



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 52

Dollar disclosure

August 2004

Your comments

You are invited to comment on the proposals and issues for consideration in this paper, including the Explanation sections.

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of your submission as confidential.

Comments are due by Tuesday, 7 September 2004 and should be sent to:

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You can also contact the ASIC Infoline on 1300 300 630 for information and assistance.

What this policy proposal is about

1 This policy proposal paper outlines how we propose to administer the dollar disclosure provisions as they apply to various fees and benefits in:

- (a) Statements of Advice (SOAs);
- (b) Product Disclosure Statements (PDSs); and
- (c) periodic statements.

2 In this policy proposal paper, we use the term ‘dollar disclosure provisions’ to collectively refer to certain provisions of the Corporations Act (as amended by the *Financial Services Reform Amendment Act 2003*) and the Corporations Regulations (as amended by the *Corporations Amendment Regulations 2004 (No 6)*).

3 These provisions require various fees and benefits to be stated as amounts in dollars in SOAs, PDSs and periodic statements, except in accordance with the regulations.

4 The law requires dollar disclosure in all cases except where ASIC has determined that, for compelling reasons, such disclosure is not possible, unreasonably burdensome or contrary to clients’ interests. Subject to any determination(s) ASIC makes, the dollar disclosure provisions apply to all SOAs, PDSs and periodic statements prepared on or after 1 January 2005.

Note: For a detailed discussion of the general dollar disclosure provisions, our power to make determinations, and specific dollar disclosure provisions, see the section of this policy proposal paper entitled ‘What are the dollar disclosure provisions?’.

5 Our proposals cover:

- (a) key technical and interpretative issues (**Section A**);
- (b) our approach to making determinations where dollar disclosure is not possible (**Section B**); and
- (c) our approach to making determinations in other cases (including where dollar disclosure is unreasonably burdensome or contrary to clients’ interests) (**Section C**).

We also discuss tentative transitional measures on the commencement of the dollar disclosure provisions (see the section of this policy proposal paper entitled ‘**Transitional issues**’).

6 We consider that disclosure of fees and benefits is a *key* consideration for consumers in making decisions about financial products and services. Consumer research indicates that dollar disclosure is more readily understood by consumers than other forms of disclosure, such as percentages.

7 One purpose of our proposals is to promote discussion about how the requirements of the dollar disclosure provisions can be met. The proposals are only an indication of the way we are thinking at this stage. They do not constitute final ASIC policy.

8 We encourage you to begin to plan **now** for how to comply with the dollar disclosure provisions. We anticipate some work will be required to prepare for these provisions, which may include considering whether and when you, or your industry association, need to apply for a dollar disclosure determination.

9 We do not propose to make determinations about dollar disclosure until our policy is finalised (around October or November 2004). However, we intend to announce our position on transitional issues by around September 2004. We therefore encourage potential applicants to focus on commenting on the proposals in this paper. We have allowed only a short period for comments to help us finalise our policy as early as possible before 1 January 2005.

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Important note: The proposals, explanations and background materials in this paper do not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act applies to you. It is your responsibility to determine your obligations under the dollar disclosure provisions in the Corporations Act. The proposals, explanations, examples and background materials in this paper are at a preliminary stage only. Our conclusions may change as a result of the comments we receive or as other circumstances change.

Examples in this paper are purely illustrative; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

This paper is based on the legislation and regulations as at 10 August 2004.

The Government announced single figure fee measure reforms for investment based financial products on 17 June 2004, which may affect how product issuers comply with the dollar disclosure provisions in PDSs and periodic statements. We do not envisage that the Government's proposals will have implications for disclosure in SOAs. We will monitor the development of regulations in this area and will take them into consideration when finalising our policy on dollar disclosure.

What are the dollar disclosure provisions?

1 This section provides an overview of the dollar disclosure provisions to help industry better understand these provisions. It outlines:

- (a) a general overview of the dollar disclosure provisions;
- (b) our power to make determinations relating to these provisions;
- (c) the specific dollar disclosure provisions as they apply to Statements of Advice (SOAs), Product Disclosure Statements (PDSs) and periodic statements; and
- (d) the general disclosure provisions that apply to Financial Services Guides (FSGs), being provisions unchanged by the dollar disclosure provisions.

General overview of the provisions

2 The dollar disclosure provisions require various fees and benefits to be stated as amounts in dollars in SOAs, PDSs and periodic statements, except in accordance with the regulations and dollar disclosure determinations.

3 In the absence of an applicable ASIC determination, the dollar disclosure provisions apply to all SOAs, PDSs and periodic statements prepared on or after 1 January 2005.

4 Fees and benefits covered by the dollar disclosure provisions are:

- (a) product fees (that is, fees and costs associated with the acquisition, disposal or holding of a financial product);
- (b) client benefits (that is, benefits received by clients, or to be received by clients, as a result of obtaining a financial service or holding a financial product);

Note: We consider that 'client benefits' include any significant advantages to which clients or product holders will or may become entitled by acquiring a financial service or product. Benefits may also include types of returns to which clients or product holders will or may be entitled, as well as significant taxation matters.

- (c) provider benefits (that is, benefits received by, or to be received by, providing entities or their associates); and

Note: For example, commission (including trailing commission) or hourly fees received by a licensee may fall within this category.

- (d) provider interests (that is, other interests held, received, or to be received by, providing entities or their associates).

Our power to make determinations

5 The Corporations Regulations (as amended by the *Corporations Amendment Regulations 2004 (No 6)*) stipulate that ASIC may make determinations permitting disclosure in terms other than as amounts in dollars where there are *compelling reasons* in the following four situations:

- (a) where it is *not possible* to state a disclosure item as an amount in dollars; or

Note: For our proposals on the use of our powers in this situation, see Section B.

- (b) where, based on the nature of the financial product or service, or the nature of the information, to disclose a disclosure item as an amount in dollars:
- (i) would impose an *unreasonable burden* on a providing entity (or class of providing entities) or product issuer (or class of product issuers); or
 - (ii) would impose an *unreasonable burden* on a providing entity (or class of providing entities) or product issuer (or class of product issuers) *within a specified period*; or
 - (iii) would be *contrary to the interests of a client* (or class of clients).

Note: For our proposals on the general use of our powers in these situations, see Section C. Refer also to the section of this policy proposal paper entitled 'Transitional issues'.

6 ASIC determinations under the dollar disclosure provisions do not remove the obligation to disclose various fees and benefits in disclosure documents. Where an ASIC determination applies, disclosure remains mandatory, but depending on the determination, providing entities and product issuers may be permitted to disclose their fees and benefits in a form *other than in dollar terms* – that is, either as:

- (a) a *percentage* (see paragraph 7); or
- (b) in *description or narrative* (see paragraph 8).

7 Where an item cannot be disclosed in dollars because it is not possible, unreasonably burdensome or contrary to clients' interests to do so, the regulations permit ASIC to make a determination that has the effect of allowing disclosure of the item as a percentage of a specified matter. Unless such a determination is made, the item needs to be disclosed in dollar terms.

8 Where an item cannot be disclosed in dollars *or as a percentage* because it is not possible, unreasonably burdensome or contrary to clients' interests to do so, the regulations permit ASIC to make a determination to allow disclosure of the item as a description or narrative of the means by which those fees and benefits can be calculated. Unless such a determination is made, the item needs to be disclosed in dollar terms or as a percentage.

Note: For periodic statements, if certain fees or benefits cannot be disclosed either in dollars or as a percentage, clients must be informed that the disclosure item is applicable and must be given details of the means by which the client is able to gain access to information relating to the amount of the disclosure item (instead of being provided with a description of the means by which the fees and benefits can be calculated): regulations 7.9.75(5), 7.9.75C(3) and 7.9.75D(4).

