



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 16

Disclosure: Product disclosure statements (and other disclosure obligations)

April 2001

Your comments

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

Comments are due by Thursday 7 June 2001 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 Under the *Financial Services Reform Bill 2001* (the Bill), issuers of financial products must give consumers full information about any product they are offering, through a Product Disclosure Statement (PDS). A PDS is one of several possible disclosures that consumers may need to be given before they decide to buy a product. We explain some of these disclosures in the flow chart and explanatory notes under “Background”.

2 This policy proposal paper focuses on:

- (a) our approach to the PDS provisions;
- (b) what guidance we will give issuers on preparing a PDS to comply with these provisions; and
- (c) our role in monitoring PDS and enforcing the PDS requirements.

3 However, in this paper, we also propose wider application of our guidance on the PDS provisions to other forms of disclosure to consumers under the Law (some of which are discussed in the flow chart).

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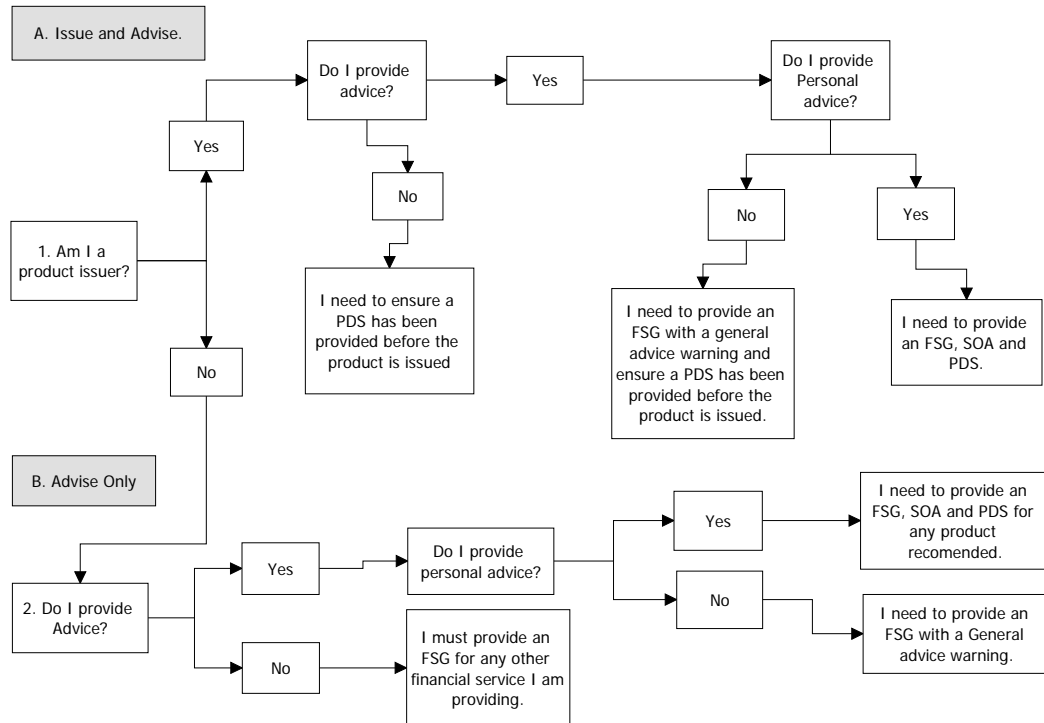
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Background: Documentary disclosure to be given to retail clients under FSRB



Important notes:

- 1 The information in this flow chart and in the following explanatory notes does not constitute legal advice. It provides general guidance to illustrate the disclosure process under the Bill. You need to seek your own legal advice to ascertain the disclosure obligations that apply to you.
- 2 An FSG (Financial Services Guide) and SOA (Statement of Advice) are to be provided by a licensee or an authorised representative: see 941A, 941B, 944A and 946A.
- 3 The information in an FSG, SOA and PDS must be up to date.
- 4 Further details on what constitutes “advice”, “general advice” and “personal advice” is contained in our FSRB Policy Proposal Paper No 1 *Licensing: The scope of the licensing regime: Financial product advice and dealing* (April 2001).

Brief description of documentary disclosure under the FSRB

Retail clients may receive a number of different documents providing disclosure. Each document has its own purpose and relates to a different stage of the investment process. A brief overview of the documents is set out below and in the previous flow chart.

This paper focuses on compliance with the PDS disclosure requirements. However, we discuss and ask questions about the application of the guidance provided to other disclosure such as FSG, SOA and advertising.

<p>WHAT SERVICE AM I GETTING?</p> <p>Disclosure is in a Financial Services Guide</p>	<p>WHAT ADVICE AM I GETTING?</p> <p>Disclosure is in a Statement of Advice if it is personal advice</p>	<p>WHAT PRODUCT AM I BUYING?</p> <p>Disclosure is in a Product Disclosure Statement</p>
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What service am I getting?

A **Financial Services Guide** (“FSG”) is to be prepared by the person who will provide a financial service. It is required to contain information so that consumers can make an informed decision about whether to acquire a financial service. An FSG includes information such as:

- (a) who will provide the service;
- (b) the kinds of financial services offered;
- (c) information about who the service provider is acting for when providing the financial service;
- (d) information about the means by which the service provider is remunerated for the services being offered to the retail client;
- (e) details about commissions; and
- (f) details about any associations or relationships which might be expected to influence a service provider in providing the service.

See 942B and 942C for further details.

Generally, an FSG must be given before providing the financial service: see 941D(1).

If “time critical” criteria are met, then the service provider may give certain information orally before providing the service without giving the full FSG: see 941D(2) and (3).

However, a full FSG must be provided within 5 days after being given the oral statement, or sooner if practicable: see 941D(4).

Certain offers of financial services do not require an FSG: see 941C. For example, an FSG need not be given if the client has already received an FSG that contains all relevant information to the client: see 941C(1).

If the service provided to a retail client is general advice then a licensee or authorised representative must warn a retail client that the advice is only general advice: see 949A for further details.

What advice am I getting?

A **Statement of Advice (“SOA”)** is to be prepared by the financial adviser who will provide personal advice. It must contain information about the personal advice so a retail client can make an informed decision about whether to act upon that advice. An SOA includes information such as:

- (a) a statement setting out the advice and an explanation of the basis upon which it was given, including a warning if the advice is based on incomplete or inaccurate information;
- (b) who has provided the advice;
- (c) any remuneration or other benefit that a service provider or an associate may receive in connection with the advice that could influence the service provider;
- (d) any other interests of the service provider or an associate that could influence the service provider; and
- (e) any associations or relationship between the service provider or an associate and product issuers that could influence the service provider.

See 947B and 947C for further details.

Generally, the SOA must, if given separately to personal advice, be provided to the client when, or as soon as practicable after, that advice is provided.

In any event, the SOA should be given before the adviser provides the client with any further financial service that arises out of or is connected with the advice: see 946C(1).

If an SOA is not given when the advice is provided, the service provider must inform the client orally of certain matters. These include information about potential conflicts of interest and information about significant consequences that may accrue from replacing an existing financial product if a change of product is recommended: see 946C(2).

If an SOA is not given and the client requires a further financial service, then the SOA must be given within 5 days after providing that further service, or sooner if practicable. If the further service is providing a financial product and a cooling-off period will apply then the SOA must be given before the start of the cooling off period under 1019B(3), or sooner if practicable: see 946C(3).

An SOA is not required if certain conditions are met and the advice is execution-related telephone advice or if it relates to basic deposit products: see 946B.

An SOA need not be given if the advice provided is only general advice. However, a warning should be given about the limitations of the advice in these circumstances: see 949A for further details.

What product am I buying?

A **Product Disclosure Statement (“PDS”)** is to be prepared by or on behalf of the issuer or seller of the financial product: see 1013A. A PDS is to contain sufficient information so that a retail client may make an informed decision about whether to purchase a financial product and to allow for comparison of financial products. A PDS includes information such as:

- (a) fees payable in respect of a financial product;
- (b) risks of a financial product;
- (c) benefits of a financial product; and
- (d) significant characteristics of a financial product.

See 1013C, 1013D and 1013E for further details.

Generally, a PDS should be given to a retail client before:

- (a) a recommendation is made to buy a financial product;*
- (b) an offer is made to issue or arrange the issue of a financial product; or*

(c) a seller makes an offer to sell the product if that sale requires disclosure.

See 1012A, 1012B and 1012C for further details.

For some superannuation products, the PDS may be given later if certain conditions are met: see 1012F. If “time critical” criteria are met, and the financial product is subject to a cooling off period or if the product is a basic deposit product, then the issuer may give certain information orally before providing the product without giving the full PDS: see 1012G. However, a full PDS must be provided not later than 5 days after the product is issued or sold or when the confirmation requirement under 1012G is complied with.

