



**ASIC**

Australian Securities & Investments Commission

CONSULTATION PAPER 15

# **Disclosure: Discretionary powers and transition**

April 2001

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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:**

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

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# What this policy proposal is about

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**1** This policy proposal paper explains how ASIC will approach relief from compliance with Part 7.9 of the *Financial Services Reform Bill 2001* (the Bill). Part 7.9 of the Bill includes the Product Disclosure Statement (PDS) requirements and ongoing disclosure requirements for financial products (generally other than securities).

**2** The paper discusses:

- (a) our general policy on relief from Part 7.9 of the Bill including how you can apply for relief;
- (b) how Part 7.9 of the Bill will affect our existing policies and decisions, including a list of those policy publications that will continue to provide guidance; and
- (c) how existing disclosure documents may be affected by the Bill.

**3** For a detailed discussion of our approach to the PDS requirements, see our FSRB Policy Proposal Paper No 4 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (April 2001).

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# Policy proposals

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

The Schedule sets out in tables the extent to which our existing policy and guidance publications will apply after commencement of the Bill.

**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 What is our general policy on relief?

Policy proposal	Your feedback
<p><b>What are the criteria for relief?</b></p> <p><b>A1</b> We will consider giving relief under 1020F to address atypical or unforeseen circumstances and unintended consequences of Part 7.9 of the Bill. We will take into account whether:</p> <ul style="list-style-type: none"> <li>(a) strict compliance with the Law would be impossible or disproportionately burdensome;</li> <li>(b) persons acquiring, holding or disposing of financial products would still have the protection they were intended by Parliament to have; and</li> <li>(c) those to whom the relief applies will receive any benefits.</li> </ul> <p><b>A2</b> Our power to give relief by modification is restricted by 1020F(3).</p> <p><b>A3</b> Our power extends to any definitions, regulations and transitional provisions that apply for the purposes of Part 7.9 of the Bill.</p> <p><b>A4</b> This paper does not apply to alternative dispute resolution requirements under 1017G.</p> <p><b>A5</b> References in this paper to Part 7.9 of the Bill exclude 1017G but include any definitions, regulations and transitional provisions that apply for the purposes of Part 7.9 of the Bill.</p> <p><b>When will we give relief to facilitate transition?</b></p>	
<p><b>A6</b> We will consider transitional relief from the provisions of Part 7.9 of the Bill and the provisions of the old Law that apply during</p>	<p><b>A6Q1</b> What specific transitional relief may be necessary?</p>

Policy proposal	Your feedback
<p>the transitional period where it addresses unintended burdens arising from transition to the Bill, while at the same time balancing consumer protection objectives.</p> <p><b>How to apply for relief</b></p> <p><b>A7</b> For general guidance on how to frame your application, see Policy Statement 51 <i>Applications for relief</i> [PS 51]. If you are relying on class order relief, you do not need to apply for relief.</p> <p><b>A8</b> Where feasible, you should specify and quantify any financial and other benefits and costs (including any loss of consumer protection) of the relief. If you cannot quantify the benefits and costs, explain why this is so and how the scale of the relief's effects can be estimated.</p> <p><b>A9</b> You should candidly set out all information that may be relevant to your application including your commercial objectives and how you will address any loss of consumer protection.</p> <p><b>A10</b> If your application does not contain all relevant information, we will refuse it. In some circumstances we will consider delaying a decision on your application until you provide more information.</p>	<p><b>A6Q2</b> For this relief, what consumer protection issues may affect the form of relief (if any) that is appropriate?</p> <p><b>A7Q1</b> How feasible is it to quantify costs and benefits when applying for relief? If not, how else should applicants for relief be expected to demonstrate the effects of compliance with the Law?</p>

# Explanation

## What are the criteria for relief?

**1** We will not exercise our power in a way that is inconsistent with Parliamentary intention. The Bill is intended to harmonise and raise standards of conduct.

**2** Any exercise of power has to be justified by the net benefits that will arise. We will carefully consider any impact of relief on consumer protection. We will give weight to the value of promoting international harmonisation where relevant.

## When will we give relief to facilitate transition?

**3** We will consider transitional relief where it addresses burdens arising from transition to the Bill that Parliament did not intend, while at the same time balancing consumer protection objectives.

**4** Our approach is based on our belief that:

- (a) transitional relief is inherently limited in duration;
- (b) transitional costs are often substantial and significantly higher, in relative terms, than ongoing compliance costs; and
- (c) transitional issues often need to be resolved quickly so industry can act within the overall statutory timeframe.

**5** We will therefore take into account the burden on industry and seek to facilitate transition in exercising our power for transitional relief. However, any relief still needs to be within the transitional framework that Parliament intends and in particular the transitional period that Parliament adopts.

**6** We expect you to plan to take the necessary steps to comply within the statutory timeframes. We will refuse applications made on the basis of lack of time to transition that are made near the end of the statutory deadlines unless the difficulties could not have been foreseen and were beyond your control.

## How to apply for relief

**7** We exercise our powers based on as much information as can reasonably be attained. You are better placed than us to get the most relevant information such as quantifications of costs and benefits. It



is appropriate that you do so if you choose to seek the benefit of relief.

**8** Applications need to address why relief would save costs or otherwise provide commercial benefits. Applications must also address effects of the requested relief on others, in particular consumers. This approach reflects that adopted in [PS 51].

**9** We have noted that many applications inadequately discuss economic impacts or omit relevant facts that explain the underlying commercial objectives involved. We will therefore be adopting administrative practices that reinforce that the onus is on you to make comprehensive applications.

## B When do our pre Bill policies apply?

Policy proposal	Your feedback
<p><b>What approach will we take to existing policy?</b></p> <p><b>B1</b> We are reviewing all our policy publications that may be relevant to relief from Part 7.9 of the Bill or that provide significant guidance relevant to Part 7.9 of the Bill.</p> <p><b>B2</b> Our review covers:</p> <ul style="list-style-type: none"> <li>(a) published policies on relief from disclosure requirements for offering securities, superannuation and life products;</li> <li>(b) published Insurance and Superannuation Commission (ISC) policies that we have continued to apply; and</li> <li>(c) published policies on relief from the managed investment provisions.</li> </ul> <p><b>B3</b> We will continue to apply our existing published policies and our published guidance to the extent that the old Law or former provisions of other laws continue to apply to the conduct on a transitional basis.</p> <p><b>B4</b> Any unpublished positions we (or the ISC) have adopted relating to particular entities should not be assumed to continue to apply under the Bill. This applies, for example, to no action letters under Policy Statement 108 <i>No action letters</i> [PS 108]. If you want us to adopt a similar approach under the Bill, you must apply to us and set out why you think we should adopt that approach.</p> <p>Note: We plan to release separate FSRB policy</p>	

## Policy proposal

proposal paper on *Licensing: External and internal dispute resolution arrangements* (which is relevant to Part 7.9 of the Bill) and a companion policy proposal paper to this document on *Licensing: Discretionary powers*. Most of these papers are planned for issue in May 2001. See our paper *Building the FSRB Administrative Framework* (April 2001) for more details.