9 Where a determination applies, providing entities and product issuers are obliged to include worked dollar examples in their disclosure documents, unless these are inappropriate.

Specific provisions

Statements of advice

10 Paragraphs 947B(2)(h), 947C(2)(i) and 947D(2)(d) – together with regulations 7.7.10A–7.7.13B – are the dollar disclosure provisions that apply to SOAs.

11 Generally, providing entities must disclose information about:

- (a) remuneration (including commission) or other benefits; and
- (b) other interests (pecuniary or otherwise; direct or indirect),

that might reasonably be expected to be capable of influencing the providing entity in providing advice.

12 Where the advice relates to either the acquisition or disposal of a client's partial or total interest in a financial product (e.g. switching), providing entities must generally disclose additional information in an SOA about:

- (a) any charges that clients will or may incur in relation to the acquisition or disposal of their interest; and
- (b) any pecuniary or other benefits that the client will or may lose as a result of taking the recommended advice.

13 All such information must be disclosed as amounts in dollars in an SOA, unless an ASIC determination applies.

Product disclosure statements

14 Paragraph 1013D(1)(m) – together with regulations 7.9.15A–7.9.15C – are the dollar disclosure provisions that apply to PDSs.

15 Generally, product issuers must disclose information about:

- (a) any significant benefits to which the product holder will or may become entitled;
- (b) the cost of the product (including ongoing costs); and
- (c) any commission (or similar payments) that will or may impact on the amount of a return, if any.

16 All such information must be disclosed as amounts in dollars in a PDS, unless an ASIC determination applies.

Periodic statements

17 Subsection 1017D(5A) – together with regulations 7.9.19–7.9.20B and 7.9.72A–7.9.75D – are the dollar disclosure provisions imposing obligations on product issuers that provide periodic statements to retail clients. This includes exit statements where the client ceases to hold a financial product. Periodic statements are required for:

- (a) managed investment products;
- (b) superannuation products (including income stream products);
- (c) retirement savings account products;
- (d) investment life insurance products (including retirement income stream products); and
- (e) deposit products.

18 Product issuers must provide retail clients with periodic statements at least annually. For each reporting period, product issuers must disclose the following information as amounts in dollars:

- (a) opening and closing balances for the reporting period;
- (b) the termination value of the investment at the end of the reporting period;
- (c) a summary of all transactions in relation to the financial product during the reporting period;
- (d) increases in contributions in relation to the financial product during the reporting period; and
- (e) the return on investment during the reporting period: s1017D(5A) and reg 7.9.74A.

Note: 'Termination value' means the ultimate amount that a client would receive as cash in hand if they were to withdraw from their investment at the end of the reporting period (incorporating, for example, any applicable exit fees).

19 All such information must be disclosed as amounts in dollars in a periodic statement, unless an ASIC determination applies.

20 Additional disclosure requirements apply to superannuation products and moneys deducted from common funds: s1017D(5)(g). Some of these disclosures are subject to the dollar disclosure provisions: regulations 7.9.19 and 7.9.75.

Financial Services Guides

21 The new dollar disclosure provisions do not apply to Financial Services Guides (FSGs). However, there are existing requirements to disclose remuneration, commission and other benefits in FSGs, which continue to apply: ss942B(2)(e) and 942C(2)(f) and regulations 7.7.04 and 7.7.07. The regulations generally require dollar disclosure if a dollar amount can be ascertained at the time a FSG is given to a client.

Note: For a discussion of these requirements and our policy on administering the law in this respect, see Policy Statement 175 *Licensing: Financial product advisers – Conduct and disclosure* at [PS 175.37]–[PS 175.41] and [PS 175.50]–[PS 175.55].

Policy proposals

We have three sections of policy proposals:

- (a) **Section A** discusses key technical and interpretative issues relating to dollar disclosure;
- (b) **Section B** canvasses our approach to making determinations where dollar disclosure is not possible; and
- (c) **Section C** canvasses our approach to making determinations in other cases.

For each of these proposed policies we list aspects of the proposals we are considering and raise issues we would like you to comment on. When necessary, we also include some explanations of our proposals.

After sections A–C, we have a section entitled ‘**Transitional issues**’. This section discusses tentative transitional measures that we are contemplating. We also seek your feedback on this section.

Special note: In addition to our specific questions, there may be other issues that you consider important. We are keen to hear from you on these issues, as well as on our specific questions.

A Key technical and interpretative issues

Policy proposal	Your feedback
<p>A1 Two key concepts that providing entities and product issuers must understand to meet the obligations imposed by the dollar disclosure provisions are:</p> <p>(a) <i>amount in dollars</i>; and</p> <p>(b) <i>worked dollar examples</i>.</p>	<p>A1Q1 Are there any other key concepts that require explanation? Please give details.</p>
<p>Amount in dollars</p> <p>A2 A disclosure item has been disclosed as an ‘amount in dollars’ where it is given as a stand-alone single number either in digits or words.</p> <p>Note 1: ‘Disclosure item’ is defined in the ‘Key terms’ section of this paper.</p> <p>Note 2: Where a fee or benefit does not arise or apply, describing the fee or benefit in words as ‘nil’ complies with the dollar disclosure provisions. This is because s9 interprets ‘amount’ as including a nil amount or zero.</p> <p>Note 3: For example, ‘20’ or ‘twenty’ is an amount.</p> <p>A3 A disclosure item has not been disclosed as an ‘amount in dollars’ if it is:</p> <p>(a) a percentage or fraction of a stand-alone single number;</p> <p>Note: For example, describing a fee as ‘10% of your investment’ or ‘4% of \$10,000’.</p> <p>(b) given as a description, such as a formula, or narrative of how a single number can be calculated; or</p> <p>Note: For example, formulas such as ‘\$4 per \$1,000 invested’.</p> <p>(c) a range of finite single numbers.</p> <p>Note: For example, ‘\$200–\$400’.</p>	<p>A2Q1 Do you agree with our understanding of ‘amount in dollars’? If not, why not?</p> <p>A3Q1 Do you agree with our approach to percentages? Why or why not?</p> <p>A3Q2 Do you agree with our approach to descriptions? Why or why not?</p> <p>A3Q3 Do you agree with our approach to ranges? Why or why not?</p>

Policy proposal	Your feedback
<p>A4 It is permissible to disclose ‘amounts’ by reference to the events upon which they arise.</p> <p>Note: For example, ‘a \$52 fee is payable for establishment’; ‘Establishment fee: fifty dollars’.</p> <p>A5 If a disclosure item is a non-monetary interest or benefit, providing entities and product issuers can comply with the dollar disclosure provisions by translating that interest or benefit into an estimated value as an ‘amount in dollars’, with appropriate warnings, where the value of that interest or benefit can be reliably estimated.</p> <p>Note: Where, for example, an adviser will receive a holiday if a quota is met in relation to a financial product, this must be disclosed, together with an estimated value of that holiday and appropriate warnings (e.g. ‘if the adviser meets the quota for this financial product, the adviser will receive a holiday to an approximate value of \$5,000. You should be aware that this value is an estimate only, and may be subject to change’).</p> <p>A6 If information is to be disclosed as an amount ‘in dollars’, it must be disclosed in Australian currency.</p>	<p>A4Q1 Do you agree with our approach to disclosing ‘amounts’ by reference to the events upon which they arise? Why or why not?</p> <p>A4Q2 Do you consider that a disclosure item has been disclosed as an ‘amount in dollars’ if it is disclosed by reference to the period of time over which it is imposed (e.g. \$10 per year)? Why or why not?</p> <p>A5Q1 Do you agree with our approach to the valuation of non-monetary interests and benefits? Why or why not?</p> <p>A5Q2 Are there other approaches to the disclosure of non-monetary benefits and interests that you think the dollar disclosure provisions permit? Please give details.</p> <p>A6Q1 Do you agree with our understanding of ‘in dollars’? If not, why not?</p>
<p>Worked dollar examples</p> <p>A7 Where an ASIC determination under the dollar disclosure provisions applies, inclusion of worked dollar examples is required, unless these are inappropriate. A worked dollar example is an illustration of</p>	<p>A7Q1 Do you agree with our understanding of ‘worked dollar examples’? If not, why not?</p>

Policy proposal

how various fees and benefits will work in practice. We expect that worked dollar examples will depict typical cases in point for clients who will be required to pay various fees or receive benefits when they acquire financial services or products.