Certain offers of financial products do not require a PDS: see 1012D and 1012E for further details.

Policy proposals

We have three sets of policy proposals. For each of these proposed policies we have listed various aspects of those proposals that we are considering and have raised issues that we would like you to comment on. Where necessary we have also included some explanations of our proposals.

The Schedule lists some disclosure outcomes that product issuers might typically consider as part of their process for preparing a PDS in compliance with the Law. It also contains examples of how issuers might address some of these outcomes in their disclosure.

Special note: We want to provide you with guidance about our plans for policy and processes as soon as we can to help you plan effectively. While we have done our best to cover the main issues, you will need to make your own preparation plans. It is possible we have missed some issues or have not taken into account the way the new legislation will affect specific industry situations. *We are keen to hear from you on our general approach, and what might be missing from it, as well as well as your answers to specific questions.*

A Our approach to the PDS provisions

Policy proposal	Your feedback
<p>What are the objectives of the PDS provisions?</p> <p>A1 We consider that the two primary goals of the PDS requirements are to:</p> <ul style="list-style-type: none"> (a) help consumers make better decisions; and (b) make it easier for consumers to compare financial products. <p>Our proposed guidance is based on achieving these objectives.</p> <p>Helping consumers make better decisions</p> <p>A2 We expect issuers to focus on the information needs of consumers in preparing a PDS. Issuers should make sure that the information they provide both:</p> <ul style="list-style-type: none"> (a) meets the technical requirements of the Bill; and (b) focuses on the quality of disclosure to consumers, for example in terms of structure, length and readability. <p>Making it easier for consumers to compare financial products</p> <p>A3 We expect issuers to prepare PDS so that consumers can compare financial products. This might be achieved if disclosure by issuers complies with standard industry practices or industry standards or Codes.</p> <p>A4 We will work with industry and consumer groups to encourage standards of disclosure that will make it easier for consumers to</p>	

Policy proposal	Your feedback
<p>compare information between PDS.</p> <p>Product differences</p> <p>A5 When issuing any guidance on the PDS provisions, we will aim to adopt a standard approach for different kinds of financial products. However, if product type differences mean that further guidance is necessary so that consumers can make an informed decision, we will take into account those differences in providing guidance.</p> <p>Using industry standards and Codes to achieve PDS objectives</p> <p>A6 ASIC will work with industry and consumer groups to develop industry standards and Codes as a means of setting best practice for disclosure and achieving the PDS objectives. In the absence of standards or Codes, and where necessary, ASIC will consider other options to clarify the PDS requirements.</p> <p>Note: See also our FSRB policy proposal paper on <i>Approval of Codes</i> planned for issue in May 2001 that deals with what we consider to be a Code and our criteria for approving a Code.</p>	<p>A5Q1 What kinds of products require further or specific guidance? Why?</p> <p>A6Q1 What measures might or should be taken by industry, consumer groups and ASIC to maximise the quality of information in a PDS? Please briefly explain your view.</p> <p>A6Q2 What aspects of PDS disclosure could usefully be supported by industry standards or Codes to maximise the quality of information in a PDS (including the comparability of information)? Please briefly explain your view and the timing for the development of any proposed Codes.</p>

Explanation

What are the objectives of the PDS provisions?

1 Paragraph 14.28 of the Explanatory Memorandum to the Bill states (in part):

“the broad objective of point of sale obligations is to provide consumers with sufficient information to make informed decisions in relation to the acquisition of financial products, including the ability to compare a range of products.”

Helping consumers make better decisions

2 The importance of the quality of disclosure is recognised in the Explanatory Memorandum above. More importantly, the focus on quality of disclosure is evidenced by the requirement that “The information included in the Product Disclosure Statement must be worded and presented in a clear, concise and effective manner”: see 1013C(3) of the Bill.

Making it easier for consumers to compare financial products

3 We believe that the PDS regime can apply flexibly to a range of products. The Explanatory Memorandum notes, however, that where “fleshing out” is required, this could be done through ASIC policy or regulations or an industry code of conduct: see paragraph 14.82 (the last bullet point). We will accommodate product type differences if doing so will help consumers make an informed purchasing decision.

4 Further or specific guidance for a particular type of financial product may be required if there is:

- (a) a distinctly different legislative context for a product; or
- (b) any distinctly different key product characteristics or features.

Using industry standards and Codes to achieve PDS objectives

5 We believe Codes have a useful role to play in:

- (a) dealing with issues not covered in legislation (this is the most useful role);

- (b) clarifying what needs to be done to comply with legislation; and
- (c) building upon the protections provided by legislation.

Codes (and even industry standards) should meet certain minimum requirements in terms of broad industry coverage and support, content, transparency, accountability and enforceability if they are to benefit consumers.

6 Any Codes or industry standards should not create a regime that is inconsistent with the obligations of issuers under the Law.

7 Codes or industry standards will not be suitable to clarify or expand upon the PDS regime in all circumstances. Where they are not suitable, regulations or policy guidance may be required.

8 We plan to release a policy proposal paper on *Approval of Codes* for comment in May 2001 that deals with what we consider to be a Code and our criteria for approving a Code.

B Preparing a PDS

Policy proposal	Your feedback
<p>PDS preparation – Issuer’s responsibility</p> <p>B1 Issuers are responsible for making sure a PDS meets the requirements and objectives of the Law. We will provide general guidance, along with examples of particular disclosure outcomes, but we cannot seek to provide universal and complete guidance on complying with the PDS requirements. ASIC will only pre vet individual PDS in exceptional circumstances.</p> <p>Developing a process</p> <p>B2 We encourage issuers to develop a structured and systematic process for preparing a PDS. In this process, issuers should:</p> <ul style="list-style-type: none"> (a) take into account the PDS objectives: see Section A of this paper; (b) consider their obligations under the PDS requirements as set out in the Law; (c) consider their obligations under any relevant regulations; and (d) decide how they will meet the obligations and intended purpose of the PDS requirements (taking into account the size of the offer and the needs of consumers for that offer). <p>B3 We believe such a process can help issuers improve their disclosure to consumers. The process may also minimise the risks of non compliance with the Law or the need to issue a supplementary PDS.</p>	<p>B2Q1 Should issuers address any other matters in preparing a PDS? If so, what are they and why? If issuers do not follow a systematic process, how else could they satisfy the legislation’s objectives? Please briefly explain your view.</p>

Policy proposal	Your feedback
<p>Following good principles</p> <p>B4 We believe that the following point of sale disclosure principles will help issuers meet the objectives of the PDS provisions:</p> <ul style="list-style-type: none"> (a) disclosure must be timely; (b) disclosure must be relevant and complete; (c) disclosure must be clear, concise and effective; (d) important information should catch the consumer’s attention; (e) where possible the PDS should be based on a format that has been consumer tested; (f) where possible the PDS should contain information which has been personalised for the consumer; and (g) disclosure should make it easier for consumers to compare financial products. <p>B5 Issuers should consider these principles in the process of preparing a PDS.</p> <p>B6 In many cases, we consider compliance with the principles in policy proposal paragraph B4 may also help issuers avoid breaches of the misleading and deceptive prohibitions in the Law: see Section C of this paper.</p> <p>B7 We believe these principles may also be relevant to other kinds of disclosure to consumers (eg in advertising, Financial Services Guides and Statements of Advice).</p>	<p>B4Q1 Are there any additional principles that should be considered? If so, what are they and why should they be considered?</p> <p>B4Q2 Why should the good principles not apply to other disclosure requirements, eg to advertising, Financial Services Guides and Statements of Advice? Please indicate any practical difficulties that may apply and what are reasonable limits to any such expanded application?</p>
<p>Examples of disclosure issues and guidance</p> <p>B8 In the Schedule for this paper, we describe some typical outcomes if issuers were to</p>	<p>Note: We invite your feedback on these disclosure</p>