### What specific policies apply after the Bill?

**B5** We will apply these general principles in determining the status of our current policies and publications:

- (a) we will no longer apply policies and publications on requirements that do not have corresponding provisions under the Bill;
- (b) we will continue to apply policies and publications on provisions that correspond to provisions under the Bill unless we consider they should be varied: see the tables in the Schedule;
- (c) policies and publications on shares and debentures will be unaffected as they apply to shares and debentures; and
- (d) policies and publications on a particular type of financial product will extend to other financial products where relevant and appropriate.

The Schedule in this paper sets out our approach to relevant policies and publications.

### ***Managed investment relief***

**B6** We will continue without substantive change relief from the managed investment provisions that is based on considerations that remain appropriate under the Bill.

## Your feedback

**B5Q1** Are there any policy publications that we should review that are not in the tables?

**B6Q1** For foreign managed investment schemes that rely on Policy Statement 65 *Foreign collective investment schemes* [PS

Policy proposal	Your feedback
<p><b><i>Disclosure relief for exempt managed investment schemes</i></b></p> <p><b>B7</b> We propose to give relief from the PDS requirements where, under the terms of relief from the managed investment provisions, a general disclosure requirement has not been imposed. If the terms of the relief would not allow for offers to retail clients, we will not need to give this relief.</p> <p><b>B8</b> If we give relief from the PDS requirements, we will give relief from Division 4 of Part 7.9 of the Bill relating to advertising.</p> <p><b>B9</b> We will also consider giving relief from the requirements of Part 7.9 of the Bill for application moneys to be held on trust (1017E) and confirmations (1017F) for operators of managed investment schemes that are exempt from the managed investments provisions and the PDS requirements.</p> <p>We propose to determine whether relief from other requirements will be given on the basis of our general policy on relief from the Bill. If you want this relief you will need to apply.</p> <p><b>B10</b> If you have individual relief from the managed investment provisions you should apply for relief from Part 7.9 of the Bill if you still need corresponding relief. This does not apply to relief under Pro Forma 186 [PF 186] for well advanced non-complying serviced strata schemes. We will issue any amended instruments needed in relation to that relief as part of our separate review of</p>	<p>65], are there any practical difficulties in complying with Part 7.9 of the Bill? If so, what are they?</p> <p><b>B9Q1</b> Are there any kinds of exempt managed investment scheme that should be covered by class order relief from 1017E and 1017F? If so why and on what terms?</p>

Policy proposal	Your feedback
<p>the disclosure conditions for that relief: see policy proposal sub-paragraph B22(d).</p> <p><b><i>Exempt managed investment schemes – cooling off and periodic reports</i></b></p> <p><b>B11</b> We propose to include conditions with our exemption from registration requiring periodic reports (1017D) and cooling off (Div 5 of Part 7.9 of the Bill) to apply as far as practicable as if the schemes were registered for:</p> <ul style="list-style-type: none"> <li>(a) horse racing syndicates under Policy Statement 20 <i>Horse racing schemes</i> [PS 20] and [CO 00/207];</li> <li>(b) interests in arrangements relating to the Society of Lloyds under [CO 00/241]; and</li> <li>(c) small industry supervised exempt mortgage schemes under Policy Statement 144 <i>Mortgage investment schemes</i> [PS 144] and [CO 00/203].</li> </ul> <p><b><i>Time-sharing schemes</i></b></p> <p><b>B12</b> We propose that issuers of interests in exempt time-sharing schemes must comply with Part 7.9 of the Bill, the licensing provisions and the consumer protection provisions as far as practicable as if the interests were managed investment products.</p> <p>We propose that the operator, which includes any issuer, of the time-sharing scheme will have to do this if they want relief from the managed investment provisions. We propose to vary existing individual instruments of relief to include this condition.</p>	<p><b>B11Q1</b> Are there any practical difficulties for operators of these schemes in complying with periodic statements and cooling off provisions? Yes, what are they?</p>
<p><b><i>Time-sharing rental pools</i></b></p> <p><b>B13</b> We propose that issuers of interests in rental</p>	<p><b>B13Q1</b> Are there any practical</p>

Policy proposal	Your feedback
<p>pools associated with exempt time-sharing schemes must comply with the PDS provisions, 1017D, Div 5 of Part 7.9 and the consumer protection provisions so far as practicable as if they applied.</p> <p><b><i>Transitional disclosure for exempt managed investment schemes</i></b></p> <p><b>B14</b> We propose to remove any general disclosure requirements in our current class order relief from the managed investment provisions, with effect from the date issuers of interests in the exempt schemes must meet the disclosure requirements under the Bill.</p> <p><b>B15</b> Policy proposal paragraph B14 applies to:</p> <ul style="list-style-type: none"> <li>(a) horse racing syndicates under [PS 20] and [CO 00/207];</li> <li>(b) participating property syndicates under Policy Statement 77 <i>Property trusts and property syndicates</i> [PS 77] and [CO 98/64], but only while the relief from the managed investment provisions continues;</li> <li>(c) small industry supervised exempt mortgage schemes under Policy Statement 144 <i>Mortgage Investment Schemes</i> [PS 144] and [CO 00/203]; and</li> <li>(d) Sydney Futures Exchange members' managed discretionary accounts under Policy Statement 136 <i>Managed investments: discretionary powers and closely related schemes</i> [PS 136] and [CO 00/1268], but only while the relief from the managed investments provisions continues.</li> </ul> <p><b>B16</b> If the scheme you operate has individual relief from the managed investment provisions, we will vary your relief in the same way. However, you must apply to vary</p>	<p>reasons why such rental pools should not have to comply with the PDS provisions? Yes, what are they?</p>

## Policy proposal

your relief. If you apply, we will consider imposing conditions that you comply with 1017D and Div 5 of Part 7.9 of the Bill as if the scheme were registered. If you do not want those conditions imposed, you need to set out in your application why this would be inappropriate by addressing the criteria set out in Section A.