Note: For example, suppose that a superannuation fund charges a 3% contribution fee plus a 2% management fee. If a client makes contributions during the year of \$10,000, and the client's account balance at the end of the year is \$50,000, the worked dollar example would show that the client will pay contribution fees of \$300 plus a management fee of \$1,000. It would also need to illustrate any additional fees that may apply (for example, for establishment of or withdrawal from the fund).

A8 Worked dollar examples should be based on realistic, factual scenarios using standardised amounts. Examples should generally be based on a stated set of facts (e.g. the typical circumstances facing an investor), with appropriate warnings.

Note: For example, assuming that \$10,000 is the level of investment typically made for a particular fund, a worked dollar example may set out the fees and charges associated with a hypothetical \$10,000 investment in that fund.

A9 Worked dollar examples will rarely, if ever, be inappropriate, and we expect that, unless there are exceptional circumstances, providing entities and product issuers will include worked dollar examples in disclosure documents where a determination has been made permitting disclosure other than in dollar terms.

Note: For more guidance on when we may make determinations permitting disclosure in a form other than in dollar amounts, see Sections B and C and the section of this policy proposal paper entitled 'Transitional issues'.

Your feedback

A7Q2 Are there other approaches to worked dollar examples that you think the dollar disclosure provisions permit? Please give details.

A8Q1 Do you agree with our approach to standardised examples? If not, why not?

A9Q1 Do you agree with our approach? Why or why not?

Policy proposal

A10 Where a number of fees and benefits are disclosed together, a separate worked dollar example is not necessarily required for each fee and benefit. On the contrary, to ensure clear, concise and effective disclosure, it will often be desirable to have one or more examples, each of which shows the effect of all fees and benefits.

Note: For a discussion of the use of worked dollar examples, see our report *A model for fee disclosure in product disclosure statements for investment products*, July 2003 (released August 2003; revised June 2004).

Your feedback

A10Q1 Do you agree with our approach? Why or why not?

Explanation

1 The Corporations Act imposes a high threshold to ensure that providing entities and product issuers disclose fees and benefits in dollar amounts in Statements of Advice, Product Disclosure Statements and periodic statements in most cases.

2 The disclosure of fees and benefits is a *key* consideration for consumers making informed decisions about financial products. Providing entities and product issuers must ensure that fees and benefits are disclosed clearly, concisely and effectively.

Note 1: For general conduct and disclosure requirements, see Parts 7.7 and 7.9 of the Corporations Act. See also Policy Statement 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* [PS 168] and Policy Statement 175 *Licensing: Financial product advisers – Conduct and disclosure* [PS 175].

Note 2: This policy proposal paper is not intended to cover general conduct and disclosure requirements.

3 Providing entities and product issuers will need to understand the terminology of the dollar disclosure provisions to effectively implement their requirements. Two key concepts are ‘amount in dollars’ and ‘worked dollar examples’.

Amount in dollars

4 The dollar disclosure regime is designed to help consumers better understand fees and benefits, and to enable them to compare financial products with greater ease.

Note: Where a fee or benefit is ‘not applicable’ there is no obligation to disclose it in dollars.

5 Disclosure of an ‘amount’ by reference to an event upon which it arises could be seen technically as a combination of an ‘amount’ and a description or narrative. But we consider such disclosure to be permissible under the dollar disclosure provisions. We consider disclosing the fee or benefit and when it will arise is a permissible means of complying with the dollar disclosure provisions.

6 The dollar disclosure provisions cover disclosure items that may not initially or normally be recorded as amounts in dollars. We acknowledge that the law may cause difficulties for some providing entities and product issuers where, for example, non-monetary interests or benefits must be disclosed. However, in these circumstances, one way to comply with the dollar disclosure provisions is to combine

description or narrative, together with a reliable estimate of the value of the interest or benefit (constituting an ‘amount’).

Note: For example, certain ‘soft dollar’ benefits may be able to be disclosed in this way.

7 Where estimated values are disclosed it will also be necessary to give appropriate warnings to clients. This will help to ensure the disclosure is not misleading or deceptive.

8 In some cases, it may not be possible, or it may be unreasonably burdensome or contrary to clients’ interests, for estimated values to be disclosed for certain non-monetary benefits and interests.

Note: See Sections B and C of this paper for our proposed approach to making determinations in these cases.

9 In view of wider developments on the disclosure of fees (such as single figure fee measures), it is important for providing entities and product issuers to use common approaches to dollar disclosure of fees and benefits. Common approaches to disclosure promote comparability of financial products and so reinforce confident and informed decision making by consumers.

Note 1: For guidance on working towards a common model of fee disclosure, see our report *A model for fee disclosure in product disclosure statements for investment products*, July 2003 (released August 2003; revised June 2004).

Note 2: As part of the Government’s package of single figure fee measure reforms for investment based financial products (released 17 June 2004), ASIC’s fee template is intended to be mandated in PDSs and periodic statements, as is a single figure fee comparison table in PDSs.

Worked dollar examples

10 Worked dollar examples are important in communicating to consumers how fees and benefits work in practice. Examples promote more confident and informed decision making. Worked dollar examples should be illustrations based on a stated set of realistic facts. This should help explain to consumers what happens to their investment over its life (including the impact of fees and benefits on that investment), and at the same time depict how fees and benefits operate.

B Our approach when dollar disclosure is not possible

Policy proposal	Your feedback
<p>B1 We propose to take the following general approach to making determinations under the ‘not possible’ category:</p> <ul style="list-style-type: none"> (a) we will make some <i>class determinations</i> on our own initiative, that is, without the need for an application (see policy proposal paragraphs B2–B6); and (b) if applications we receive demonstrate <i>compelling reasons</i> why disclosure is not possible, we will consider making a class determination. However, where applications demonstrate that an applicant’s circumstances are unique or exceptional, we may consider making individual determinations (see policy proposal paragraphs B7–B9). 	<p>B1Q1 Do you agree with our approach? Why or why not?</p> <p>B1Q2 Are there any other approaches you would suggest? Please give details.</p>
<p>Class determinations</p> <p>B2 Class determinations permitting disclosure other than in dollar terms are likely to be appropriate in some generic cases. We propose to make class determinations in the following two cases because we consider that there are compelling reasons why dollar disclosure is not possible:</p> <ul style="list-style-type: none"> (a) where disclosure items depend on <i>unknown facts and circumstances</i> (see policy proposal paragraphs B4–B5); and (b) where disclosure items are <i>intangible client benefits</i>, the value of which cannot be reliably estimated (see policy proposal paragraph B6). <p>Note: For a discussion of our approach to reliable estimates of the value of non-monetary benefits, see paragraphs 6–8 of the Explanation in Section A.</p>	<p>B2Q1 Are there any other generic cases where it is not possible to provide dollar disclosure? Please give details.</p> <p>B2Q2 Would a class determination be appropriate for any of the cases you identify in question B2Q1? Why or why not?</p>