Policy proposal	Your feedback
<p>follow our guidelines and principles for preparing a PDS.</p> <p>B9 We also include examples of PDS disclosure that reflect some of these outcomes. We encourage issuers to consider these disclosure outcomes and examples when preparing their PDS.</p>	<p>outcomes and examples with specific questions in the Schedule.</p> <p>B9Q1 Why should these typical disclosure outcomes and examples not apply to other disclosure to consumers, eg in advertising, Financial Services Guides and Statements of Advice? Please indicate any practical difficulties that may apply and what are reasonable limits to any such expanded application?</p>
<p><i>What guidance do we provide in the examples in the Schedule?</i></p> <p>B10 At present, we only plan to issue guidance in the Schedule on these PDS requirements:</p> <ul style="list-style-type: none"> (a) the significant benefits of the product: see 1013D(1)(b); (b) the significant risks associated with the product: see 1013D(1)(c); (c) the cost of the product and any relevant commissions or fees associated with the product: see 1013D(1)(d) and (e); and (d) the significant characteristics or features of the product: see 1013D(1)(f). 	<p>B10Q1 Are there any other PDS disclosure requirements that we should issue guidance on? Why?</p>
<p>Is disclosure in existing documents sufficient for a PDS?</p> <p>B11 Current offer documents meeting disclosure requirements under the old Law will not necessarily meet the PDS disclosure requirements (once they apply).</p>	<p>B11Q1 Will any type of current point of sale disclosure document substantially meet the requirements of</p>

Policy proposal	Your feedback
<p>requirements (once they apply).</p> <p>B12 Issuers should therefore review the way they prepare their offer documents and the content of their offer documents, to ensure that when they issue these documents as PDS, they comply with the objectives and content requirements of the Law.</p>	<p>Part 7.9 and the PDS objectives without amendment? If so, what kind of document and how does it satisfy all the PDS objectives and requirements?</p>

Explanation

PDS preparation – Issuer’s responsibility

1 What issuers must disclose will depend upon the product being offered and the issuer’s circumstances. It would not be possible nor appropriate for ASIC to prescribe the exact content of a PDS. We have therefore focused on providing guidance on what we consider is most relevant to all financial products at this time. We have also outlined typical disclosure outcomes and examples of disclosure to help issuers in preparing a PDS.

Developing a process

2 There are a number of advantages in establishing and promoting a structured process for preparing a PDS:

- (a) from a consumer perspective, a structured preparation process is likely to improve the quality of disclosure and to assist in achieving the objectives of the Law;
- (b) a properly administered process may assist issuers in satisfying any relevant duties that may apply, eg the duties of a responsible entity of a registered scheme under the managed investment provisions or the duties of a superannuation trustee;
- (c) financial services licensees need to comply with their licensee obligations. This includes obligations for offering financial products. A structured process for preparing a PDS will help issuers meet these obligations; and
- (d) ASIC may take enforcement action if the PDS requirements are not met, eg if the PDS is misleading or deceptive or contains an omission of relevant information known to a person specified in 1013C(2). A structured process can minimise this possibility.

3 Under the PDS provisions of the Law, issuers must keep a PDS up to date. Issuers should regularly review their PDS to make sure the information in it is current. An out of date PDS may give consumers a right to a refund under 1016E.

Following good principles

4 We believe issuers should address a number of principles that underpin the PDS objectives when preparing a PDS to meet those objectives. These principles may also help issuers identify issues that might otherwise lead to a PDS being misleading or deceptive.

5 We think these principles can be more generally applied to other forms of disclosure to consumers such as advertising or the financial services disclosure requirements (eg in a Financial Services Guide or a Statement of Advice).

Disclosure must be timely

6 Timely disclosure means including the information that a consumer needs in a way they can easily and quickly understand and providing that information at an early stage in their decision making process. It ensures consumers have the information they need at a time when it may influence their decision.

Disclosure must be relevant and complete

7 Information must be relevant and useful to a consumer’s needs, and complete. This means:

- (a) issuers should decide what is the most important information for consumers to receive and highlight this information. For example, a consumer will want to find and understand information on the cost of a financial product and the risks and benefits associated with the financial product.
- (b) all aspects of relevant information should be presented together or effectively cross-referenced; and
- (c) if disclosure is contained in more than one document, the information that makes up the PDS must be clearly identified and linked.

8 Disclosure that is not complete may constitute misleading or deceptive conduct or breach the content requirements of Part 7.9 of the Law.

Disclosure must be clear, concise and effective

9 Information must be presented in clear and simple language that consumers can easily understand. This means avoiding industry and legal jargon or, if it can’t be avoided, carefully explaining its meaning. It also means using plain language and, if necessary, providing examples.

10 Even if information is presented in clear language, if what is being described is particularly complex, that very complexity may create a barrier to consumers understanding the information presented.

11 For example, issuers who are offering multiple financial products in a single PDS need to pay particular attention to this principle so that consumers are not misled or confused by any material in the PDS.

12 In some extreme instances, issuers may need to consider simplifying the item or system being described as well as how information about it is disclosed. For example, some fee arrangements may be so complex that they are difficult to describe in a manner that is clear, concise and effective.

13 Where you are disclosing amounts to be paid, either in fees or returns to investors, use dollar amounts in an example rather than just percentages to demonstrate how the amount is calculated.

14 If you plan to include material that is not relevant to the offer, eg advertising, keep in mind the requirement that information in the PDS should be “worded and presented in a clear, concise and effective manner”.

15 We do not propose to prescribe in detail the precise manner in which advertising and other material not mandated by the PDS requirements should be dealt with when included in a PDS.

16 However, including material not strictly relevant to the offer (such as advertising) carries a number of consumer protection risks that ASIC will monitor. These risks may arise because of the nature or content of the material or its position in a PDS. The risks include:

- (a) the consumer may not read, or may disregard or not understand the importance of other information in the PDS; and
- (b) the consumer might otherwise be misled or deceived.

17 To ensure clear, concise and effective disclosure, material that is not mandated by the PDS requirements should be:

- (a) clearly distinguishable from the mandatory information; and
- (b) not more prominent than mandatory information.

18 If products are generally *not* understood by consumers, for example because they are new or complex, a greater level of disclosure may be required: see 1013F.

Important information should catch the consumer's attention

19 Sometimes all relevant information may be provided but consumers may miss important points because of the way it is presented.

20 Issues such as the size of typeface, layout, the use of colour, the use of graphics, the order in which information is presented and the location and boldness of information are all relevant to whether or not a consumer's attention is likely to be drawn to the information they most need.

21 Where a PDS is made up of several documents, consumers must know where to find the information most relevant to their decision and how it is linked to relevant information in other documents.

22 Both benefits **and** risks should have appropriate prominence in the PDS.

Consumer testing

23 Where possible, the PDS should be based on a format that has been consumer tested. Consumer testing may identify areas of the PDS that are potentially misleading and deceptive, or additional information that consumers need. In some cases, issuers should do consumer testing on the actual PDS.

Personalised information

24 Where possible, the PDS should contain information that has been personalised for the consumer. This principle is more likely to be relevant where a PDS is prepared for a particular individual rather than a larger group. An insurance policy or an interactive PDS are examples where personalised information could be included.

Encouraging comparison

25 Consistent with the PDS objectives, a PDS should be drafted in a way that makes it easier for consumers to compare the issuer's financial product with other financial products. For example, issuers could use industry standards and practices designed to harmonise approaches to certain key items of disclosure. If issuers fail to follow industry practices that consumers would expect them to follow, they may mislead consumers.

26 Issuers should make sure that the basis for any comparison with a financial product of a competitor is not misleading and deceptive.

Failure to meet good disclosure principles may indicate a deficient PDS

27 In many instances, failure to meet these principles would constitute misleading and deceptive conduct, be unconscionable, or indicate that the PDS requirements have not been met. In these circumstances, ASIC will take appropriate remedial action (such as a stop order) to ensure that consumers' interests are protected.

Examples of disclosure issues and guidance

28 We will give guidance on the PDS provisions to help achieve their objectives. In providing guidance, ASIC will consider the purpose or object underlying the Law: see s109H.

29 When deciding whether to issue guidance on PDS content, we will take into account:

- (a) our own regulatory experience;
- (b) past and current point of sale disclosure practices;
- (c) relevant overseas regulatory analogies; and
- (d) the results of relevant Australian and overseas research (including the results of any relevant consumer research or user testing).

30 We will monitor the need to remove, revise or add any guidance. The disclosure issues and examples contained in the Schedule may need to be reviewed to take into account any regulations expanding on or elaborating on the PDS requirements for any one or more financial products, eg superannuation, as described in paragraph 14.6 of the Explanatory Memorandum to the Bill. We may also provide further guidance for financial products not previously subject to similar disclosure obligations in light of our experience in regulating those products under the Law.

What guidance should we provide in the examples in the Schedule?

31 We intend, initially, to provide guidance only on disclosure of risks, benefits, fees and characteristics because:

- (a) our research has shown these matters to be of greatest concern to consumers; and
- (b) our experience as a regulator has highlighted the particular importance of adequate disclosure in these areas.

32 The examples may not be suitable for all circumstances. In relation to the matters discussed in the examples (and all the other disclosure requirements in the PDS provisions) issuers remain responsible for choosing how they disclose in accordance with the Law.

Is disclosure in existing documents sufficient for a PDS?

