preparation cost of the superannuation entity's PDS because the superannuation trustee will not be required to obtain product information from the product issuer, and then assess the relevance of the information, or organise and present this information in the superannuation entity's PDS. There will also be a reduction in the ongoing costs for the trustee associated with monitoring PDS information to ensure it remains accurate (i.e. less information will need to be monitored).

---

<sup>10</sup> This is the relief described as *Option 2* in Part C of the PPP.

41. A reduction of duplicated information given to members of the superannuation fund is anticipated, as members will not have information about accessible financial products repeated in the superannuation entity's PDS as well as in the issuer's accessible product PDS for the accessible financial product.

42. Another benefit is that this option creates a level playing field for the superannuation industry as non-superannuation master funds and wrap services already enjoy the benefit of relief of this kind.

43. The trustee of the superannuation fund will have the choice of whether to comply with this option or the requirements of the law without modification. Therefore, if the cost of complying with this option is considered by the superannuation trustee to be higher than the cost of complying with the law the trustee can choose to comply with the requirements of the law without modification. As industry sought this option, we consider that it is likely that a significant number of entities will experience a net benefit. During consultations, industry expressed satisfaction that this option would make it easier for superannuation trustees to comply with s1012IA.

### ***Option 2 – Do nothing***

#### Costs

44. All of the benefits described at *Option 1* (above) will be lost as they arise from the removal of duplication of information.

#### Benefits

45. ASIC would not bear the cost of developing a policy statement describing the relief (and a class order implementing the relief).

### ***Issue 3 – Disclosure obligations for ongoing contributions and investment income allocation (additional acquisitions)***

### ***Option 1 – Conditional relief***

#### Costs

46. The main cost associated with this option is that members may not have accurate or up-to-date information at the time that an accessible financial product is acquired by the trustee on the member's behalf. This would occur because the member would not receive a

PDS for an accessible financial product included in the member's selected investment strategy before each ongoing contribution is allocated to that product. The impact of this "loss of information" cost is expected to be minimal. The member would continue to receive disclosure about significant events and material changes affecting the accessible financial product as required by s1017B. Under these requirements, the member would receive disclosure about significant events and material changes affecting the accessible financial product within three months of the event or change.

### Benefits

47. Reduced costs for superannuation trustees, who will not be required to distribute a PDS to a member each time a new contribution or income is allocated to the member's selected investment strategy. This may result in reduced administration fees and costs for the members of the superannuation fund.

48. In addition, the member will receive information about material changes or significant events that affect the accessible financial product within three months. The superannuation trustee would be required to inform the member that they may not have received the current disclosure document for the accessible financial product, or have received disclosure about significant events or material changes affecting the product, before or at the time that an ongoing contribution is used to acquire the product. The superannuation trustee would also be required to give the member an opportunity to select a new investment strategy on receipt of disclosure about a material change or significant event.

49. Members will not repeatedly receive substantially similar information but will receive current information when the information that they have previously received becomes outdated.

### ***Option 2 – Unconditional relief***

#### Costs

50. The member may not have accurate or up-to-date information at the time that an accessible financial product is acquired by the trustee on the member's behalf. We expect this cost would be minimal for the reasons set out at paragraph 46 above. Members would not receive further PDS information about accessible financial products included in an investment strategy after that strategy has been selected other than under material changes and significant events reporting

requirements (s1017B). Under these requirements, the member would receive disclosure about significant events and material changes affecting the financial product within three months of the event or change.

51. If the trustee were not required to inform the member that the member might not have the current disclosure document for the accessible financial product or have received disclosure about significant events or material changes when an ongoing contribution is used to acquire the product; the member would be unaware of this information asymmetry. In addition, if the superannuation trustee was not required to give the member an opportunity to select a new investment strategy on receipt of disclosure about a material change or significant event that affected their current selected strategy, the member may be “locked into” an investment strategy that was no longer optimal.

### Benefits

52. This option will result in significantly reduced printing and distribution costs for superannuation trustees as they will not be required to print and distribute a PDS to a member each time a new contribution is made or income is allocated.

53. Members will not repeatedly receive substantially similar information but will receive current information when the information that they have previously received becomes outdated.

### ***Option 3 – Do nothing***

### Costs

54. There may be substantial costs for superannuation trustees (which may be passed on to members), in complying with the disclosure requirement each time an additional acquisition of an accessible financial product is made if no relief is available.

55. There is a cost to members if repeated receipt of similar PDS information masks situations where significant changes have occurred (i.e. a member may experience ‘information fatigue’ and so not read each new PDS).

56. An uneven playing field compared to non-superannuation master funds and wrap services that currently have conditional relief as proposed at *Option 1* (above).