Policy proposal	Your feedback
<p>B3 In our determinations, we will retain the power to notify a person that, from a date specified in the notice, they are no longer entitled to rely on the specified determination. This is to ensure that we are able to respond to attempts to artificially avoid disclosure of fees and benefits through inappropriate use of our determinations.</p> <p>Unknown facts and circumstances</p> <p>B4 We propose to make a class determination permitting disclosure of product fees, client benefits and provider benefits (but not provider interests) as either:</p> <ul style="list-style-type: none"> (a) <i>a percentage</i> (where dollar disclosure is mathematically impossible); or (b) <i>by description or narrative</i> of the means by which those fees and benefits can be calculated (where disclosure in dollar terms or as a percentage is mathematically impossible), <p>because:</p> <ul style="list-style-type: none"> (a) the fee or benefit depends directly on facts and circumstances that are not yet known, nor is there any way of knowing them, at the time of preparing the disclosure document; and (b) the lack of knowledge of the relevant facts and circumstances is beyond the control of the providing entity or product issuer. <p>This determination would apply to PDSs. It would apply to SOAs, but only to the extent that the relevant disclosure item is a product fee or client benefit relating to the product the subject of the SOA. We have not yet decided whether this determination will apply to all or some provider benefits, such as trailing commissions, which require disclosure in SOAs.</p>	<p>B3Q1 Are there any practical problems with this approach? Please give details.</p> <p>B4Q1 Do you agree with our approach where the amount of the fee or benefit directly depends on unknown facts and circumstances? Why or why not?</p> <p>B4Q2 Are there any practical problems with this approach? Please give details.</p> <p>B4Q3 Are there any practical problems with limiting this determination to PDSs and certain disclosures in SOAs? Please give details. For example, are there any practical problems with limiting this determination such that it does not apply to provider benefits, such as trailing commissions, which require disclosure in SOAs?</p> <p>B4Q4 Are there any circumstances where a determination of this kind should apply to periodic statements? If so, please give details.</p>

Policy proposal

disclosure in SOAs.

Note 1: It is *not* impossible, for example, to disclose a fee in dollars simply because the amount of the fee depends on the product issuer exercising a discretion that they have not yet exercised.

Note 2: It is *not* impossible, for example, to disclose benefits in dollars where the value of a client or provider benefit can be reliably estimated as an amount. For a discussion of our approach to reliable estimates of the value of non-monetary benefits, see paragraphs 6–8 of the Explanation in Section A.

Note 3: For further explanation of the concepts of product fees, client benefits and provider benefits (as opposed to provider interests), see paragraph 4 of the section of this policy proposal paper entitled ‘What are the dollar disclosure provisions?’.

- B5** Where this class determination applies, the disclosure document will also need to include a *worked dollar example* of the relevant fee or benefit, based on a realistic factual scenario. Providing entities and product issuers should also disclose:
- (a) what the fee or benefit is;
 - (b) that the amount of the fee or benefit is uncertain;
 - (c) what the amount of the fee or benefit depends on; and
 - (d) how and when the fee or benefit will be calculated and determined (including a description of the factors that will be taken into account when determining any such amount).

Note: For example, under this class determination, a responsible entity would have to disclose that the future returns to the client are uncertain and depend on the performance of the fund investments. The responsible entity would also need to explain when the benefits are calculated and credited to client accounts.

Your feedback

- B5Q1** Are there any other items that should be disclosed in worked dollar examples? Please give details.

Policy proposal	Your feedback
<p><i>Intangible client benefits</i></p> <p>B6 We propose to make a class determination and class order permitting disclosure by way of <i>description or narrative</i> of a client benefit (rather than in dollars or by way of percentage) where dollar disclosure is not possible because:</p> <ul style="list-style-type: none"> (a) the benefit is not an amount, nor of a monetary nature; and (b) its value cannot be reliably estimated. <p>This determination would apply to PDSs. It would apply to SOAs, but only to the extent that the relevant disclosure item is a client benefit relating to the product the subject of the SOA.</p> <p>Note 1: In this context we are discussing benefits to be received by the client that are not of a monetary nature, as opposed to unknown future client benefits as in policy proposal paragraphs B4–B5. For example, benefits of a financial product such as a product’s ease of use, accessibility or security would fall within this category.</p> <p>Note 2: It is <i>not</i> impossible to disclose client benefits in dollars where the value of those benefits can be reliably estimated as amounts. For a discussion of our approach to reliable estimates of the value of non-monetary benefits, see paragraphs 6–8 of the Explanation in Section A.</p>	<p>B6Q1 Do you agree with our approach to intangible client benefits? Why or why not?</p> <p>B6Q2 Are there any practical problems with this approach? Please give details.</p> <p>B6Q3 Are there any practical problems with limiting this determination to PDSs and certain disclosures in SOAs? Please give details.</p> <p>B6Q4 Are there any circumstances where a determination of this kind should apply to periodic statements? If so, please give details.</p> <p>B6Q5 Please provide examples (if any) of non-monetary benefits that you consider cannot be reliably estimated.</p>
<p>Other determinations – on application</p> <p>B7 Applications for determinations under our ‘not possible’ power need to demonstrate that compliance with the dollar disclosure provisions is not possible for <i>compelling reasons</i> and, therefore, that a determination should be made on either an individual or group basis.</p>	<p>B7Q1 Are there any practical problems with this approach? Please give details.</p>

Policy proposal	Your feedback
<p>B8 We will need cogent evidence and argument that demonstrates that dollar disclosure is not possible. Whether disclosure in dollars is not possible for compelling reasons will depend on all of the facts and circumstances, which may include:</p> <ul style="list-style-type: none"> (a) the nature of the financial product or service; (b) the nature of the information; and (c) any unique or exceptional circumstances of providing entities, product issuers and relevant third parties (such as industry associations). <p>B9 Generally, we will be more likely to make class determinations under our ‘not possible’ power. We consider that if disclosure is impossible in one case, it is likely to be impossible in other similar cases. Generally, individual circumstances will not be enough to make dollar disclosure impossible. We encourage providing entities and product issuers to put any applications for determinations to us on a group or industry basis. We will generally give priority to processing these applications.</p>	<p>B9Q1 Are there any problems in making group or industry applications that would make this approach impracticable? Please give details.</p>

Explanation

1 We propose to take two approaches to making determinations under our ‘not possible’ power, namely:

- (a) to make some class determinations on our own initiative (see paragraphs 2–13 of this Explanation); and
- (b) where applications are received demonstrating compelling reasons as to why disclosure in dollars is not possible, to generally make class determinations, unless unique or exceptional circumstances are evidenced (see paragraphs 14–17 of this Explanation).

Class determinations

2 We acknowledge that there are certain generic cases where, for compelling reasons, it will not be possible to disclose a disclosure item as an amount in dollars. These cases primarily involve instances in which the fee or benefit depends on unknown facts and circumstances, or alternatively, where benefits are of a non-monetary nature.

3 In such cases, we will make class determinations permitting disclosure by way of a percentage of a specified matter, or description or narrative (as opposed to in dollar terms), so as to treat all providing entities and product issuers equally. We believe that this approach will provide a more timely and efficient process for both ourselves and industry.