33 Issuers may be permitted to continue to use existing disclosure documents for a period under the transitional provisions of the Bill. However, when they come to issue these documents as a PDS, they must review the content and format of the disclosure made under the old Law in light of the new provisions in the Law and the PDS objectives: see Section A of this paper.

C Monitoring PDS and enforcing the PDS requirements

Policy proposal	Your feedback
<p>What we will look at</p> <p>C1 We will conduct selective compliance reviews of PDS.</p> <p>C2 We may review certain PDS:</p> <ul style="list-style-type: none"> (a) that we categorise as open to compliance risk; (b) if we receive credible information from external sources about a PDS that warrants undertaking a review; or (c) at random. <p>C3 We may also look at disclosure in various PDS for a particular class of financial products, to see whether the objectives discussed in Section A of this paper are generally being met by those documents.</p> <p>Our approach to enforcement</p> <p>C4 Where we detect or are made aware of valid <i>prima facie</i> disclosure concerns about a PDS, we may notify the issuer of our concerns before serving an interim stop order.</p> <p>C5 However, if delay could be prejudicial to the public interest, we will impose an interim stop order without consulting the issuer pending resolution of our concerns at a hearing.</p> <p>C6 In deciding whether to take enforcement action on a particular PDS, we will consider whether the PDS appears to:</p> <ul style="list-style-type: none"> (a) be misleading or deceptive; 	<p>C6Q1 Are there any other matters ASIC should consider? If so, what are they and why?</p>

Policy proposal	Your feedback
<p>(b) contain all relevant information; and</p> <p>(c) meet the other general and specific content requirements of Part 7.9, eg based on our good point of sale disclosure principles.</p> <p>In making our assessment, we will also take into account:</p> <p>(d) any changes that have occurred since the date of the PDS that could make it deficient;</p> <p>(e) the circumstances surrounding the preparation of the PDS, including any processes followed; and</p> <p>(f) the circumstances in which the PDS was given to the consumer.</p>	
<p>Misleading and deceptive conduct</p>	
<p>C7 We believe that adhering to the good disclosure principles outlined in Section B of this paper will minimise instances of misleading and deceptive conduct and help issuers meet their product disclosure obligations.</p>	<p>C7Q1 Why would these disclosure principles not help minimise instances of misleading and deceptive conduct in other disclosure to consumers, eg advertising, Financial Services Guides and Statements of Advice? Please briefly explain your view.</p>
<p>C8 When assessing whether a PDS appears to be misleading or deceptive, we will pay particular attention to:</p> <p>(a) statements about future matters such as forecasts (they should have a reasonable basis);</p> <p>(b) statements of opinion (they should be formed honestly and reasonably);</p>	<p>C8Q1 Are there any other type of statements ASIC should pay particular attention to in assessing whether a PDS is misleading and deceptive? If so, what are they and why?</p> <p>C8Q2 Why should ASIC not take these aspects of</p>

Policy proposal

- (c) the likely overall impression of a PDS;
- (d) the use of disclaimers;
- (e) ambiguous statements; and
- (f) whether statements draw inaccurate, unfair or inappropriate comparisons.

Your feedback

disclosure into account when assessing whether other disclosure to consumers, eg advertising, Financial Services Guides and Statements of Advice, appear to be misleading or deceptive? Please briefly explain your view.

Explanation

Our approach to enforcement

1 Our approach to issuing stop orders during the exposure period under Chapter 6D of the Law is set out in Policy Statement 152 *Lodgment of disclosure documents* [PS 152] at [PS 152.49]. Under the PDS regime, there is no such period during which applications from the public may not be processed. We may therefore need to act more quickly in issuing an interim stop order to protect consumers.

2 While a PDS has no expiry date, issuers must keep a PDS up to date. We may take enforcement action if changes in circumstances mean that the PDS is misleading or not complete.

Misleading and deceptive conduct

3 A statement about any future matter is misleading if the maker does not have reasonable grounds for making it. For example, financial projections are based on hypothetical assumptions and therefore reasonable grounds for the projection may not always exist: see Information release [IR 01/05] and Media release [MR 01/112].

4 Statements of opinion that amount to a representation may be misleading and deceptive. For example:

- (a) an opinion may be a statement about a future matter and therefore must have reasonable grounds;
- (b) an opinion may convey that there is a basis for the statement, that it is honestly held, and when expressed as the opinion of an expert that it is honestly held upon rational grounds involving the application of the relevant expertise. If this is not the case, the expression of opinion may be regarded as misleading and deceptive: see *Bateman v Slayter* (1987) ATPR40-762;
- (c) a statement of opinion involving a state of mind may convey the meaning (expressly or by implication) that the maker had the particular state of mind when the statement was made, and, commonly, that there was a basis for the state of mind. If this is not so such a statement may constitute misleading or deceptive conduct: see *Stanton v ANZ Banking Group* (1987) ATPR 40-755.

5 In assessing the overall impression of a PDS, we will:

- (a) identify the relevant section of the public to whom the offer was made; and

(b) consider the range of people within that section.

The PDS should be intelligible to reasonable members of the class to whom it is directed: see *Fraser v NRMA Holdings Ltd (1995) 15 ASCR 590*.

6 Disclaimers about statements may not be effective if they do not clearly counterbalance the effect of a misrepresentation clearly made. The disclaimer should generally be seen and understood by those who would otherwise be misled: see *Lezam Pty Ltd v Seabridge Australia Pty Ltd 1992 35 FCR 535*.

7 Ambiguity may constitute misleading or deceptive conduct if one or more of the reasonably possible meanings is misleading or deceptive.

8 The comparison of a product to a benchmark or a competitor should be done in a careful manner. For example, comparison of a financial product against a benchmark assuming that returns are re-invested may be misleading if, in fact, it is not possible to re-invest returns.

9 Consumer testing documents may help issuers identify whether people are or are not actually misled by a document (although it is not necessary to prove that someone has been actually misled to establish misleading and deceptive conduct).

Applying the principles to other disclosure obligations

10 We consider that the aspects of misleading conduct we will look at in a PDS are also more generally applicable to other forms of disclosure to consumers. Advertising or financial services disclosure requirements (such as in a Financial Services Guide or a Statement of Advice) are examples where these aspects could be applied more generally.

Schedule: PDS content – outcomes and examples

Important notes about this Schedule

This Schedule lists some disclosure outcomes that issuers might typically consider as part of their process for preparing a PDS in compliance with the Law. We also give examples of how issuers might address some of these outcomes in their disclosure.

This Schedule only provides guidance on the content of a PDS for these PDS disclosure requirements:

- (a) the significant benefits of the product: see 1013D(1)(b);
- (b) the significant risks associated with the product: see 1013D(1)(c);
- (c) the cost of the product and any relevant commissions or fees associated with the product: see 1013D(1)(d) and (e); and
- (d) the significant characteristics or features of the product: see 1013D(1)(f).

We do not suggest that the matters in the Schedule are relevant to all PDS nor that they are exhaustive. Compliance with the Law is best achieved by reviewing disclosure along the lines set out in our policy proposal. The Schedule will, however, give you guidance on our current thinking on these issues, and what we will look for in assessing the adequacy of a PDS.

The disclosure issues and examples in the Schedule may need to be reviewed to take into account any regulations expanding on or elaborating on the PDS requirements for any one or more financial products, eg superannuation. We may also review our examples periodically in light of our experience in administering the Law.

This Schedule has six parts:

Part A sets out disclosure outcomes that may be relevant to all financial products;

Part B sets out disclosure outcomes that may be relevant to risk based (insurance) products;

Part C sets out disclosure outcomes that may be relevant to superannuation products;

Part D sets out disclosure outcomes that may be relevant to derivatives;

Part E sets out disclosure outcomes that may be relevant to products with an investment component; and

Part F sets out disclosure examples.

Where a product has the characteristics of a number of different types of financial products, eg life products offered through a superannuation fund, issuers should consider the suggested outcomes of each part that may be relevant.

“Consumer” in this Schedule means reasonable members of the class of consumers who will receive the PDS. The outcomes should be considered in light of the whole range of people in that class, eg the astute and the gullible, the intelligent and the not so intelligent, and the well educated and poorly educated.

Questions

S1 Are there any other outcomes that should be listed in Parts A–E of this Schedule? Please briefly explain them and why they should be included.

S2 As asked in question B4Q1 in Section B of the policy proposals, why should the typical disclosure outcomes and examples not equally apply to other product promotional material or, where applicable, other disclosure requirements, eg the requirement to prepare and issue a Financial Services Guide and a Statement of Advice? Please indicate any practical difficulties you see in their application and what are reasonable limitations to any such expanded application? *[Please disregard this question if you have already answered it in Section B.]*

Part A: Disclosure issues for financial products generally

This part provides outcomes that may be relevant to all types of financial products.