**B17** We will separately consider disclosure requirements for management rights schemes and well advanced schemes under Policy Statement 140 *Serviced strata schemes* [PS 140].

**B18** We propose to give additional relief from certain provisions of Part 7.9 of the Bill for the schemes referred to in policy proposal paragraph B15 and interests in arrangements relating to the Society of Lloyd's under [CO 00/241]. Except as proposed in policy proposal paragraph B11, the relief will apply to all of Part 7.9 of the Bill except the PDS requirements and requirements that correspond to those that applied under the old Law when read with the relief applying under the old Law.

This relief will apply to

- (a) participating property syndicates; and
- (b) Sydney Futures Exchange members' managed discretionary accounts,

only until we finish reviewing our policy in relation to that type of scheme or 1 July 2002, whichever is first.

### ***Individual disclosure relief***

**B19** Any individual relief you may have from disclosure requirements under the old Law will cease when the conduct covered by the relief becomes subject to the Bill.

## Your feedback

Policy proposal	Your feedback
<p>The Bill sets out some transitional arrangements, and individual relief will continue to apply to the extent that the old Law applies.</p> <p>If you seek relief from the Bill, you must apply for this relief:</p> <ul style="list-style-type: none"> <li>(a) following our general policy: see Section A; and</li> <li>(b) referring to any relevant policy that applies under the Bill: see the Schedule.</li> </ul> <p><b>Warrants</b></p> <p><b>B20</b> We do not propose to give relief for warrants based on [CO 00/1068].</p> <p><b>Investor directed portfolio services</b></p> <p><b>B21</b> We propose to continue to give relief to operators of an IDPS (as defined in Policy Statement 148 <i>Investor directed portfolio services</i> [PS 148]) from the managed investment provisions on conditions that correspond to those currently applying so far as relevant. You will need to provide an IDPS Guide to get relief.</p> <p><b>Separate reviews</b></p> <p><b>B22</b> We will be separately reviewing:</p> <ul style="list-style-type: none"> <li>(a) Parts E and H of Policy Statement 148 <i>Investor directed portfolio services</i> [PS 148], and the sections of Part C of [PS 148] dealing with disclosure for accessible securities;</li> <li>(b) Policy Statement 149 <i>Nominee and custody services</i> [PS 149],</li> <li>(c) Policy Statement 129 <i>Business matching services</i> [PS 129];</li> <li>(d) our disclosure conditions for relief for management rights schemes and well</li> </ul>	<p><b>B21Q1</b> Should ASIC change the content requirements for an IDPS Guide? If so what should the requirements be?</p>



Policy proposal	Your feedback
<p>advanced schemes under Policy Statement <i>Serviced strata schemes</i> [PS 140]; and</p> <p>(e) our policy on managed discretionary accounts.</p> <p>While we are considering our managed discretionary accounts policy, we do not propose to take action against contraventions of Chapter 5C or Part 7.9 of the Bill, in cases where the managed discretionary account is operated by an ASX member and there is no pooling between investors.</p>	

# Explanation

## What approach do we take to existing policy?

**1** We seek to give certainty to industry by clarifying how our policies and publications under the old Law will apply under the Bill. The table in the Schedule builds on the tables we released in 2000 at [www.asic.gov.au](http://www.asic.gov.au) about the impact of the Exposure Draft version of Bill on existing policies. Unless there is reason for change, we intend to apply as much of our previous published policy and guidance as we can.

**2** Where we give relief from the PDS requirements, you still have to comply with the requirements for holding money in trust (1017E) and confirming transactions (1017F) unless you have also applied for relief from these requirements.

### ***Exempt managed investments schemes***

**3** Generally, interests in managed investments schemes that are not registered because of ASIC relief are financial products. This is because the acquisition of the interest is the making of a financial investment. This may not apply to time-sharing schemes and rental pools that are incidental to a time-sharing scheme. Although an interest in an unregistered managed investment scheme may be a financial product, unless the scheme is operated solely within the jurisdiction, it is not a managed investment product. This means that 1017D (periodic statements) and Div 5 of Part 7.9 (cooling off) do not apply. We can require compliance with the provisions relating to financial products, or managed investment products under the conditions of relief from the managed investment provisions.

### ***Serviced strata schemes***

**4** We have previously announced a review of disclosure statement requirements for the management rights and well advanced scheme relief under Policy Statement 140 [PS 140] *Serviced strata schemes*. That review will proceed separately:

- (a) with a focus on consulting the affected industry and consumers; and
- (b) in the context of reviewing the provisions for transfer of property under the management rights class order: see [CO 00/570].

## **Warrants**

**5** Existing relief for offers of warrants was based in part on the inappropriateness of applying to derivatives disclosure documents, requirements that assumed that the key information was peculiarly within the knowledge of the issuer. It was also based on the undesirability of having a limited kind of warrant subject to disclosure under the Law while the rest were subject to disclosure requirements under ASX Rules.

**6** However the PDS requirements are designed to apply to derivatives. Alternative disclosure obligations under the ASX's Rules are not a basis for exemption especially when, under the Bill, most types of warrants would be covered by the definition of derivative and subject to disclosure requirements under the Law. When you issue warrants other than to your controller and provide a PDS, the PDS requirements for secondary trading under 1012C will not apply.

## **IDPS Guide**

**7** We note that the requirements for an IDPS Guide in Policy Statement 148 *Investor directed portfolio services* at [PS 148.43] – [PS 148.49] correspond less specifically with the requirements for a Financial Services Guide under 942B than an Advisory Services Guide under current corporations regulation 7.3.02B(6). However we consider that the IDPS Guide requirements are tailored to the particular services provided through an IDPS and remain appropriate. The IDPS Guide and the financial services guide can be contained in the one document so that no duplication results.

## C Reviewing disclosure documents before transition

Policy proposal	Your feedback
<p><b>C1</b> In many cases, there is a continuing obligation for current disclosure documents to be updated. This may include, for example, disclosure about the effect of any pending relevant legislation. You should review your current disclosure documents to see if you need to update them to reflect the future impact of the Bill when it is enacted.</p>	<p><b>C1Q1</b> What updating of current disclosure documents might be necessary?</p> <p><b>C1Q2</b> Should ASIC give more detailed guidance on what information about the impact of the Bill should be included in current disclosure documents?</p>

# Explanation

## What changes are needed to existing disclosure documents before transition?

**1** Different disclosure requirements currently apply to the various financial products regulated by ASIC, in particular, managed investments, superannuation and life insurance. We do not propose to prescribe particular disclosures under these various regimes to ensure prospective investors receive any information they may need to know about under the Bill. However, you should consider whether or not the impact of the Bill itself is a matter that should be disclosed in current disclosure documents.