Note: Our class determinations will not apply where the value of a disclosure item can be reliably estimated as an amount. For a discussion of our approach to reliable estimates of the value of non-monetary benefits, see paragraphs 6–8 of the Explanation in Section A.

4 Our determinations will be structured to minimise potential opportunities to deliberately and artificially avoid disclosure in dollars. The determinations will take into account to what extent the providing entity or product issuer has created a situation of apparent impossibility to disclose in dollars. Where this is the case, we will be unlikely to accept that disclosure in dollars is actually impossible (e.g. the providing entity or product issuer is able to remove the impossibility themselves).

5 We will also monitor compliance. Where we observe that, for example, providing entities and product issuers have arranged fees and benefits in such a manner as would make it impossible to disclose them in dollar amounts under the intended class determinations, we will be prepared to notify providing entities and product issuers that they are no longer entitled to rely on the specified determination(s).

Unknown facts and circumstances

6 We propose that our determinations will apply to PDSs and SOAs (but only to the extent that the information being disclosed relates to the fees charged to, and benefits received by, the client in respect of the financial product the subject of the SOA). We think this is appropriate because, as a forward looking document, PDSs will sometimes be unable to disclose actual dollar amounts for the fees and benefits relating to a financial product. Similarly, in the case of SOAs, a providing entity may be unable to disclose product fees and client benefits at the time of preparing the SOA in relation to a particular client. In contrast, for documents dealing with historic periods such as periodic statements, we would generally expect the relevant facts and circumstances to be either known or easily ascertainable.

7 We have not yet decided whether our determination should apply to all or some forms of provider benefit, such as trailing commissions, which require disclosure in SOAs. This is because we are not yet sure about the circumstances (if any) in which dollar disclosure of these forms of benefit will not be possible. Further, we are concerned that extending our determination to provider benefits may encourage or facilitate licensees structuring their remuneration structures with a view to avoiding the need to disclose provider benefits in dollars. We are keen to receive submissions from industry on this matter.

8 This means that where our determination applies:

- (a) PDSs and SOAs will be able to disclose percentage-based product fees as percentages, and unknown fees by description;
- (b) PDSs and SOAs will be able to disclose percentage-based client benefits as percentages, and otherwise as descriptions; and
- (c) PDSs will be able to disclose percentage-based provider benefits (which are required to be disclosed where they may affect returns) as percentages, and otherwise as descriptions.

9 Our proposed determinations under the ‘not possible’ power will not, however, affect these matters:

- (a) SOAs will still have to disclose provider benefits and provider interests as amounts in dollars; and
- (b) periodic statements will still have to disclose required items in dollars.

Note: For further explanation of the concepts of product fees, client benefits, provider benefits and provider interests, see paragraph 4 of the section of this policy proposal paper entitled ‘What are the dollar disclosure provisions?’.

10 In order to clearly, concisely and effectively disclose fees and benefits under this class determination, the disclosure document will need to include worked dollar examples, based on realistic factual scenarios including the use of standard relevant amounts.

Intangible client benefits

11 We consider a class determination and class order for intangible client benefits is appropriate because it would be mathematically impossible to disclose such items as actual or approximate amounts in dollar terms. Disclosure would instead be required by way of a description or narrative. This determination will apply to PDSs and SOAs (to the extent that the information relates to the benefits received by, or to be received by, clients in relation to the financial product being discussed in the SOA) only. We do not propose to extend this class determination to periodic statements.

Note: This approach is supported in the Explanatory Statement to the *Corporations Amendment Regulations 2004 (No 6)* which suggests that information regarding a range of intangible and unquantifiable items may be able to be considered by ASIC under our 'not possible' power.

12 This class determination will not apply where the value of a client benefit can be reliably estimated. We anticipate that, in many cases, such benefits can be disclosed as amounts in dollars in that manner. In these circumstances, we expect providing entities and product issuers to include in their disclosure documents estimations of the approximate value of the benefits received by, or to be received by, clients as amounts in dollars, where the value of the benefits can be estimated with a fair degree of reliability.

Note: For a discussion of our approach to reliable estimates of the value of non-monetary benefits, see paragraphs 6–8 of the Explanation in Section A.

13 Where this class determination applies the disclosure document would need to include worked dollar examples, based on realistic factual scenarios, together with appropriate warnings.

Other determinations – on application

14 We consider that the phrase 'compelling reasons' under our 'not possible' power means that providing entities and product issuers will be required to demonstrate that disclosure of amounts in dollars is clearly impossible. We interpret 'not possible' in this context as meaning that a providing entity or product issuer cannot disclose a disclosure item as an amount in dollars because that item is 'not able to be brought into effect' as such an amount. We expect that it will not be possible to disclose fees and benefits as amounts in dollars for

compelling reasons primarily as a result of mathematical impossibilities.

15 Where the facts and circumstances do not present very strong arguments to support a case of impossibility, applications for determinations are likely to be unsuccessful. The law imposes a high threshold in this respect and we expect that providing entities, product issuers, or relevant third parties (such as industry associations) will need to provide cogent objective evidence as to why dollar disclosure is not possible to establish a successful case.

16 While providing entities and product issuers may be required to undertake system changes and incur costs for compliance purposes, we do not consider such circumstances as being compelling reasons that disclosure is not possible. This is because implementing dollar disclosure in these circumstances would be possible, even if it gives rise to difficulties or costs.

Note 1: Our approach is supported in the Explanatory Statement to the *Corporations Amendment Regulations 2004 (No 6)*.

Note 2: Issues surrounding implementation costs may be relevant under our 'unreasonably burdensome' or 'unreasonably burdensome *within a specified period*' determination powers: see Section C and the section of this policy proposal paper entitled 'Transitional issues'.

17 Determinations are likely to be made on a class basis because of the generic nature of impossibility. Where possible, we urge providing entities and product issuers to make applications for determinations on a group basis and, where applicable, through their representative industry association or body. We will give priority to processing group or industry applications for determinations. The equity and efficiency gained from making class determinations will allow for better management of resources and therefore, an easier transition into the dollar disclosure regime leading to better, more consistent consumer outcomes.

C Our approach when dollar disclosure is unreasonably burdensome or contrary to clients' interests

Policy proposal	Your feedback
<p>C1 We do not propose to make any determinations under the 'unreasonably burdensome' or 'contrary to clients' interests' powers on our own initiative. However, we will consider applications for class or individual determinations under these powers. Generally, we expect to make individual rather than class determinations under these powers.</p> <p>Note: For our proposed approach to making determinations where dollar disclosure is 'unreasonably burdensome <i>within a specified period</i>', see policy proposal paragraph C5 and the section of this policy proposal paper entitled 'Transitional issues'.</p>	<p>C1Q1 Do you agree with our general approach? Why or why not?</p> <p>C1Q2 Is there any other approach you would suggest? Please give details.</p>
<p>Compelling reasons</p> <p>C2 Applicants must provide cogent evidence and argument demonstrating that to provide dollar disclosure is clearly unreasonably burdensome (including <i>within a specified period</i>) or contrary to clients' interests. The providing entity, product issuer or relevant third party (such as an industry association) will have to show 'compelling reasons' for why ASIC should use its powers.</p>	<p>C2Q1 Do you agree with our understanding of 'compelling reasons'? If not, why not?</p>
<p>Unreasonably burdensome</p> <p>C3 We consider that an 'unreasonable burden' may exist where the burden of complying with the dollar disclosure provisions is extreme, excessive or out of all proportion to the benefits of dollar disclosure.</p>	<p>C3Q1 Do you agree with our understanding of 'unreasonable burden'? If not, why not?</p>