1 Fees disclosure

Narrative description of fees

You should consider the description/ statement (including any relevant numbers and illustrative tables and graphs) of particular fee types.

Disclosure approach	Outcome sought
Itemised fees	<p>Are fees itemised and set out on a standardised basis so that consumers can understand and compare them?</p> <p>Are the terms used in any itemisation of fees clear to consumers?</p> <p>Are consumers able to easily understand the fee structure and identify the variables that affect fees charged so they might modify their behaviour to reduce fees (if applicable)? In particular, if a financial product offers a range of choices, do consumers understand the difference in fees relating to those choices? Where a consumer has an option to pay fees in two different ways, is there a comparison showing the relative charges made after various durations?</p> <p>Are fees itemised to show to whom they are paid and what they are for?</p> <p>If fees are within a certain range is the range stated?</p> <p>Do consumers understand if fees are negotiable in certain circumstances?</p>
Use of tables	<p>Is your communication clear?</p> <p>Have you used a range of communication tools (such as definitions, tables and graphs) to maximise consumer understanding of information?</p>
Percentages and/or amounts	<p>Where reasonably achievable are consumers informed of fees in dollar terms?</p> <p>If not reasonably achievable are consumers informed of fees by use of a percentage or at least in a way that allows calculation of the fees?</p>
Standardised terms and rules	<p>Are consumers informed of fees in a way that is standardised and consistent with industry standards and/or practice?</p>
Maximum charge disclosure	<p>Are consumers informed of the maximum fees that may be charged?</p>

Disclosure approach	Outcome sought
How fees and expenses may be changed	Are consumers informed of how fees may be changed in the future and what period of notice they will receive before there is any such change in fees? Is the period of notice consistent with 1017B?
In the one place or cross-referenced	Is your description of fees set out in the one place? If not, will consumers be able to clearly work out where all information on fees can be found?

Questions

SA1 Are there any standardised methods of ascertaining fees that should be recognised now (eg "management expense ratio" or "ongoing management charge")? What are they? Why should they be recognised?

SA2 For investment products, is there any reason why fees should not be disclosed both net and gross of tax where tax is charged at a product level? Please briefly explain your answer.

Use of warnings

You should consider the use of prominent "warnings" to highlight an aspect of fees disclosure that might not otherwise always be understood by the less experienced consumer.

Disclosure approach	Outcome sought
Reference to other materials	Are consumers clearly warned that more particular fees information can be obtained in other documents and/or from someone else?
Highlighting comparative information	Do consumers know what particular parts of fees information is designed to assist comparison of products?
Illustration only warning	Are consumers warned that any illustration demonstrating the effect of fees, is not a forecast of the end benefit payable?

Adviser remuneration

You should consider disclosure of any remuneration paid by consumers or (if applicable) out of the fund directly or indirectly to an adviser.

Disclosure approach	Outcome sought
Narrative description of the fact	Is there a description/statement (including any relevant numbers and illustrative tables and graphs) of each particular fee, expense and commission type (whether direct or indirect) paid to an adviser by the consumer? This includes amounts paid out of a fund.

Disclosure approach	Outcome sought
See adviser for details	Does the offer document refer to the fact of payments to an adviser and indicate that a consumer can also receive relevant information about such payments from the adviser (eg. in an financial services guide or a statement of advice)?
Adviser interest	If someone other than the consumer (including someone other than the issuer) pays an adviser in respect of their recommendation is that fact disclosed?

2 Benefits, risks and significant characteristics/features

Narrative description

You should consider use of a description or statement to explain these features.

Disclosure approach	Outcome sought
Description of benefits	Are the benefits (both generally and specifically) of acquiring the particular product explained adequately to consumers?
Description of risks	Have general and specific risks in relation to acquiring the particular product been identified and brought to consumer's attention?
Eligibility and disqualification circumstances	Have you included a description of the circumstances (if any) in which a consumer may be eligible for a particular kind of benefit(s) and when a consumer may become disqualified for a particular kind of benefit(s)?
Consumers required to "pay" more	Have you described the circumstances (if any) in which a consumer may be required to pay more in respect of the financial product other than by way of contributions (for example in the case of insolvency of the issuer or product)?
Early surrender or sale of product	Do consumers understand that early termination or sale of the product may lead to financial loss? Have potential losses been quantified and explained clearly?
Ongoing services relating to product	Do consumers know who is going to provide any ongoing services relating to the product and how to contact them?
Compliance with Codes or standards	Do consumers understand any rights they may have under any Code or standard that the issuer must comply with?

Use of warnings

You should consider the use of prominent “warnings” to highlight an aspect of disclosure that might not otherwise always be understood by the less experienced consumer.

Disclosure approach	Outcome sought
Comparative information	Does the PDS inform consumers that particular parts of the risk information are designed to assist comparison of products (eg: volatility aspects, comparison with indices)?

Use of product descriptors

You should consider an approach that only allows the use certain phrases to describe a kind of product with relevant “warnings” and/or narrative descriptions.

Disclosure approach	Outcome sought
Restricted use of “guarantee”	<p>Could consumers be misled if the product was described as “guaranteed”?</p> <p>Where a product is described as “guaranteed”, is a description of the nature of the guarantee included?</p> <p>Which entity provides the guarantee?</p> <p>What is the probability of the guarantee not being met?</p>
Use of title that describes the type of product	<p>Could consumers be misled if a title is used to describe the nature of the underlying investments of the product?</p> <p>Does the title accurately represent the overwhelmingly greater part of the underlying investments of the product?</p>

Suitability of the product

You should consider the use of a description to indicate that a product may suit or not suit a type of consumer.

Disclosure approach	Outcome sought
Aimed for consumer type	Does the PDS describe a particular product as being “suitable” for a specified type of consumer?
Description of consumer type	Does the PDS include a description of the characteristics or the consumer type used to describe the “suitability” of the product?
Not suited to some	Does the PDS include a description that a particular product is not suited to certain kinds of consumers?

Part B: Disclosure issues for risk based (insurance) products

This part provides outcomes that are relevant to risk insurance products (as defined in s764A(1)(d) and 764A(1)(e) of the Bill) and investment life insurance products (as defined in s764A(1)(f) of the Bill).

You should also look at Part A of this Schedule. For investment life insurance products, see Parts A and E.

1 Fees disclosure

Use of historical illustration

You should consider the use of an illustration to demonstrate the effect of fees on the actual returns of an investment based risk product.

Disclosure approach	Outcome sought
Effect on termination	Are consumers aware of the effect of fees on the value of a termination interest in a product? This may be particularly relevant for risk related products with an investment component where there is a higher proportion of product fees paid earlier on during the life of the product.

2 Benefits, risks and significant characteristics/features

Narrative description

You should consider use of a description or statement with regard to the following features.

Disclosure approach	Outcome sought
Description of benefits	Are consumers aware of what is not provided as a benefit (where relevant) such as exclusions in the case of risk insurance?
What level of risk cover is appropriate?	Have you adequately discussed how a consumer should determine what amount of insurance cover might be appropriate for them?
Eligibility and disqualification circumstances	Have you included a description informing an insured that they have a duty of disclosure and the consequences of any non-disclosure?

Use of surrender value illustration

You should consider the use of an illustration of likely surrender value associated with a risk product with surrender values.

Disclosure approach	Outcome sought
Use of table	Have you included a table to illustrate the surrender value of a risk product where an investor chooses to surrender their “investment” at various points in time? (Designed to highlight the “effect” of making such an investment decision, for example showing that the investor may get less than the amount invested in the “early years”). This is particularly relevant for risk related products with an investment component where there is a higher proportion of product fees paid earlier on during the life of the product.

Questions

SB1 Where a surrender value illustration is used, who should set the illustration rate of return and on what basis? For example, should a relevant industry association recommend an actuarially based illustration rate of return on behalf of industry? Please briefly explain your answer.

Part C: Disclosure issues for superannuation products

This part provides outcomes that are relevant to superannuation products (as defined in s764A(1)(g) of the Bill) and RSA products (as defined in s764A(1)(h) of the Bill).

You should also look at Parts A and E of this Schedule. If you are offering risk based (insurance) products, see Part B.

1 Benefits, risks and significant characteristics/features

Narrative description

You should consider use of a description or statement with regard to these features.