**2** The Bill will bring some changes that will affect prospective investors such as entitlements to periodic reports disclosing balances held for managed investment schemes. Responsible entities need to consider whether this is information relating to rights attaching to securities that investors would reasonably require and reasonably expect to find in the prospectus. Such consideration would have to take into account, among other things, whether it may be advantageous to the investor and the degree of probability of the enactment of the Bill.

**3** This approach reflects that adopted in Policy Statement 135 *Managed investments: Transitional issues* [PS 135] on transition to the managed investment provisions.

# Schedule: Tables of policies

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The tables in this Schedule set out the extent to which ASIC policy and guidance publications will apply after commencement of the Bill.

Note: The summaries in this Schedule assume that the reader is familiar with the relevant publication and should be read with the relevant publication.

The tables cover:

- A** Managed investment schemes
- B** Life insurance
- C** General insurance
- D** Superannuation

Note: This Schedule does not cover whether any dispute resolution policy or other policies relating to matters not covered by Part 7.9 of the Bill in the relevant publications will apply under the Bill. For example parts of a superseded publication may continue as licensing policy.

The Schedule does not relate to policy as it applies to shares and debentures. A policy that is superseded for the purposes of Part 7.9 of the Bill may continue to apply for shares and debentures.

# A Managed investment schemes

## *Policy statements*

No.	Description	Effect of the Bill
19	Film investment schemes	Policy at [PS 19.13]-[PS 19.19] for managed investments relief in relation to investments by Governments and film distributors and broadcasters will continue and we will give relief from all of Part 7.9 of the Bill for schemes within the exemption.
20	Horse racing schemes	Policy at [PS 20.13]-[PS 20.20] for managed investments relief will continue. We will require compliance with 1017D and Div 5 of Part 7.9 of the Bill. We will remove the provisions for general disclosure with effect from when disclosure is required under the PDS requirements. We will give relief from Part 7.9 other than the PDS requirements.
32	Trustee common fund	Policy on relief from managed investment provisions unaffected. The disclosure relief will not be needed under the Bill.
41	Limited partnerships fundraising	Policy unaffected
49	Employee share schemes	Policy unaffected. Relief for contribution plans will extend to Part 7.9 of Bill on same basis as relief from managed investment provisions. Relief for options to acquire shares will be extended to the corresponding provisions of Part 7.9. We are however considering review of this policy independently of the Bill: see Information release [IR 00/39].
51	Applications for relief	Policy applies to financial products subject to specific policy propositions in Section A above.
56	Prospectuses	Where [PS 56] refers to other policies information is given in this table with reference to that policy.  The policy is relevant to financial products as follows:  (a) [PS 56.67] Society of Lloyd's – we will continue this relief. We will require

DISCLOSURE: DISCRETIONARY POWERS AND TRANSITION

No.	Description	Effect of the Bill
		<p>compliance with Part 7.9 subject to modifications corresponding to those in [CO 00/241] where appropriate. In addition we will require compliance with 1017D and Div 5 of Part 7.9 as far as practicable as if the scheme were registered;</p>
		<p>(b) [PS 56.69] Chess Units of Foreign Securities – we will give corresponding relief from Part 7.9 of the Bill for offers of CUFS relating to registered schemes that are operated by foreign companies;</p>
		<p>(c) [PS 56.92] Extension of licensed dealer exemption to wholly owned subsidiaries will be applied to financial products;</p>
		<p>(d) [PS 56.94] Warrants will not be applied to Part 7.9 of the Bill; and</p>
		<p>(e) [PS 56.138] Mining experts reports will be applied to PDS.</p>
61	Underwriting	[PS 61] is not relevant to Part 7.9 of the Bill.
65	Foreign collective investment schemes	<p>Relief provided under the policy in relation to disclosure is not necessary under Part 7.9 of the Bill. Relief from managed investment provisions will continue to be available subject to sunset under current policy with references to prospectuses to be references to PDS. Policy to be read with Information release [IR 99/17].</p>
72	Foreign securities	<p>[PS 72.16]–[PS 72.21] (rights issues), [PS 72.26] –[PS 72.29] (foreign takeovers and schemes of arrangements) and [PS 72.50]–[PS 72.55] (advertising) will be applied to financial products in terms reflecting the terms used in the Bill. The policy on approving foreign exchanges is unaffected.</p>
77	Property trusts and property syndicates	<p>We will continue existing policy on participating property syndicates under [PS 77.94]–[PS 77.96Y]. We will remove the provisions for general disclosure with effect from when disclosure is required under the PDS requirements. We will give relief from Part 7.9 except the PDS provisions. This policy is sunsetted to 30 June 2002 and subject to review.</p>
		<p>Policy on small property syndicates at [PS 77.96ZA] is</p>



**DISCLOSURE: DISCRETIONARY POWERS AND TRANSITION**

<b>No.</b>	<b>Description</b>	<b>Effect of the Bill</b>
		unaffected and relief will be given from Part 7.9 of the Bill.
80	Prescribed interests not for money	Policy unaffected. Relief will also be given from Part 7.9 of the Bill for managed investment schemes to which the relief applies.
87	Charities	Policy unaffected. Relief will also be given from the PDS requirements for managed investment schemes to which the relief applies.
91	Horse breeding schemes	Relief from the managed investment provisions for private broodmare and stallion syndicates will be continued. Relief will be extended to Part 7.9 of the Bill.
95	Disclosing entity provisions relief	Relief will continue unaffected with reference to replacement provisions. In the absence of lodgement of PDS, continuous disclosure notices may be required rather than the mere giving of a supplementary or new PDS.
99	Quotation of securities	This policy does not apply to financial products. ASIC will consider giving relief from 1016D in relation to those applicants that do not elect to withdraw if the issuer follows the procedure in 1016E(2).
107	Electronic prospectuses	The Bill clearly provides for electronic prospectuses so relief is not required for their use. Policy will continue to apply in relation to financial products to the extent relief is required so that an electronic document may be treated as a copy of a document lodged or relief is required to allow application forms issued by an AFSL holder to be accepted where the responsible person has reasonable grounds to believe the applicant was given the PDS.
108	No action letters	Policy applies to Part 7.9 of the Bill.
114	Undesirable advertising in the futures industry	This policy is superseded as we will not have a specific power under the Bill to require no advertising without approval. However guidance concerning what conduct may be misleading will be relevant under the Bill.
127	Additional investments in managed investment schemes	Provisions regulating top ups are in 1012D(2) and the policy will therefore no longer apply to top ups. The policy will be applied to switches between financial products with the same issuer. The requirement for a