Policy proposal	Your feedback
<p>C4 We expect that compliance with the new dollar disclosure provisions may impose some additional compliance costs on providing entities and product issuers. We consider this to have been contemplated by Parliament. Therefore, it is likely that the mere existence of cost, even where significant, will not be enough to demonstrate unreasonable burden.</p>	
<p>Unreasonably burdensome <i>within a specified period</i></p> <p>C5 We are considering whether we will use our powers to make determinations where dollar disclosure is unreasonably burdensome <i>within a specified period</i> in relation to transitional compliance issues arising as a result of the commencement of the dollar disclosure provisions: see the section of this policy proposal paper entitled ‘Transitional issues’. We envisage that we will rarely use this power in situations other than those dealing with transitional issues. However, we recognise that other specific circumstances might occasionally arise where disclosure of fees and benefits as amounts in dollars is unreasonably burdensome <i>within a specified period</i>.</p> <p>Note 1: For example, other specific circumstances might include the introduction of immediately applicable legislation.</p> <p>Note 2: Applications for determinations under this power must address the threshold issue of why dollar disclosure is unreasonably burdensome. For our approach to ‘unreasonably burdensome’, see policy proposal paragraphs C3–C4.</p> <p>Note 3: Applications for determinations would also have to show that the burden is temporary in nature and demonstrate that the applicant is taking steps to ensure that it will be in a position to disclose fees and benefits in dollars after the specified period has</p>	<p>C5Q1 Do you agree with our understanding of ‘unreasonably burdensome <i>within a specified period</i>’? If not, why not?</p> <p>C5Q2 Are there other circumstances that you can envisage might require a determination under our ‘unreasonably burdensome <i>within a specified period</i>’ power? Please give details.</p>

Policy proposal	Your feedback
<p>passed (unless the product or service will no longer be provided after that time).</p>	
<p>Contrary to clients' interests</p> <p>C6 The regulations contemplate that there may be circumstances where disclosure of disclosure items as amounts in dollars is contrary to clients' interests. We do not envisage that such circumstances will often arise.</p> <p>C7 When making applications for determinations on the basis of clients' interests, we expect providing entities, product issuers and relevant third parties (such as industry associations) to:</p> <ul style="list-style-type: none"> (a) provide a comprehensive outline of clients' interests; and (b) show that those interests will materially suffer unless a determination is made that dollar disclosure is not required. <p>Note: We will give consideration to our own assessment of what constitutes 'clients' interests' when considering any application for a determination. For other factors we will take into account, see policy proposal paragraph C10.</p>	<p>C6Q1 Do you agree? Why or why not?</p> <p>C7Q1 Do you agree with our approach to 'contrary to clients' interests'? Why or why not?</p>
<p>Our approach to applications</p> <p>C8 We propose to make individual determinations under our 'unreasonable burden' or 'contrary to clients' interests' powers on a case-by-case basis only. We will take into account all of the facts and circumstances detailed in applications.</p> <p>Note 1: For example, we do not propose to make class determinations where it will be unreasonably burdensome or contrary to clients' interests to provide dollar disclosure of items in relation to financial products such as closed schemes and legacy products on an ongoing basis.</p> <p>Note 2: For information on our current thinking about</p>	<p>C8Q1 Do you agree with our approach to making determinations on the basis of unreasonable burden or contrary to clients' interests? Why or why not?</p> <p>C8Q2 Are there any practical problems with this approach? Please give details.</p> <p>C8Q3 Do you agree with our approach in the case of products such as closed</p>

Policy proposal

a possible transitional class determination under our 'unreasonably burdensome *within a specified period*' power, see the section of this policy proposal paper entitled 'Transitional issues'.

C9 The dollar disclosure provisions are intended to raise disclosure standards and impose a high hurdle before we can make determinations. Where the facts and circumstances do not present an overwhelming case of unreasonable burden or establish clearly that the disclosure would be contrary to clients' interests, we consider it likely that such applications for determinations will be unsuccessful. We anticipate that these determinations will be relatively rare.

C10 The following factors may be relevant in considering whether compliance with the dollar disclosure provisions is unreasonably burdensome (including *within a specified period*) or contrary to clients' interests:

- (a) whether the costs of compliance would be excessive as compared to the typical costs faced by comparable providing entities or product issuers, or the burden would be out of all proportion to the expected benefits resulting from such compliance;
- (b) objective evidence that there is no way of complying that would not confuse or mislead clients (e.g. whether the entity has undertaken any consumer research or testing);
- (c) to what extent the burden is predominantly attributable to the complexity of the providing entity's or product issuer's own underlying remuneration and benefits arrangements; and

Your feedback

products such as closed schemes and legacy products? If not, why not?

C10Q1 Could these factors be better described? Please give details.

C10Q2 Are there any other factors that you consider to be relevant here? Please give details.

C10Q3 Are any of these factors not appropriate? Please give details.

Policy proposal

- (d) any unique or unusual practical difficulties that providing entities and product issuers might face in compliance.

Note: These factors relate to our policy on whether dollar disclosure is 'unreasonably burdensome' (policy proposal paragraphs C3–C4) and/ or 'contrary to clients' interests' (policy proposal paragraphs C6–C7). We expect applicants to address our policy, as well as these factors.

C11 While our general exemption and modification powers apply in relation to the dollar disclosure provisions (in addition to our specific determination powers in those provisions), we anticipate that we would only give relief under those powers where, for compelling reasons, dollar disclosure is not possible, unreasonably burdensome or contrary to clients' interests.

Your feedback

Explanation

Compelling reasons

1 The onus to establish a case that, for compelling reasons, disclosure of fees and benefits as amounts in dollars is unreasonably burdensome (including *within a specified period*) or contrary to clients' interests, lies on the providing entity, product issuer or relevant third party (such as an industry association). Where the facts and circumstances do not present an overwhelming case and meet the high burden imposed by the law, we consider it likely that such applications for determinations will be unsuccessful. We expect, therefore, that providing entities, product issuers and relevant third parties will need to provide cogent objective evidence as to why dollar disclosure involves an unreasonable burden or is contrary to the interests of clients.

Unreasonably burdensome

2 We consider that an 'unreasonable burden' may exist where the burden of complying with the dollar disclosure provisions is extreme, excessive or out of all proportion to the benefits of dollar disclosure. For example, we consider an 'unreasonable burden' may exist where providing entities, product issuers, or groups thereof, are required to comply with the dollar disclosure provisions, but such compliance will require extreme implementation processes that go far beyond what is based on reason or good sense. An 'unreasonable burden', therefore, may be incurred where compliance with the dollar disclosure provisions necessitates process and systems changes such that the costs of implementing the dollar disclosure regime are out of all proportion to the benefits to be gained.

Note 1: 'Unreasonable burden' was discussed in *Mazda Australia Pty Limited and Others v ASC* (1992) 8 ASCR 613. See also Policy Statement 43 *Financial reports and audit relief* at [PS 43.23]–[PS 43.25], and *Directors of Liquid Air (WA) Pty Ltd v Commissioner for Corporate Affairs* (1989) 15 ACLR 29.

Note 2: The Explanatory Statement to the *Corporations Amendment Regulations 2004 (No 6)* suggests that ASIC is to consider 'a range of compliance issues and costs associated with the provision of information in dollar terms [under our unreasonably burdensome power]. For example, the extent to which a matter constitutes an unreasonable burden may include consideration of the necessary systems changes required to collate the information'.

3 When making applications for determinations under our ‘unreasonably burdensome’ powers, providing entities, product issuers and relevant third parties should demonstrate:

- (a) that a burden exists (clearly identifying that burden); and
- (b) why the burden is unreasonable.