Disclosure approach	Outcome sought
Description of rules that govern investment	Are consumers aware of any significant rules or conditions governing their investment such as contribution rules, preservation rules; default investment strategies or member benefit protection rules?
Unclaimed or "lost" benefits	Are consumers aware of the relevant procedures relating to unclaimed or "lost" superannuation benefits?
Nomination of beneficiaries	If it is possible to nominate a beneficiary for payment of death benefits, is this adequately explained to consumers so they know how this nomination should be made and when this nomination must be made to be effective?
Reserving policy	If the fund uses a reserving policy, is this adequately explained to consumers so they know what it means and how it is applied in practice?

Part D: Disclosure issues for derivatives products

This part provides outcomes that are relevant to derivatives (as defined in s761D of the Bill). You should also look at Parts A and E of this Schedule.

1 Benefits, risks and significant characteristics/features

Narrative description

You should consider use of a description or statement with regard to these features.

Disclosure approach	Outcome sought
Description of nature of derivatives contracts	Are consumers clearly aware of the nature of derivatives contracts and how they may be acquired for either or both speculative or hedging purposes?
Relationship with broker	Are consumers aware of the obligations they assume when they instruct a broker to enter into a derivatives contract?
Margining requirements	Have consumers been provided with a statement of risks about margins (see Form 804 under the old Law)?

Part E: Disclosure issues that may typically apply to investment products

This part provides outcomes that may be relevant to:

- (a) interests in a registered scheme (see s764A(1)(b) of the Bill);*
- (b) investment life insurance products (as defined in s764A(1)(f) of the Bill);*
- (c) superannuation products (as defined in s764A(1)(g) of the Bill) and RSA products (as defined in s764A(1)(h) of the Bill);*
- (d) derivatives (as defined in s761D of the Bill); and*
- (e) deposit taking facilities discussed in s764A(1)(i) of the Bill.*

You should also look at Part A of this Schedule.

1 Fees disclosure

Use of historical illustration

You should consider the use of an illustration to demonstrate the effect of fees on the actual returns of an investment.

Disclosure approach	Outcome sought
Effect on returns	Is there a table or other relevant communication tool for consumers to use that outlines actual cost and commission amounts (in dollars) based on an investment in the product in the past (for example over the last 1, 3, 5 and 10 years)?
Use of assumptions	<p>Do you provide consumers with an historical illustration? If so, do you set out the assumptions for the purposes of the illustration?</p> <p>Where possible, do the illustrations assume facts to allow standardised comparisons?</p> <p>Have you considered whether it is possible and appropriate to include the effect of fees that include taxes, stamp duties and other transactional costs?</p>

Question

SE1 Who should set standard assumptions for historical illustrations to promote comparability? For example, should a relevant industry association recommend standard terms and communication methods on behalf of industry? Please briefly explain your answer.

2 Benefits, risks and significant characteristics/features

Narrative description

You should consider use of a description or statement with regard to these features.

Disclosure approach	Outcome sought
Description of investment objectives	Are the investment objectives of the product described to consumers?
Description of investment strategies	Are the investment strategies associated with the product adequately described? Are asset allocation ranges described meaningfully?
Access	Have you included a description of the circumstances in which a consumer may gain access to their investment (ie terminate part or all of their investment)? Have you described the procedures to do that? Have you described any relevant factors such as withdrawal fees and pro rata distributions for part-periods?
What risks	Have you identified all risks associated with the product’s portfolio as a whole and any reasonably foreseeable circumstances that may materially adversely affect the product’s returns?
Description of basis for returns	Do consumers understand how investment returns are determined and the typical and material factors that may affect returns?
Description of distributions	Have you explained to consumers the basis for the calculation of income distributions, announcement, timing and any relevant options for reinvestment?

Use of warnings

You should consider the use of prominent “warnings” to highlight an aspect of disclosure that might not otherwise always be understood by the less experienced consumer.

Disclosure approach	Outcome sought
No prediction	Are consumers clearly warned that the use of any figures relating to past or current performance are illustrative only and are not intended as a prediction of future performance?
Investment protection	Do consumers understand the terms and conditions of protection if a consumer’s investment is protected by any state or industry protection and/or insurance scheme?

Not guaranteed	Does the PDS include a prominent warning if a product is not “guaranteed”? If a product is guaranteed consumers should understand the nature and extent of the guarantee.
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Reference to past performance

You should consider how past performance information is presented.

Disclosure approach	Outcome sought
Description of past performance	In describing past performance have you provided consumers with appropriate use of narrative, bar charts and tables to demonstrate the past performance of the product?
Restriction on eligible users	Would it be misleading to provide consumers with past performance information given the length of time the product has been in existence? Has the product existed for at least 12 months?
Standardised terms and rules	Where past performance information is included, are standard terms and design tools used for the presentation of past performance information (to assist consumer comparison)? For example, investment choice assumptions; a standard number of years presented; fees included; common start and end points are set.
Comparison to indices	Where past performance information is included, does the PDS compare actual returns of the product to an appropriate broad based index or indices (composite if necessary)?
Highest and lowest	Where past performance information is included, does the PDS describe the highest and lowest performance for a relevant sub-period during the life of any past performance information (for example the highest and lowest calendar quarter return during the 10 years)?
Reference to latest update	Where past performance information is included, does the PDS include a reference to other information for consumers to obtain more up to date past performance figures (eg telephone, internet, newspapers)?
Risk/ return statement	Is there a statement that acknowledges the relationship between the risk and returns? (ie generally the higher the return the greater the risk)

Question

SE2 Should all examples of past performance include a reference to fees that would have been payable based on the past performance assumptions? Why or why not?

Use of forecast illustration

You should only consider the use of an illustration of expected returns based against certain assumptions if those assumptions have reasonable grounds.

Disclosure approach	Outcome sought
Use of table	If the PDS includes a forecast illustration, for example use of a table to illustrate forecast returns, does the table comply with Practice Note 67, Information release [IR 01/05] and Media release [MR 01/112] as appropriate?
Personalised projection	If the PDS includes a forecast illustration, can the forecast be calculated on the actual amount to be invested and intended term (for example, typically a life insurance product)?
Non-personalised projection	If the PDS includes a forecast illustration, does it use a range of assumptions (representing the type of business the firm conducts in relation to the benefits provided)? Are the assumptions adequately described? Do the assumptions have reasonable grounds?

Question

SE3 Where illustrations are used, who should set the forecast rate of return and on what basis? For example, should a relevant industry association recommend an actuarially based rate of return on behalf of industry or should it remain the obligation of each issuer. Please briefly explain your answer.

Part F: Examples of typical PDS content

Questions

SF1 Are there any other examples that should be listed in Part F of this Schedule? Please briefly explain them and why they should be included.

SF2 How might we improve on the examples listed in Part F of this Schedule? Please briefly explain how and why they should be improved.

1 Fees and interests disclosure for products with an investment component (other than risk products)

What are the costs?

<i>Expenses of joining and leaving the fund</i>	<p>Generally we charge X% of the amount you invest as an entry fee. We take this out of your application money then issue you units. This means we take out of your application money \$Y for every \$1000 invested.</p> <p>There are no exit fees but there may be transaction costs associated with selling your investment. These are discussed below.</p> <p>There are no fees payable for switching between funds.</p>
<i>Expenses paid by the fund</i>	<p>We charge an ongoing management fee of 0.78% pa of the funds we manage, calculated each day and paid to us each month. This amount includes fees that we pay to investment managers.</p> <p>Currently we have capped expenses at 0.02% pa and pay any excess ourselves. We can, however, recover all proper and reasonable expenses from the fund, and are entitled to be indemnified from the fund for any liability we properly incur in relation to the fund.</p> <p>To give you an idea this means we take out annually \$Z for every \$1000 of your investment with us. We would not change this without informing you first.</p>

There is also a difference between the entry price and exit price of a unit, often called the “buy-sell spread”. This covers our estimate of the costs of buying or selling investments for you when you want us to invest for you, or withdraw from your investment. Currently it is 0.50%. To give you some idea of what this means, at the same point in time, investments that you buy at a value of \$10000 can be redeemed at a value of \$9950.

What's the MER?

The management expense ratio, or **MER** of the fund is 0.80%. To give you some idea of what this means, and generally speaking, fees and expenses will total around \$8.00 each year for each \$1,000 of your investment.

The MER is a useful measure of the **ongoing fees and expenses** of investing in a fund. Expressed as a percentage of the size of a fund, it includes the management fee and certain other expenses **but not transaction costs such as brokerage and FID**. The MER also excludes entry fees, exit fees, contingent fees (such as switching costs) and fees deducted from earnings.

Changes in expenses

If we change any fees or expenses, we would first inform you in writing at least 3 months prior to the change.

Historical example: Set out below is an example of fees in dollars paid by an investor in the past over a 1,3 and 5 year period and since the fund began assuming that an initial investment of \$10,000 was made. The fees column indicates how much would have been paid in total expenses (excluding tax) if the account were closed at the end of the period of time indicated.