**DISCLOSURE: DISCRETIONARY POWERS AND TRANSITION**

<b>No.</b>	<b>Description</b>	<b>Effect of the Bill</b>
		<p>transaction statement will not apply as the Law provides for confirmations. Relief is not required to allow for a PDS to comprise multiple documents. A PDS is not limited in duration. Accordingly no relief is needed to facilitate a two part or updating summary document rather than a PDS.</p>
129	Business matching services	<p>We are separately reviewing [PS 129] but pending any review will apply the policy to relief from Part 7.9 of the Bill in relation to managed investment products.</p>
136	Managed investments: discretionary powers and closely related schemes	<p>Policy generally applies to managed investment schemes with reference to new definitions eg retail client in [PS 136.3] and [PS 136.10].</p> <p>Our policy on relief for managed discretionary accounts operated by members of the Sydney Futures Exchange continues subject to its sunset on 1 July 2002. We will remove the provisions for prospectus disclosure with effect from when disclosure is required under the PDS requirements. During the currency of the interim policy we will give relief from any requirements of Part 7.9 of the Bill that are additional to those applying under the old Law.</p> <p>Policy on closely related schemes applies for purposes of 1012K.</p>
140	Serviced strata schemes	<p>Disclosure and managed investments policy is unaffected except for appropriate adaptations eg offers to wholesale clients will be treated as excluded offers and references to prospectuses being read as reference to PDS (see especially [PS 140.91]).</p> <p>Disclosure conditions for management rights and well advanced schemes relief are being separately reviewed.</p>
141	Offers of securities on internet	<p>Policy will be applied to financial products. Part B will apply in more limited cases because relief will only be needed under [PS 107] in more limited cases.</p>
144	Mortgage investment schemes	<p>Policy continues to apply except for relief for two part prospectuses which is no longer needed. We will remove the provisions for general disclosure in relation to small industry supervised schemes from when disclosure is required under the PDS requirements. We will impose</p>

**DISCLOSURE: DISCRETIONARY POWERS AND TRANSITION**

<b>No.</b>	<b>Description</b>	<b>Effect of the Bill</b>
		conditions requiring compliance with 1017D and Div 5 of Part 7.9 of the Bill in relation to those schemes. We will give relief for those schemes from Part 7.9 of the Bill except the PDS provisions. Schemes that are not required to be registered as they have less than 20 members will be exempt from Part 7.9 of the Bill.
148	Investor directed portfolio services	The relief from the managed investments provisions will continue and be extended to Part 7.9 of the Bill. The IDPS Guide requirements will continue. We will separately review the conditions of relief for disclosure of accessible securities.
149	Nominee and custody services	Will be separately reviewed.
150	Electronic applications	Relief will be given based on the policy in relation to financial products.
152	Lodgment of disclosure statements	<p>The policy will apply to those PDS that are required to be lodged. [PS 152.16], [PS 152.17] and [PS 152.18(b)] do not apply to financial products because under the Bill:</p> <ul style="list-style-type: none"> <li data-bbox="959 1073 1490 1104">(a) there is no provision for profile statements; and</li> <li data-bbox="959 1125 1490 1234">(b) it is clear that the exposure period does not apply to Supplementary Product Disclosure Statements that have to be lodged.</li> </ul>
153	Profile statements	Superseded
154	Certificate by qualified accountant	Policy statement applies to 761G(7)(c).
158	Advertising and publicity for offers of securities	Policy applies to financial products except that relief for roadshows will no longer be necessary. A draft PDS can be handed out at a roadshow so long as the statements in 1018A(2)(c)–(f) are included.
160	Time-sharing schemes	<p>This policy is in the process of being finalised.</p> <p>Fixed term schemes to which the old Law as defined in s1451 applies are not affected by the Bill.</p> <p>Issuers of interests in exempt time-sharing schemes will be required by conditions of exemption to comply with Part 7.9 of the Bill and the consumer protection provisions as far as practicable as if the interests were</p>

DISCLOSURE: DISCRETIONARY POWERS AND TRANSITION

No.	Description	Effect of the Bill
		<p data-bbox="906 279 1214 306">managed investment products.</p> <p data-bbox="906 342 1490 558">Where Division 5 of Part 7.9 of the Bill applies or a condition requiring compliance with it is included, no other requirements for cooling off will apply for members of ATHOC or an approved ISB. In other cases existing requirements will apply in addition to the requirements of, or conditions based on, Div 5 of Part 7.9.</p> <p data-bbox="906 590 1490 695">Relief from Part 7.9 of the Bill will not be required to use a loose leaf price list, but the existing relief from s601GA(1)(a) will be unaffected.</p> <p data-bbox="906 726 1490 905">Issuers of interests in rental pools associated with exempt time-sharing schemes will be required by conditions of exemption to comply with the PDS provisions, 1017D, Div 5 of Part 7.9 and the consumer protection provisions so far as practicable as if they applied.</p>

**Practice notes**

No.	Description	Effect of the Bill
40	Reconstruction meetings	Practice note applies in relation to interpretation of when there is an offer to issue or arrange the issue of financial products. However the issue of financial products, even after a reconstruction meeting, is subject to Part 7.9 of the Bill. ASIC will consider applications for conditional relief from the PDS requirements in this situation under Section A.
43	Valuation reports and profit forecasts	Practice note applies to PDS except for [PN 43.51]–[PN 43.52] and [PN 43.69]. This PN should be read with [IR 01/ 5] and [MR 01/112].
55	Citing experts	Practice note applies to financial products except for the discussion of disclosure of interests of experts because there is no provision in the Bill directly corresponding with 1021(6) as applying when [PN 55] was issued. [PN 55] is to be read subject to the guidance in the draft amendments published with Information release [IR 97/13].
60	Updating and correcting prospectuses and application forms	The practice note does not apply to financial products, except for [PN 60.6]–[PN 60.12J] and [PN 60.61], because the provisions of the Bill do not correspond to the provisions of the Law discussed.
62	Crown immunity	The following parts of the practice note apply to financial products, Part II, Part IV (except [PN 62.34]–[PN 62.37] and [PN 62.41]–[PN 62.42]), Part V and Part VI.
64	Accounting and disclosure issues for property trust prospectuses	Applies to financial products.
66	Transaction specific prospectuses	Does not apply to financial products as the content rules for PDS for continuously quoted financial products (or other ED securities) are different from the old Law.
67	Financial forecasts	Applies to financial products as it does to securities and is to be read together with Information release [IR 01/5] and [MR 01/112]. For discussion of use of assumptions, see our policy FSRB Policy Proposal Paper No 4 <i>Disclosure: Product Disclosure Statements (and other disclosure obligations)</i> (April 2001).