57. The benefits described at *Option 1* and *Option 2* would not be realised, as they are dependent on limiting the requirement to provide PDSs for the accessible financial product that was selected.

58. Superannuation trustees may seek to reduce the frequency at which contributions are allocated to accessible financial products that have been selected, in order to reduce compliance costs (e.g. by only allowing contributions to be made on a monthly, rather than weekly basis). This may have a negative effect on returns to members in the long run.

### Benefits

59. ASIC would not bear the cost of developing a policy statement describing this relief (and a class order implementing the relief).

60. Members will benefit from always having up to date PDS information.

## Consultation

61. ASIC began considering the issues associated with the application of s1012IA to superannuation investment strategy choice in response to submissions from the Investment and Financial Services Association (IFSA) and the Association of Superannuation Funds of Australia Limited (ASFA).

62. The concerns raised in these initial IFSA and ASFA submissions about the application of s1012IA to the superannuation industry included:

- the lack of a distribution mechanism for underlying PDSs;<sup>11</sup>
- the cost of distribution of underlying PDSs (and the resulting costs for members);<sup>12</sup>
- the cost of development by the superannuation trustee of a PDS when no PDS existed (and the resulting increased cost of accessible financial products);<sup>13</sup>
- the timing of distribution of underlying PDSs relative to membership of the superannuation fund;<sup>14</sup>

---

<sup>11</sup> See *Issue 2*.

<sup>12</sup> See *Issue 2*.

<sup>13</sup> See *Issue 2*.

<sup>14</sup> See *Issue 2* and *Issue 3*.

- the potential for disclosure information fatigue and consumer confusion resulting from the lack of relevance of some underlying PDS information (e.g. because the PDS may contain information about fees that would only apply to direct investors);<sup>15</sup> and
- increased costs for the superannuation fund associated with the duplication of disclosure obligations due to similar requirements in the *Superannuation (Industry) Supervision Act 1993*.<sup>16</sup>

63. In response to those submissions ASIC prepared an informal discussion paper for the purpose of better understanding the issues raised by IFSA and ASFA and to explore the feasibility of two options for the delivery of information to investors (see *Issue 1 - Option 1 and Issue 2 - Option 1*).

64. Meetings were held with each of IFSA and ASFA at which the ASIC discussion paper was considered. Both IFSA and ASFA supported the draft proposals contained in the discussion paper (see *Issue 1 - Option 1 and Issue 2 - Option 1*).

65. The ASIC discussion paper was also provided to the Australian Prudential Regulation Authority (APRA). APRA provided comments that were taken into account in the development of ASIC's PPP. APRA's primary concern was if a trustee of a superannuation fund chooses to offer a number of investment strategies then they need to have the resources and processes available to meet the relevant legislative requirements in administering each strategy. Any relief provided by ASIC should not affect that principle.

66. Following this limited initial consultation ASIC's PPP was released for public consultation on 11 November 2004. The consultation period ended on 22 December 2004 and submissions were received from ASFA, the Securities Institute of Australia and IFSA.

67. Key concerns identified in the submissions included that:

- (a) disclosure requirements for ongoing contributions did not take account of existing disclosure requirements (i.e. significant events and periodic reporting) that may be relevant to notifying members about changed information concerning the investment strategy. Additionally, at a practical level, there were concerns about the feasibility of the processes and time requirements set out in the proposed requirements concerning ongoing contributions;

---

<sup>15</sup> See *Issue 1* and *Issue 2*.

<sup>16</sup> See *Issue 1* and *Issue 2*.



- (b) the lack of clarity concerning how ASIC viewed the interaction between reg 4.02 of the Superannuation Industry (Supervision) Regulations 1994 and PDS requirements relating to disclosures required about investment strategies;
- (c) the lack of clarity concerning how member contribution monies should be treated by a superannuation trustee in the event that it fails to comply with proposed conditions of relief;
- (d) the proposed application of IDPS requirements concerning quarterly reporting and annual auditing to superannuation trustees; and
- (e) concern relating to the proposed transition date of 30 June 2005 for trustees to be compliant with s1012IA.

68. We note that there was no fundamental opposition in the submissions to the two propositions (i.e. Issue 1 Option 1 and Issue 2 Option 1) being made available to trustees to meet s1012IA disclosure obligations. Subject to the concerns summarised in paragraph 67 above, industry was satisfied that the proposed options would make it easier for superannuation trustees to comply with s1012IA and will not involve excessive costs.

69. We have addressed the concerns identified in subparagraphs 67(b) and 67(c) above by including a specific discussion of these topics in the final policy statement. We will also amend the conditions proposed in the PPP in light of two industry comments summarised by subparagraphs 67(a) and 67(d) above. First, given that superannuation trustees are required to disclose material changes that affect a financial product acquired using an ongoing contribution, it is not appropriate to require the superannuation trustee to provide updated disclosure documents within five days of receipt of an ongoing contribution. Secondly, given existing periodic reporting requirements, we will not impose additional quarterly and annual reporting requirements. We have given superannuation trustees an extended transition period until 30 June 2007 to address the concerns in subparagraph 67(e).