WARNING: This example is for illustrative purposes only to assist in comparing this product to others. Further details are set out in the section dealing with past performance.

<i>Period of time</i>	<i>Total fees paid</i>
1 year (investment commenced on X and ceased on Y)	\$A
3 years (investment commenced on X and ceased on Y)	\$B
5 years (investment commenced on X and ceased on Y)	\$C
Since fund began (investment commenced on X and ceased on Y)	\$D

How your investment adviser is paid

Your investment adviser can clarify the exact amount of fees that have been or may be payable to them as a result of them recommending this product.

Commissions Your investment adviser receives a commission from us when you invest in the Fund. The commission we pay to your adviser is a maximum of X% that is inclusive of GST. To give you an idea this means we pay your adviser up to \$Y out of your entry fee for every \$1000 invested with us.

Service commission We also pay a service commission, also known as a trail fee, to your investment adviser at the end of each quarter. This commission is a percentage of the average daily value of all units in the Fund held by the investment adviser's clients. The commission is X% per year. To give you an idea this means we pay your adviser annually \$Y out of your ongoing management fee for every \$1000 of your investment with us.

2 Past performance (for an investment product)

Historical example

Set out below is an example of performance in dollars accrued by an actual investor in the past over a 1,3 and 5 year period and since the fund began assuming that an initial investment of \$10,000 was made and all distributions were reinvested. These figures are compounded, calculated using exit prices and assume income is reinvested and tax is not deducted. Inflation has been taken into account.

What about past performance of the fund?

	1 year	3 years	5 years	Since fund began
<i>Distribution return</i>				
<i>Growth return</i>				
<i>Total return after fees</i>				
<i>The return based on the benchmark</i>				

Performance figures

The distribution return reflects income paid from the fund, whilst the growth return reflects changes in the capital value of units.

WARNING: Don't forget that these returns happened in the past and just because they happened then doesn't mean that they will happen again. Returns are volatile and may go up and down significantly and quickly. For example, since the fund began the lowest Total Return after fees during any quarter was X% (this means you would have lost \$Y in total value for every \$10,000 of your investment). The highest Total Return after fees during any quarter was Z% (this means you would have gained \$A in total value for every \$10,000 of your investment).

Your investment is not a deposit or liability of XYZ or any other member of our group – *neither any of them nor we guarantee your investment or that you will receive income.*

Contact us for free up-to-date performance information.

3 Risks (for investment product investing in various asset classes)

What are the risks?

All investing involves risk. It's the trade off for the return we all seek. Generally you trade higher expected return for higher risk or volatility.

Shares are more risky than property, then fixed interest, and then cash, and so this is a relatively high-risk investment.

As with most investing, it is not guaranteed that you will make money from this fund. The value of your investment can go up or down with the value of investments of the fund. The risks may result in loss of income, principal invested and possible delays in repayment.

You could receive back less than you invested and there is no guarantee that you will receive any income.

You can do some things to reduce the impact of risk. Firstly, get professional advice - advice suitable to your investment objectives, financial situation and particular needs - nothing in this PDS can replace that. Secondly, diversify across asset classes because this helps reduce risk. Finally, invest for at least the recommended timeframe.

The significant risks of a general nature for this fund are:

- ✓ **Individual investment risk:** individual investments we buy can (and do) fall in value for many reasons such as changes in the entity's internal operations or management, or in its business environment.
- ✓ **Market risk:** economic, technological, political or legal conditions, and even market sentiment, can (and do) change, and this can mean the investments we buy in those markets can change in value.
- ✓ **Interest rate risk:** changes in interest rates can have a negative impact directly or indirectly on investment value or returns - for example the cost of a company's borrowing can increase, or the income return on a fixed interest security can become less favourable.
- ✓ **Currency risk:** we invest in other countries, and if their currencies change in value relative to our dollar, the value of the investment can change.

Specific risks relating to this product are X, Y, Z.

4 Suitability of product (for an investment product)

About this fund

This diversified fund invests at any one time between X% and Y% of the fund's portfolio in listed Australian and international shares, with some exposure to fixed interest and cash. It borrows only for short term needs.

Our aim is to outperform a benchmark over the recommended investment time frame, but neither income nor your investment is guaranteed.

We expect that a typical investor is focused on receiving income, but also seeks greater exposure to growth investments.

The fund is a moderate to higher risk investment, so look to invest for at least 5 years. It may not be suitable for short-term investors.

The fund is not listed on any financial products market, so you may only be able to liquefy your investment by [insert] and this may involve the risk that [insert].

5 Fee disclosure (for transaction and deposit-taking products)

Example of good transaction disclosure for an account with a number of free transactions per month

<i>Transaction type</i>	<i>Total transactions</i>	<i>Free</i>	<i>Transactions charged for</i>	<i>Cost per transaction</i>	<i>Total charged</i>
Cheque withdrawal	2	0	2	50c	\$1.00
Own bank ATM withdrawal	4	2	2	65c	\$1.30
Other bank ATM withdrawal/inquiry	1	1	0	\$1.50	\$0.00
EFTPOS withdrawal	4	0	4	50c	\$2.00
Own bank mini statement	1	1	0	\$1.00	\$0.00
Over the counter withdrawal	1	1	0	\$2.50	\$0.00
Telephone banking	1	0	1	40c	\$0.40
BPAY instruction	2	0	2	40c	\$0.80
Internet banking	0	0	0	30c	\$0.00
Direct debit or periodic payment	0	0	0	40c	\$0.00
Total transaction fees					\$5.50
Total account keeping fees					\$5.00
Total fees payable					\$10.50

You are entitled to 5 free transactions per calendar month, of which there is a limit of two free across the counter transactions and two cheque withdrawals. We will include the more expensive transactions in your free allocation first. Note no account keeping fees apply if the minimum monthly balance is above \$2,000. Call xxxxx for more information.

Example of good transaction fee disclosure for an account with a rebate system

<i>Transaction type</i>	<i>Number of transactions</i>	<i>Cost per transaction</i>	<i>Amount charged</i>
Cheque withdrawal	2	\$0.50	\$1.00
Own bank ATM withdrawal	4	\$0.65	\$2.60
Other bank ATM withdrawal/inquiry	1	\$1.50	\$1.50
EFTPOS withdrawal	4	\$0.50	\$2.00
Own bank mini statement	1	\$1.00	\$1.00
Over the counter withdrawal	1	\$2.50	\$2.50
Telephone banking	1	\$0.40	\$0.40
BPAY instruction	2	\$0.40	\$0.80
Internet banking	0	\$0.30	\$0.00
Direct debit or periodic payment	0	\$0.40	\$0.00
Total transaction fees			\$11.80
Transaction fees less monthly rebate of \$5.00			\$6.80
Monthly account keeping fee			\$5.00
Total fees payable			\$11.80

Each calendar month we will pay a minimum of \$5.00 worth of the fees you incur. We will give you an addition rebate of \$1.00 each month for every \$5,000 you have in other deposit or loan accounts with us. We will calculate your monthly rebate on the first day of each month. Note that no account keeping fees apply if the minimum monthly balance is above \$2,000. Call xxxx for more information.

6 Significant features of a transaction or deposit-taking product

Set out below are some important features of this product. These will affect the way that you can operate this account and our rights to protect the Bank from loss.

Opening an account Under the Financial Transactions Reports Act, we are required to confirm your identity before you can open an account. If you do not already have an account with us, you will have to prove your identity. You can use a combination of documents such as your passport, driver's licence, Medicare card, credit cards, utility bills, and other identity documents.

Tax File Number You are not obliged to disclose your Tax File Number to us. However, if you do not, we are obliged to deduct tax from any interest you earn at the highest marginal rate.

Statements We will provide you with a statement of all activity on your account at least once every 6 months. However, you can also ask us to provide statements on a more regular basis (eg every month). There is a charge if you ask for a replacement statement (refer to the "Other fees" heading).

Combining accounts If you have more than one account with us, we have the right to combine those accounts. This means that we can transfer money from one account to another if the second account is overdrawn or a loan repayment is not made.

However, there are restrictions on our ability to combine accounts if social security benefits are paid into the account. In that case, we will not use more than x% of the income to cover losses in another product that you have with us.

We will tell if you we have exercised this right to combine accounts.

Using cheques

Cheques written by you On request, we will issue you with a chequebook linked to this account. When writing cheques, you should take care to cross the cheque, and write the words "Non-negotiable". This will reduce the risk of fraud. You should also tell us as soon as you know or suspect that one or more of your cheque forms has been lost or stolen, or if unauthorised use has occurred.