Unreasonably burdensome *within a specified period*

4 We consider that it will be rare that we will make determinations where it is unreasonably burdensome to comply with the dollar disclosure provisions *within a specified period* other than in transitional cases. However, we acknowledge that providing entities and product issuers might occasionally be confronted with events such as the introduction of immediately applicable legislation, which might involve issues that hinder their ability to disclose fees and benefits as an amount in dollars *within a specified period*. Providing entities and product issuers may make an application for a determination in such circumstances. Providing entities and product issuers should address why dollar disclosure is unreasonably burdensome, as well as why it is unreasonably burdensome within a particular specified period. We also expect that providing entities and product issuers will demonstrate that they are taking steps to ensure that they can comply with the dollar disclosure provisions within the specified period. We envisage that any determination made under this power will only cover temporary or transitory issues, as opposed to being a permanent basis for disclosure other than in dollar terms.

Note 1: For a discussion on our approach to ‘unreasonably burdensome’, see policy proposal paragraphs C3–C4 and paragraphs 2–3 of the Explanations to this section.

Note 2: For information on our current thinking about a possible transitional class determination under our ‘unreasonably burdensome *within a specified period*’ power, see the section of this policy proposal paper entitled ‘Transitional issues’.

Contrary to clients’ interests

5 We consider that it will be rare for compliance with the dollar disclosure provisions to be ‘contrary to clients’ interests’. This is because research indicates that clients better understand information about fees and benefits when such information is disclosed in dollar terms. However, we acknowledge that there might be occasional circumstances in which dollar disclosure will not be in the interests of clients. For example, where compliance with the dollar

disclosure provisions is likely to be prohibitively expensive, it is arguable that dollar disclosure may not be in the interests of clients where such compliance would have a detrimental effect on clients themselves, or their investments. Nonetheless, arguments as to costs and their impact by way of increase on fees, by themselves, will not be enough to demonstrate that dollar disclosure is contrary to clients' interests.

Note: For example, it may not be in the interests of clients to require dollar disclosure in the case of some closed schemes.

6 Where such applications are made, providing entities, product issuers and relevant third parties should provide:

- (a) a comprehensive outline of their clients' interests; and
- (b) a detailed submission that those interests will materially suffer unless a determination is made permitting non-dollar disclosure.

Our approach to applications

7 With the exception of a transitional class determination under our 'unreasonably burdensome *within a specified period*' power, we intend to exercise our powers on a case-by-case basis only, making individual determinations because determinations are very likely to depend on the unique or unusual facts and circumstances of each applicant.

Transitional issues

1 This section considers the transitional measures that we are thinking about under our ‘unreasonably burdensome *within a specified period*’ power. We intend to announce the details of our transitional approach by the end of September 2004.

2 The *Corporations Amendment Regulations 2004 (No 6)* commenced on 1 July 2004, and provides for a transition period until 1 January 2005. We are, however, aware that some industry participants are concerned about their ability to comply with the dollar disclosure provisions by this time. We acknowledge that some industry participants may face significant difficulties in implementing systems changes during the November–January period in order to comply with the dollar disclosure provisions.

Note: The Parliamentary Joint Committee on Corporations and Financial Services, in its enquiry on the draft dollar disclosure regulations released for public consultation on 7 January 2004 (which were colloquially referred to as *Draft Regulations – Corporations Amendment Regulations 2004 (Batch 8)*), came to the view that ‘the timeframe for the implementation of the proposed regulations is short and may cause difficulties for some providers’. The Committee’s recommendation was stated as follows: ‘that a regulation be made that would allow a transition period to extend to 1 January 2005. The Committee, however, is strongly of the view that those capable of meeting their dollar disclosure obligations should do so from 1 July 2004’.

3 We believe that it is important to ensure that adequate time is given to consider the policy issues raised in Sections A–C. We also consider that the importance of dollar disclosure requires emphasis to be placed upon the quality of longer term outcomes for consumers. Against the background of these guiding principles, this might require putting transitional measures in place which delay the commencement of the dollar disclosure regime for a short period.

4 As a transitional measure, we are thinking about making a class determination under our ‘unreasonably burdensome *within a specified period*’ power to address transitional compliance issues. We envisage that any possible determination would provide for a short, conditional extension of the transition period from the commencement of the dollar disclosure provisions until no later than 28 February 2005. Our current view is that such an approach would appropriately balance the importance of early commencement of the dollar disclosure provisions and transitional systems issues.

5 If we were to make a class determination similar to that canvassed in paragraph 4, we would be likely to impose conditions requiring any providing entity or product issuer intending to rely on the determination to:

- (a) form a reasonable view that it would be unreasonably burdensome to comply with the dollar disclosure provisions by 1 January 2005;
- (b) form a reasonable view that it would be in a position to comply with the dollar disclosure provisions by the date set out in determination (which we envisage will be no later than 28 February 2005);
- (c) lodge a reliance notice (declaration) including the above self-certifications with ASIC by 31 December 2004; and
- (d) include required disclosures as a percentage of a specified matter, or description or narrative (as opposed to amounts in dollars), until the date set out in the determination.

Note: In forming reasonable views, a providing entity or product issuer would need to have regard to what constitutes an unreasonable burden, together with what constitutes an unreasonable burden *within a specified period*. For our approach to ‘unreasonably burdensome’, see policy proposal paragraphs C3–C4.

6 If a self-certification were made for the purposes of relying on the class determination we are currently contemplating, we would also expect a providing entity or product issuer to keep a record of the self-certification, together with the processes followed in making the self-certification. Senior representatives who are able to legally bind the providing entity or product issuer would be required to sign off on any such self-certification.

7 A providing entity or product issuer relying on the class determination we are currently considering would need to comply with the dollar disclosure provisions by 1 March 2005 at the latest, except to the extent that another determination applies.

8 At this stage, in the absence of compelling arguments, we do not anticipate that we will make any further class determinations to address transitional issues under our ‘unreasonably burdensome *within a specified period*’ power that apply beyond 28 February 2005.

Note: We acknowledge that in future, other issues may arise that involve dollar disclosure being unreasonably burdensome *within a specified period*. We propose to consider any such applications in accordance with our proposals in policy proposal paragraph C5.

Your feedback

We are currently considering whether we should make a class determination to address transitional issues.

In particular, ASIC asks:

1. industry participants for information about the types of difficulty they are facing in order to comply with the dollar disclosure obligations by 1 January 2005. We seek information on particular compliance problems (e.g. systems issues) that may exist for:
 - (a) classes of financial product or service; and
 - (b) kinds of disclosure document – that is, PDSs, SOAs or periodic statements in all their forms (e.g. including exit statements);
2. consumer representatives for information about why they consider it is not unreasonable to expect industry to comply with the dollar disclosure obligations by 1 January 2005; and
3. both industry participants and consumer representatives for comments on the suggested conditions to the possible class determination we are thinking about and whether any additional conditions should be imposed (e.g. to protect consumer interests).

Any comments that we receive will be taken into account when deciding on our final position regarding transitional issues.

Regulatory and financial impact

We have considered the likely regulatory and financial impact of the policy proposals in this paper. Based on the information that we currently have, we believe that our proposals strike an appropriate balance between facilitating financial services activity and investor protection. To ensure that we have achieved an appropriate balance, we are also developing a Regulatory and Financial Impact Statement (RIS). All RISs are submitted to the Office of Regulation Review.

The RIS will address the following seven key elements:

1 Issue(s) or problem(s)

This will identify and discuss the nature and magnitude of the issues and problems that we are seeking to address.