**DISCLOSURE: DISCRETIONARY POWERS AND TRANSITION**

<b>No.</b>	<b>Description</b>	<b>Effect of the Bill</b>
70	Cash box prospectuses	Applies to financial products except [PN 70.16].

***Class orders***

<b>No.</b>	<b>Description</b>	<b>Effect of the Bill</b>
98/51	Relief from duty to separate assets of a managed investment scheme.	Relief will continue but be amended so that the term derivative will be as defined in the Bill.
98/52	Relief from the consideration to acquire constitutional requirement	Will be amended to make references to corresponding provisions of the Bill concerning wholesale clients and PDS after commencement of the Bill.
99/461	Closed service strata schemes	Relief will be applied to Part 7.9 of the Bill and offers to wholesale clients treated like excluded offers.
00/44	Electronic application forms	The relief allowing similar versions to be treated as copies and for application form issued and partly completed by the holder of an AFSL will be given in relation to the financial products.
00/97	Offers of securities through the internet	Relief will be given in relation to financial products.
00/168	Relief from exposure period: quoted securities	Relief will be given in relation to financial products.
00/169	Relief from exposure period: supplementary and replacement prospectuses	Will not apply to financial products as a supplementary PDS under the Bill is clearly not treated like a PDS for the purposes of the exposure period.
00/171	Qualified accountants	Instrument will continue in effect and apply to financial products.
00/175	Pre-prospectus roadshow presentations	Relief will not be applied to financial products as it is not needed. A draft PDS can be handed out at a roadshow so long as the statements in 1018A(2)(c)-(f) are included.
00/176	Pre-prospectus market research	Relief will be given in relation to financial products.

**DISCLOSURE: DISCRETIONARY POWERS AND TRANSITION**

<b>No.</b>	<b>Description</b>	<b>Effect of the Bill</b>
00/178	Foreign securities: Publishing of reports and notices	Relief will be given in relation to financial products.
00/179	Foreign securities: Publishing of reports and notices – publishers	Relief will be given in relation to financial products.
00/180	Foreign securities: Publishing of reports and notices to approved foreign exchange	Relief will be given in relation to financial products.
00/181	Foreign securities: Publishing of reports and notices (multi-part prospectuses)	Will not be applied to financial products because the Bill facilitates multi-part PDS and does not require a statement that the PDS expires.
00/182	Transfer and settlement of foreign securities through CHESS	Relief from Part 7.9 of the Bill will be given in relation to interests in managed investment schemes operated by foreign companies that are financial products.
00/184	Relief to facilitate offer of interests in registered schemes in New Zealand	Superseded. Relief is not needed for financial products as Part 7.9 of the Bill only applies to offers received in Australia.
00/185	Foreign securities	Relief will be given in relation to financial products.
00/187	Rights issue notification	Relief will be given in relation to financial products based on the issuer having a PDS available.
00/189	Use of original application form	Relief from 1016A(3) will be given to allow an issue or sale of financial products to proceed following the procedure in 1016E(2)(b) without a fresh application form. Other relief provided by this class order will not be needed.
00/190	Substituting or consolidating supplementary disclosure documents	This relief is no longer required as a supplementary PDS under the Bill may specify which former Supplementary PDS it is to be read with.
00/191	Sale of strata title units for \$500,000 or more	This relief will be extended to Part 7.9 of the Bill if needed having regard to any regulations made under s761G(7)(a).
00/192	Business introduction or matching services	Pending separate review – relief will be given in relation to managed investment products.

**DISCLOSURE: DISCRETIONARY POWERS AND TRANSITION**

<b>No.</b>	<b>Description</b>	<b>Effect of the Bill</b>
00/193	Experts: citing in disclosure documents	Relief will be given in relation to financial products.
00/197	Charitable investment schemes - Fundraising	Relief will be given in relation to managed investment schemes from the PDS requirements on corresponding conditions.
00/198	Managed investment schemes - interests not for money	Relief will be extended to Part 7.9 of the Bill in relation to the relevant managed investment schemes. Requires drafting variations to refer to new retail client provisions as well as former exclusions.
00/199	Trustee companies' common funds	Unaffected. There is no need to carry forward relief from the application form requirement for voluntary investors as under 1016A it will not apply where there is no relevant offer.
00/200	Relief for operation of foreign managed investment schemes	Will be amended to allow for offers to wholesale clients in Australia.
00/202	Two part prospectus relief for mortgage schemes	Relief will not be needed as lodgement is not generally required and a PDS may consist of more than one document.
00/203	Mortgage schemes – Chapter 5C and disclosure relief	Schemes that do not have to be registered as they have less than 20 members will be exempt from Part 7.9 of the Bill. We will remove the provisions for general disclosure in relation to small industry supervised schemes with effect from when disclosure is required under the PDS requirements. We will impose conditions requiring compliance with 1017D and Div 5 of Part 7.9 of the Bill in relation to those schemes. We will give relief for those schemes from Part 7.9 of the Bill except the PDS provisions.
00/204	Private ostrich schemes	Relief will be given from Part 7.9 of the Bill.
00/205	Horse breeding schemes – private broodmare syndication	Relief will be given from Part 7.9 of the Bill.
00/206	Horse breeding schemes – private stallion syndication	Relief will be given from Part 7.9 of the Bill
00/207	Horse racing syndicates	Will continue in a modified form to reflect PDS disclosure requirements. We will require compliance with 1017D and Div 5 of Part 7.9 of the Bill. We will