If you do not have enough money in your account to cover the cheques that you have written, we can choose which cheques will be paid, and the order in which they will be paid. We may charge you a fee for overdrawing your account. The maximum fee we would charge is \$15.

We may also use our right to combine accounts to cover any shortfall in your account.

At any time before a cheque that you have written is presented to us, you can ask us not to pay the cheque (to “stop” the cheque). You can make this request in writing or by telephone and there is no fee attached. Once a cheque has been “stopped”, it cannot be reactivated.

Cheques deposited by you Once a cheque is deposited to your account, it will normally take up to x working days before the cheque is cleared and the funds become available to you. You can ask for a quick clearance on a cheque. This will take up to y working days. We will charge you \$x for this service.

Using electronic banking

On request, we will issue you with a Personal Identification Number or password so that you can access electronic banking services. It is important that you keep your PIN or password confidential. You should not disclose your PIN or password to anyone. If an unauthorised transaction occurs on your account, and you have not taken good care of your PIN or password, you may be liable for all or part of the loss.

You should tell us immediately you suspect that your card, PIN or password may have been lost or stolen, or if you suspect that unauthorised transactions have occurred on your account. The earlier you tell us, the more easily we will be able to protect you from further loss. You may also be liable for some of the loss if you unreasonably delay telling us.

We comply with the rules for electronic banking that are contained in the Electronic Funds Transfer Code of Conduct (“EFT Code”). The EFT Code sets out minimum standards for information disclosure, liability, complaints handling and other matters. Contact us if you would like more detail on the EFT Code.

Using direct debits

You can authorise a merchant or other third party to debit a specific amount from your account at regular intervals. To cancel a direct debit arrangement, you should advise the third party in writing that their authority to debit your account has been cancelled.

Using BPAY

If you choose to have access to telephone or internet banking, you can make electronic payments to authorised billers using the BPAY system. Payments will be received on the day they are sent, provided the BPAY instruction is provided before the cut-off time. We will tell you what the cut-off time is when you first access telephone or internet banking. Processing and settlement may take longer if you authorise the payment after the cut-off time, or on a Saturday, Sunday or public holiday.

7 Insurance products – duty of disclosure

Your duty of disclosure

The information that you provide in the application form helps us to assess the level of risk that we are being asked to cover. This in turn helps us to decide the appropriate insurance premium.

You have a legal obligation to answer all of the questions in the application form truthfully. If you do not, we may be entitled to cancel your policy. We may also be entitled to reduce your claim or refuse to pay the claim.

You also have a duty to tell us about any matter that we think might be relevant to assessing the risk of insuring you. This duty applies even if we have not asked a specific question about a matter. If you have any questions at all about what you might need to disclose, you should contact us.

Duty of disclosure on renewal

Your duty of disclosure is ongoing. This means that, you must tell us, of any factors or changes that have occurred since the last renewal if those factors or changes might be relevant to our assessment of the risk. Again, you should contact us if you have any questions about what you should disclose.

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).

The RIS will address the following seven key elements:

1 Issue / problem

This will discuss the nature and magnitude of the problem.

2 Objective(s) / analysis of the problem

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

3 Options / solutions

This will identify all the alternative options that could achieve the objective(s) stated above for dealing with the issue being considered (eg no specific action; ASIC policy proposal; media release; information statement; self regulation/quasi regulation; codes of conduct; and 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 the options, including any restriction on competition for different persons affected;
- (b) identification of persons or bodies affected by the problem; and those that will be affected by the solutions or options identified (ie applicant/proponent of issue; other interested parties, consumers, business and government);
- (c) a consideration of how each of the proposed options will affect existing law, regulations or policies;

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

We will try to quantify these effects where possible (for example, will there be any restriction on competition as a result of the proposed regulation?)

Costs to business 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 and more difficult or expensive options for seeking redress.

- (e) benefits of the options will also be identified (even where they are not quantifiable);
- (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, and reasons why.

7 Implementation and review

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

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 final RIS.

Development of policy proposal

We have developed this policy proposal paper by considering:

- (a) the intention of the Bill as indicated in the Explanatory Memorandum to the Bill and the Second Reading Speech in the House of Representatives on the introduction of the Bill into Federal Parliament;
- (b) the Report on the Bill by the Parliamentary Joint Committee on Corporations and Securities issued in August 2000;
- (c) the Government's response to the Report, issued on 29 March 2001;
- (d) relevant comparisons with current legislative requirements for the regulation of financial services activity under the law;
- (e) a review of existing ASIC policies and practices relevant to the regulation of financial services activity under the law; and
- (f) a review of public submissions on the Exposure Draft Bill issued by the Government in February 2000.

Key terms

In this policy proposal:

“ASIC” means the Australian Securities and Investments Commission;

“Bill” means the Financial Services Reform Bill 2001, the Law as amended by the Bill or that bill as enacted as applicable and includes and regulations made for the purposes of the Bill;

“consumer protection provisions” means the prohibitions contained in Part 7.10 of the Bill, ie misleading or deceptive, unconscionable conduct etc;

“fees” means costs that a consumer will pay for a product or service. It includes commissions and unless the context otherwise requires all government charges;

“financial product” means a facility through which, or through the acquisition of which, a person does one or more of the following:

- (a) makes a financial investment (see s763B);
- (b) manages financial risk (see s763C);
- (c) makes non-cash payments (see s763D);

Note: This is a definition contained in 763A

“financial services guide” means a document that that must be given to a retail client before the provision of a financial service in accordance with Part 7.7 Division 2;

“financial services licensee” means a person who holds an Australian Financial Services Licence;

Note: This is a definition is contained in 761A

“Law” means the Corporations Law (including as intended to be replaced by the *Corporations Bill 2001*);

“licensee disclosure requirements” means the requirements under Part 7.7 of the Bill;

“licensee conduct requirements” means the requirements under Part 7.6 of the Bill;

“licensee obligations” means the obligations of a licensee as set out in 912A, 912B and 917E;

“managed investment provisions” means Chapter 5C of the Law;

“old Law” means the various regulatory regimes for financial products that existed before amendment by the Bill;

“ongoing product disclosure requirements” means the requirements set out in Part 7.9 Division 3 of the Bill;

“PDS” means Product Disclosure Statement;

“PDS requirements” means the requirements set out in Part 7.9 Division 2 of the Bill;

“retail client” means a client defined as such under 761G;

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

“PS 136” (for example) means an ASIC Policy Statement (in this example numbered 136);

“SIS” means the Superannuation Industry (Supervision) Act 1993.

“982A” (for example) means a clause of the Bill;

“s782” (for example) means a section of the Law.

What will happen next?

Stage 1

26 April 2001	ASIC policy proposal paper released
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Stage 2

May/early June 2001	Consultation period on the contents of this policy proposal paper
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7 June 2001	Comments due on the policy proposal
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15 June to September 2001	Drafting of policy statement
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Stage 3

Mid to late September 2001	Policy statement released
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Your comments

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

Comments are due by Thursday 7 June 2001 and should be sent to:

Roxanna Irvin
FSR Project Office
Regulatory Policy Branch
Australian Securities & Investments Commission
GPO Box 4866
Sydney NSW 1042
email: FSRProjectOffice@asic.gov.au

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

Related papers

This policy proposal paper is part of a set of seven documents issued together in April 2001 on the implementation of the *Financial Services Reform Bill 2001*. As outlined in our paper *Building the FSRB Administrative Framework*, we intend to issue further proposal papers in the coming months all related to the implementation of the Bill.

The related documents issued together in April are:

Building the FSRB Administrative Framework – Policy to implement the Financial Services Reform Bill 2001

Licensing: The scope of the licensing regime: Financial product advice and dealing

FSRB Policy Proposal Paper No 1

Licensing: Organisational capacities

FSRB Policy Proposal Paper No 2

Licensing: Adapting IPS 146 to the Financial Services Reform regime

FSRB Policy Proposal Paper No 3

Disclosure: Product Disclosure Statements (and other disclosure obligations)

FSRB Policy Proposal Paper No 4

Disclosure: Discretionary powers and transition

FSRB Policy Proposal Paper No 5

Licensing Process Guideline: How do you get an Australian Financial Services Licence?

Copies of policy proposal papers

Download them from the ASIC home page:

<http://www.asic.gov.au>

(follow the links from “Financial services reform” that is on the top right of our home page)

You can also get copies of ASIC policy proposal papers from: ASIC Infoline: 1300 300 630

To find out more about FSRB

Visit the FSRB page on our website at www.asic.gov.au:

- (a) click “Financial Services Reform” on the top right of our home page
- (b) register for our free update email service which alerts you to our latest developments.