2 Objective(s) or analysis of the problem

The objective(s), or the outcome(s) sought, in relation to the identified issue(s)/ problem(s) will be addressed.

3 Options or solutions

This will identify all the alternative options that could achieve the objective(s) stated above for dealing with the issue(s)/ problem(s) being considered (e.g. no specific action; ASIC policy proposal; media release; information statement; self regulation/ quasi-regulation; codes of conduct; co-regulation; compliance and enforcement strategies).

4 Impact analysis (costs and benefits) of each option

Impact analysis will include:

- (a) analysis of the benefits and costs of each of the options, including any restriction on competition for different persons affected;
- (b) identification of persons or bodies affected by the problem(s), together with identification of those persons or bodies that will be affected by the proposed solutions or options identified (i.e. applicant/ proponent of issue; consumers; business; government; any other interested parties/ stakeholders);
- (c) a consideration of how each of the proposed options will affect the existing Act, regulations or policies; and

- (d) identification and categorisation of the expected impacts of each of the proposed options as likely benefits or likely costs against each of the people/ bodies identified as likely to be affected.

We will try to quantify these effects where possible.

Costs to businesses affected by a regulatory initiative might include: administrative costs; complying with new regulatory standards; licence fees; delays; etc..

Costs to consumers affected could also include higher prices for goods and services; reduced utility of goods and services; delays; more difficult or expensive options for seeking redress; etc..

- (e) benefits of each of the options will also be identified (even where they are not quantifiable); and
- (f) the data sources used and assumptions made in making these assessments will be identified.

5 Consultation

The consultation undertaken in the policy process will be detailed.

6 Conclusions and recommended option

The preferred option(s) will be given, together with reason(s) why.

7 Implementation and review

This will discuss how the proposed option will be administered, implemented, or enforced (e.g. instrument of relief; policy statement; practice note; no action letter; etc.).

Your feedback

In order for us to fully assess the financial and regulatory impact of our proposals, we invite you to consider possible options that would achieve our objectives, comment on the impact that these policy proposals might have, and, in particular, give consideration to the costs and benefits of these proposals. Where possible, we are seeking both quantitative and qualitative data.

Any comments that we receive will be taken into account when preparing our RIS.

Development of policy proposal

We have developed this policy proposal paper by considering:

- (a) the *Corporations Act 2001*, as amended by the *FSR Amendment Act 2003*;
- (b) the intention of the *FSR Amendment Act 2003*, as indicated in the Explanatory Memorandum to the Bill;
- (c) the *Corporations Regulations 2001*, as amended by the *Corporations Amendment Regulations 2004 (No 6)*;
- (d) the Parliamentary Joint Committee on Corporations and Financial Services' report in relation to the dollar disclosure regulations released for public consultation on 7 January 2004 (which were colloquially referred to as *Draft Regulations – Corporations Amendment Regulations 2004 (Batch 8)*) (released March 2004), and industry submissions in relation to that enquiry;
- (e) the Government's Package of Fee Disclosure Initiatives entitled *Disclosure of Fees and Charges for Superannuation and Managed Investment Products* (released 17 June 2004);
- (f) ASIC's report entitled *A model for fee disclosure in product disclosure statements for investment products* (released August 2003; revised June 2004);
- (g) ASIC's research report entitled *Disclosure of soft dollar benefits* (released June 2004);
- (h) other existing ASIC policies and practices relevant to the regulation of financial services activity; and
- (i) common law decisions relevant to the regulation of financial services activity.

Key terms

In this policy proposal, the following terms have the following meanings:

ASIC means Australian Securities and Investments Commission

authorised representative has the meaning set out in s761A

Corporations Act means the *Corporations Act 2001* and includes regulations made for the purposes of the Corporations Act

determination means a determination made by ASIC under powers provided by the Corporations Regulations (as amended by the *Corporations Amendment Regulations 2004 (No 6)*) permitting disclosure of various fees and benefits as percentages or descriptions, instead of in dollar terms.

Note: These are the determinations made under regulations 7.7.11–7.7.13B, 7.9.15B–7.9.15C, 7.9.19A–7.9.20B and 7.9.74A–7.9.75D.

disclosure documents means Statements of Advice, Product Disclosure Statements and periodic statements

disclosure item means a matter (such as a fee, benefit, interest or cost) that is covered by the dollar disclosure provisions and, therefore, must be disclosed as an amount in dollars, in the absence of a determination made by ASIC

dollar disclosure provisions means the provisions of the Corporations Act (as amended by the *Financial Services Reform Amendment Act 2003*) and the Corporations Regulations (as amended by the *Corporations Amendment Regulations 2004 (No 6)*), which require various fees and benefits to be stated as amounts in dollars in SOAs, PDSs and periodic statements, except in accordance with the regulations

Note: For a discussion of the specific dollar disclosure provisions, see paragraphs 10–20 of the section of this policy proposal paper entitled ‘What are the dollar disclosure provisions?’.

fees and benefits means fees and costs that a consumer will pay for a financial product or service, as well as benefits and interests that a consumer or their financial service provider may obtain. This may include commissions and, unless the context otherwise requires, all government charges

financial product has the meaning set out in s763A

financial service has the meaning set out in s766A

Financial Services Guide (FSG) means a document that must be given to a retail client in relation to the provision of a financial service in accordance with Division 2 of Part 7.7

FSR regime means the financial services reform regime, as implemented by the *Financial Services Reform Act 2001*

licensee means a person who holds an Australian financial services licence

Note: This is a definition contained in s761A.

Part 7.9 (for example) means a part of the Corporations Act (in this example numbered 7.9)

periodic statement means a document that must be given to a retail client in relation to the offer or issue of certain financial products in accordance with Division 3 of Part 7.9

Product Disclosure Statement (PDS) means a document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Division 2 of Part 7.9

providing entity means a licensee or an authorised representative

PS 168 (for example) means an ASIC policy statement (in this example numbered 168)

reg 7.7.10A (for example) means a regulation of the Corporations Regulations (in this example numbered 7.7.10A)

representative has the meaning set out in s910A

retail client means a client defined as such under s761G

s760A (for example) means a section of the Corporations Act (in this example numbered 760A)

Statement of Advice (SOA) means a document that must be given to a retail client in relation to the provision of personal advice in accordance with Subdivisions C and D of Division 3 of Part 7.7.

What will happen next?

Stage 1

10 August 2004

ASIC policy proposal paper released for public comment

Stage 2

7 September 2004

Comments due on the policy proposal paper

Stage 3

September 2004

ASIC announcement regarding transitional measures

September–October 2004

Drafting of final policy

October–November 2004

Final policy statement released

Your comments

We invite your comments on the proposals and issues for consideration in this paper, including the Explanation sections.

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of your submission as confidential.

Comments are due by Tuesday, 7 September 2004 and should be sent to:

Liz Roberts
Regulatory Policy Branch
Australian Securities & Investments Commission
GPO Box 9827
Sydney NSW 2001
Facsimile: 02 9911 2316
Email: policy.submissions@asic.gov.au

You can also contact the ASIC Infoline on 1300 300 630 for information and assistance.

Related papers

A model for fee disclosure in product disclosure statements for investment products, ASIC report, July 2003 (released August 2003; revised June 2004)

Policy Statement 167 *Licensing: Discretionary powers and transition* [PS 167]

Policy Statement 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* [PS 168]

Policy Statement 169 *Disclosure: Discretionary powers and transition* [PS 169]

Policy Statement 175 *Licensing: Financial product advisers – Conduct and disclosure* [PS 175]

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