**DISCLOSURE: DISCRETIONARY POWERS AND TRANSITION**

<b>No.</b>	<b>Description</b>	<b>Effect of the Bill</b>
		remove the provisions for general disclosure with effect from when disclosure is required under the PDS requirements. We will give relief from Part 7.9 other than the PDS requirements.
00/208	Managed investment schemes – no issue required disclosure	Relief will be modified to also cover issues that do not require a PDS.
00/209	Ordinary residential or commercial letting arrangements	Relief will be extended to financial products and to Part 7.9 of the Bill.
00/210	Investor directed portfolio services	Relief will be extended to Part 7.9 of the Bill. Disclosure conditions for accessible financial products and relief for issuers will be separately reviewed
00/211	Nominee and custody services	Relief will be extended to Part 7.9 of the Bill. Disclosure conditions for accessible financial products and relief for issuers will be separately reviewed.
00/212	Investor directed portfolio like services provided through a registered managed investment scheme	Will be separately reviewed.
00/214	Foreign securities: foreign listed companies making 20 or fewer offers in 12 months.	Relief will be applied to Part 7.9 of the Bill for interests in managed investment schemes.
00/215	Small property syndicates	Relief will be applied to Part 7.9 of the Bill.
00/217	Additional investment applications	The Bill permits additional investments without an application form in the circumstances covered by the relief. Relief will be given to permit switches into another financial product in response to a PDS, without an application form. The requirement for transaction reports will not apply. Relief for election forms is not required.
00/218	Additional investment applications: two part prospectus	Superseded
00/219	Additional investments: use of	Superseded

**DISCLOSURE: DISCRETIONARY POWERS AND TRANSITION**

<b>No.</b>	<b>Description</b>	<b>Effect of the Bill</b>
	an updating supplementary prospectus	
00/224	Employee share schemes – contribution plans	Relief will apply to Part 7.9 of the Bill (assuming policy continues).
00/225	Golden Circle	Relief will be given while Golden Circle Limited is permitted by the Law to operate a financial product market without a licence to do so. Golden Circle Limited may apply for further relief based on the general policy in Section A.
00/227	Time-sharing schemes – private arrangements	Will not be continued because except in very unusual circumstances such arrangements are not required to be registered as a managed investment scheme.
00/229	Solicitors mortgage investment companies	Will be amended to refer to holder of an AFSL that authorises dealing, rather than a dealers licence.
00/232	School enrolment deposits	Relief will be extended to Part 7.9 of the Bill as applies in relation to Parts 6D.2 and 6D.3.
00/233	Interests in film and theatrical ventures	Relief will be extended to Part 7.9 of the Bill as applies in relation to Parts 6D.2 and 6D.3
00/234	Film investment schemes	Relief will be extended to Part 7.9 of the Bill as applies in relation to Parts 6D.2 and 6D.3
00/237	Twenty issues in 12 months – transitional issues	A corresponding class order will be made if needed.
00/240	Treatment of offers of interests in managed investment schemes	This need not be applied to Part 7.9 of the Bill as it relates to provisions that do not correspond to the Bill
00/241	Lloyd's	Relief from managed investments provisions will continue. Modifications will be made to the PDS provisions reflecting the class order so far as relevant. We will require compliance with 1017D and Div 5 of Part 7.9 as if the scheme were registered.
00/570	Management rights schemes	Will be separately reviewed.
00/656	Announcements to securities exchanges about offers by	Relief will be applied to Part 7.9 of the Bill and extend to financial products.

**DISCLOSURE: DISCRETIONARY POWERS AND TRANSITION**

<b>No.</b>	<b>Description</b>	<b>Effect of the Bill</b>
	subsidiaries of the listed body	
00/1068	Warrants: fundraising relief	This relief will not be applied to Part 7.9 of the Bill.
00/1268	Sydney Futures Exchange managed discretionary accounts	Relief will be applied to Part 7.9 of the Bill subject to existing sunset. Conditions for prospectus disclosure will be removed with effect from when the PDS provisions apply. Relief will require compliance only with the requirements that correspond to those applying currently.
01/50	Differential fees	Will be amended to refer to wholesale clients and PDS for managed investment products after commencement of the Bill.
01/179	Time-sharing schemes operation of rental pool	<p>The first exemption will be continued in an amended form. We will remove the provisions for general disclosure with effect from when disclosure is required under the PDS requirements. We will impose conditions requiring compliance with the PDS provisions, 1017D, Div 5 of Part 7.9 and the consumer protection provisions as if the interests were managed investment products. We will give relief from the other provisions of Part 7.9 of the Bill.</p> <p>The second exemption will continue in an amended form. We will remove the provisions for general disclosure with effect from when disclosure is required under the PDS requirements. We will give relief from Part 7.9 of the Bill except the PDS provisions, 1017D and Div 5 of Part 7.9.</p>
01/180	Time-sharing schemes loose leaf price lists	Relief from s601GA(1)(a) will be amended to remove the requirements of the instrument for cooling off and in relation to a loose leaf price list in the case of a member of ATHOC or an approved ISB. For members of ATHOC or an approved ISB, the cooling off provisions in the Law will be adequate. References to a prospectus will be to PDS. Looseleaf price lists will be permitted under the PDS provisions.

**Pro formas**

<b>No.</b>	<b>Description</b>	<b>Effect of the Bill</b>
PF 96	Sponsor deed	Will continue subject to technical amendments.
PF 97	Sponsor exemption	Will continue and extend to the PDS provisions.
PF123	Changing a disclosure document before Issue	Will be applied to PDS.
PF 184	Strata arrangements that incidentally involve a managed investment scheme	Relief from the managed investment provisions will continue.
PF 186	Well advanced schemes	Will be separately reviewed.
PF 187	Management rights schemes where the strata unit cannot be used as a residence	Will be separately reviewed.
PF 205	Time-sharing schemes formerly exempt under State laws	Relief from the managed investment provisions will continue. Relief will be varied to impose conditions on any issuer of interests to comply with Part 7.9 of the Bill the licensing provisions and the consumer protection provisions as if the scheme were registered as far as practicable.
PF 206	Time-sharing schemes Chapter 5C relief	Relief from the managed investment provisions will continue. Relief will be varied to impose conditions on any issuer of interests to comply with Part 7.9 of the Bill the licensing provisions and the consumer protection provisions as if the scheme were registered as far as practicable.
PF 207	Title based time-sharing schemes	Relief from the managed investment provisions will continue. Relief will be varied to impose conditions on any issuer of interests to comply with Part 7.9 of the Bill the licensing provisions and the consumer protection provisions as if the scheme were registered as far as practicable.