70. As our final policy is substantially similar to the options outlined in the PPP, we have not undertaken any additional formal consultation.

# Conclusion and recommended option

## ***Issue 1 – Restricted delivery mechanism***

71. Our preferred approach is *Option 1 – Trustee’s accessible product PDS option*.

72. This proposal is preferred because it provides superannuation trustees with the flexibility they have requested to prepare the information about the accessible financial products themselves (in the way that they believe best suits the needs of their members) while ensuring that members continue to receive an equivalent standard of information as they would receive if relief was not granted.

73. The alternative, *Option 2 – Do nothing, require trustees of superannuation funds to provide information about accessible financial products in the way prescribed by s1012IA* is not preferred because it unnecessarily limits the options for delivery of information to members. This is likely to have detrimental consequences to the industry, as accessible financial products will be limited to those that have current PDSs. In addition, the benefit of having disclosure that is prepared to specifically meet the needs of the membership of the superannuation fund will not be realised.

## ***Issue 2 – Duplication of disclosure obligation***

74. Our preferred approach is *Option 1 – Issuer’s accessible product PDS option*.

75. This approach is preferred because the information needs of members will be satisfied without duplication. This has the dual advantages of reducing the net disclosure costs of the superannuation fund and reducing the information burden for members.

76. This approach also has the benefit of providing a level playing field for superannuation funds compared with non-superannuation master fund and wrap services. If the proposed relief was not granted to the superannuation industry they would be at a disadvantage to non-superannuation master funds and wrap services in circumstances where there are no grounds to distinguish the differential treatment of superannuation products.

77. The alternative, *Option 2 – Do nothing, require trustees of superannuation trustees to satisfy both the requirements of s1012IA*

*and s1013D and 1013E without modification* is not preferred as the duplicative information would not benefit members but could confuse them. Doing nothing in these circumstances would result in the expenditure of valuable resources by the superannuation fund resulting in a negative impact for members. In addition, by not giving the relief we would be promoting an uneven playing field without justification as non-superannuation master funds and wrap services already have access to this type of relief.

### **Issue 3 – Ongoing contributions**

78. Our preferred approach is *Option 1 – Relief for additional acquisitions*.

79. This proposal is preferred because it removes information overload for members that would result from substantially the same information being repeatedly sent to members. Members will receive updated information when there are material changes that affect the accessible financial product, and will be informed of the limitations on the disclosure they receive and their right to select a new investment strategy on receiving disclosure about a defect in the disclosure document for an accessible financial product included in their selected investment strategy. Because this proposal relies on existing obligations to disclose material changes and significant events, the compliance burden on superannuation trustees is minimised (i.e. as no additional work will be required).

80. *Option 2 – Unconditional relief for additional acquisitions* is not preferred because under this option members would not receive information about when they will receive additional disclosure about accessible financial products related to their selected investment strategy, or be guaranteed an opportunity to select a new investment strategy when they receive additional disclosure.

81. *Option 3 – Do nothing, require trustees of superannuation funds to provide a PDS for an accessible financial product prior to each additional acquisition being made under the relevant investment strategy (subject to any existing exemptions in the law from the obligation to provide a PDS)* is not recommended as it would have a significant negative impact on the superannuation industry. The cost of repeatedly sending substantially similar disclosure information to members is likely to be significant in light of the fact that superannuation contributions are made very regularly (e.g. weekly or fortnightly).

82. There would be no benefit in sending these disclosures to members if they did not contain new information that could affect the member's decision to select the particular investment strategy. In fact, repeatedly sending substantially similar information would be likely to have a negative impact on consumer awareness, as it would mask situations when significant events have occurred and material changes have been made to the information.

## Implementation and review

83. We intend to implement our policy by the issue of a policy statement and associated class orders using exemption and modification powers in Chapter 7 of the Corporations Act.

84. The superannuation industry previously had an extended deadline for compliance with s1012IA until 30 June 2005 to enable us to complete the policy development process and to allow time for the superannuation industry to transition. We have provided a further extension of the transition period to 30 June 2007 (see [CO 03/1097]) to address timing concerns expressed in submissions and also on the basis that there is less dependency between implementation of s1012IA and the commencement of superannuation fund choice legislation (which commenced on 1 July 2005) than originally thought.

85. We will monitor any compliance difficulties associated with this policy following its implementation. We will consider whether there is any need for review of the policy in light of any practical difficulties that become apparent when the policy is applied.