# B Life insurance

## ISC PUBLISHED POLICY

### *Circulars*

No.	Description	Effect of the Bill
B.3 (AB 3/96)	Guide to the Insurance Contracts Act 1984	Still applies except to the extent that it does not reflect consequential FSR changes. The PDS requirements will supplement, but not replace, disclosure requirements for insurance under the Insurance Contracts Act.
G.I.1	Disclosure requirements for promotional material in the life insurance industry	Superseded
G.I.2	Policy illustration rates	Superseded. Refer to our FSRB Policy Proposal Paper No 4 <i>Disclosure: Product Disclosure Statements (and other disclosure obligations)</i> (April 2001).
G.II.2	Code of Practice issues	Superseded

### *CEO letters*

No.	Description	Effect of the Bill
19/10/95	Investment/savings policies – annual statements to policyholders	Superseded
28/3/96	Direct response marketing and Circular G.I.1 – disclosure requirements	Superseded
23/10/96	Electronic distribution of promotional material for life insurance and superannuation products	Superseded. Relief is not needed under the Bill for the conduct to which the policy applied.
7/8/97	Requests for extensions to customer information brochures	Superseded as the Bill does not prescribe life of a PDS.
24/4/98	Lodgement of customer information brochures and pro forma policy documents	Superseded

**ASIC PUBLISHED POLICY*****Information releases***

<b>No.</b>	<b>Description</b>	<b>Effect of the Bill</b>
99/27	Telemarketing of life insurance products – relief from G.I.1 and G.II.1	Applies to financial products.
00/13	Relief for life companies to enable partial electronic applications	Superseded because provisions of Bill allow electronic applications including partial electronic applications.

## C General insurance

Our policies in relation to General Insurance do not relate to the requirements of Part 7.9 of the Bill.

## D Superannuation

*Note:* Some of the content of the ISC Information Statements and Approved Trustee letters is within APRA's jurisdiction. The table below does not address impact of the Bill on APRA's role – it is confined to implications under Part 7.9 of the Bill.

### ISC INSTRUMENTS

#### *Modification declarations*

No.	Description	Effect of the Bill
15 (7/8/96)	Issue of interest to standard employer sponsored members without an application	Superseded
21 (15/5/97)	Information by cross-reference to other documents	Superseded

#### *ISC determinations*

Description	Effect of the Bill
Applications for "Single Premium" superannuation interests (public offer superannuation funds) pursuant to s153(4) of the SIS (Reissued 14/10/97)	Superseded by PDS provisions in the Bill.
Determination relating to eligible applications (RSAs) pursuant to s51(3), RSA Act	Superseded by PDS provisions in the Bill.

## ISC PUBLISHED POLICY

### *Circulars*

No.	Description	Effect of the Bill
I.D.1 (Aug 95)	Disclosure requirements for regulated superannuation funds other than excluded funds	Superseded. The circular may provide guidance on the type of information which needs to be considered when preparing periodic reports, significant event reports and information “on request” under corresponding provisions in the Bill.
I.D.2 (Oct 95)	Disclosure requirements for excluded superannuation funds	Superseded. The Bill does not differentiate between product types.
I.D.3 (Sept 95)	Disclosure requirements for approved deposit funds other than excluded ADFs	Superseded. The Bill does not differentiate between product types.
I.D.4	Disclosure requirements for excluded ADFs	Superseded. The Bill does not differentiate between product types.
I.D.5	Disclosure requirements for PSTs	Superseded. The Bill does not differentiate between product types.
I.E.1	Internal inquiries and complaints processes	Superseded.

### *ISC information letters sent to all approved trustees*

*Note:* Our description of the effect of the Bill is confined to those parts of these letters that relate to Part 7.9 of the Bill.

No.	Description	Effect of the Bill
2 (6/94)	Miscellaneous	Superseded
3 (8/94)	Miscellaneous	Superseded as our views on PDS content are in our FSRB Policy Proposal Paper No 4 <i>Disclosure: Product Disclosure Statements (and other disclosure obligations)</i> (April 2001).
7 (8/95)	Miscellaneous	Superseded as our views on PDS content are in our FSRB Policy Proposal Paper No 4 <i>Disclosure: Product Disclosure Statements (and other</i>



**DISCLOSURE: DISCRETIONARY POWERS AND TRANSITION**

<b>No.</b>	<b>Description</b>	<b>Effect of the Bill</b>
		<i>disclosure obligations</i> ) (April 2001).
9 (12/95)	Miscellaneous	Superseded as our views on PDS content are in our FSRB Policy Proposal Paper No 4 <i>Disclosure: Product Disclosure Statements (and other disclosure obligations)</i> (April 2001).
11 (4/96)	Approval of s153 determination – point of sale disclosure	Superseded by PDS provisions in the Bill.
12 (5/96)	ASC V A S Nominees Limited	Superseded as our views on PDS content are in our FSRB Policy Proposal Paper No 4 <i>Disclosure: Product Disclosure Statements (and other disclosure obligations)</i> (April 2001).
13 (8/96)	Section 153 determination - point of sale disclosure	Superseded by PDS provisions in the Bill.
15 (10/96)	Electronic distribution of promotional material for life insurance and superannuation products	Superseded
17 (2/97)	Miscellaneous	Superseded
18 (7/97)	Section 153 determination – point of sale disclosure	Superseded by PDS provisions in the Bill.

## **ASIC PUBLISHED POLICY**

### ***Information releases***

<b>No.</b>	<b>Description</b>	<b>Effect of the Bill</b>
IR 99/02 (11/1/99)	ASIC’s approach to operational requests on superannuation	Superseded
IR 99/03 (13/1/99)	Functions transferred to ASIC from the ISC	Superseded except about how to treat reference to “ISC” in former policy of the ISC.

# Regulatory and financial impact

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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); 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, 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

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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

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In this policy proposal:

“ASIC” means the Australian Securities and Investments Commission;

“ASX” means the Australian Stock Exchange Ltd;

“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;

“[CO 00/241]” (for example) means a reference to the ASIC class order number [CO 00/241].

“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

“ISC” means the Insurance and Superannuation Commission.

“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?

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## Stage 1

26 April 2001 ASIC policy proposal paper released

## Stage 2

May/early June 2001 Consultation period on the contents of this policy proposal paper

7 June 2001 Comments due on the policy proposal

15 June to September 2001 Drafting of policy statement

## 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](mailto:FSRProjectOffice@asic.gov.au)

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

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## Related papers

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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?*

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