

Attachment 2 to CP 232: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Superannuation (Product Disclosure for Investment Strategies) Instrument 2015/XX

I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Dated 2015

<signature>

<insert name>

Delegate of the Australian Securities and Investments Commission

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Part 1—Preliminary

1 Name of legislative instrument

This instrument is *ASIC Superannuation (Product Disclosure for Investment Strategies) Instrument 2015*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Note: The register may be accessed at <http://www.comlaw.gov.au>.

3 Authority

This instrument is made under section 1020F of the *Corporations Act 2001* (the *Act*).

Part 2—Declarations

4 Relief in relation to regulated acquisitions through certain superannuation funds

Part 7.9 of the Act applies in relation to a trustee of a superannuation entity as if provisions in that Part were modified or varied by:

Main modifications

- (a) after section 1013FA inserting:

“1013FB Choices available in relation to Product Disclosure Statements for superannuation custodial arrangements and related regulated acquisitions

- (1) This section applies if a regulated acquisition of a financial product (the *accessible financial product*) may be made through a superannuation entity.
- (2) If this section applies, a Product Disclosure Statement (the *superannuation entity PDS*) for the superannuation product to which the superannuation entity relates may comply with:
 - (a) subsection (3) (separate Statements for the superannuation product and the accessible financial product); or
 - (b) subsections (5) and (6) (integrated Statement for the superannuation product and the accessible financial product).

If the superannuation entity PDS complies with subsections (5) and (6), a Product Disclosure Statement for the accessible financial product must also comply with those subsections.

Note : Product Disclosure Statements do not have to comply with paragraph (a) or (b). They may instead be prepared in accordance with this Division apart from this section.

Alternative 1 – Separate PDSs for superannuation product and accessible financial products

- (3) The superannuation entity PDS must:
 - (a) contain the information about the superannuation product that is required by Part 7.9 of the Act; and
 - (b) in relation to the accessible financial product— contain the information that a person would reasonably require as a retail client to:

- (i) identify the accessible financial product; and
 - (ii) understand the investment strategy under which the product may be acquired by way of a regulated acquisition; and
 - (iii) work out whether to ask for further information about the product; and
- (c) either:
- (i) inform people of their right to obtain from the trustee (the *provider*) of the superannuation entity on request a Product Disclosure Statement (the *provider's accessible product PDS*) for the accessible financial product that the provider has prepared; or
 - (ii) inform people of their right to obtain from the provider on request a Product Disclosure Statement (the *issuer's accessible product PDS*) for the accessible financial product that the issuer of the product has prepared.
- (4) If the superannuation entity PDS complies with subsection (3):
- (a) the superannuation entity PDS does not have to:
 - (i) include any other information about the accessible financial product that would be required by sections 1013D, 1013DA, 1013E or 1013F;
 - (ii) if the accessible financial product is a margin loan, comply with regulation 7.9.11D of the Regulations in relation to the accessible financial product;
 - (iii) if the accessible financial product is a superannuation product to which Subdivision 4.2B of Division 4 of Part 7.9 of the Regulations applies, comply with regulation 7.9.11O of the Regulations in relation to the accessible financial product; and
 - (iv) if the accessible financial product is a simple managed investment scheme to which Subdivision 4.2C of Division 4 of Part 7.9 of the Regulations applies, comply with regulation 7.9.11W of the Regulations in relation to the accessible financial product; and
 - (b) the provider must give a copy of the provider's accessible product PDS (where subparagraph (3)(c)(i)

applies) or the issuer's accessible product PDS (where subparagraph (3)(c)(ii) applies)) to any person who asks for it.

Note: Paragraphs (a)(ii) to (a)(iv) mean that Schedules 10C to 10E do not have to be complied with in relation to the superannuation entity PDS.

Alternative 2 – Integrated PDS for superannuation product and related accessible financial products

- (5) The superannuation entity PDS and the Product Disclosure Statement for the accessible financial product must be combined in a single document (the ***integrated PDS***) or in 2 or more separate documents (the ***integrated PDS***) that are given at the same time.

Note: Other requirements relating to Product Disclosure Statements made up of 2 or more separate documents are set out in section 1013L.

- (6) The integrated PDS must contain:
- (a) the information about the superannuation product and about the accessible financial product that is required by Part 7.9 of the Act; and
 - (b) the information that a person would reasonably require as a retail client to understand the investment strategy under which the accessible financial product may be acquired by way of a regulated acquisition.

Note: Paragraph 1012IA(5)(aa) enables a Product Disclosure Statement for the accessible financial product to be prepared by the provider where:

- (a) Alternative 1 is relied on and the Product Disclosure Statement for the superannuation product informs people of their right to obtain the provider's accessible product PDS; or
- (b) Alternative 2 is relied on.”; and

- (b) after section 1017C inserting:

“1017CA Information for existing holders of superannuation products who have given instructions to make regulated acquisitions

- (1) If:
- (a) a person (the ***client***) has directed (whether before or after the commencement of this section) the trustee (the ***provider***) of a superannuation entity to follow an investment strategy (the ***affected investment strategy***) that involves making a regulated acquisition of an accessible financial product in relation to all or part of

the client's holding of the superannuation product to which the entity relates; and

- (b) at a time when the provider holds the accessible financial product as a result of the client's direction, a material adverse change to a matter, or a significant event that adversely affects a matter occurs, being a matter that would have been required to be specified in a Product Disclosure Statement for the accessible financial product prepared on the day before the change or event occurs; and
- (c) the provider has not decided to stop making regulated acquisitions of the product under the affected strategy;

the provider must comply with subsections (2) and (5).

Note: Paragraph (b) applies whether or not a Product Disclosure Statement was in fact prepared (or required to be prepared) on the day before the change or event occurs.

- (2) As soon as practicable after the change or event occurs, the provider must notify the client in accordance with subsections (3) and (4):
 - (a) of the change or event; and
 - (b) that:
 - (i) the client may direct the provider to follow an investment strategy made available by the provider that does not involve regulated acquisitions of the accessible financial product, in relation to either or both of the following:
 - (A) the holding in the product that the provider has acquired as a result of following the affected investment strategy;
 - (B) any future contribution by or on behalf of the client to the superannuation entity to the extent to which it would otherwise have been subject to the affected investment strategy; and
 - (ii) if the client does not give the provider directions in accordance with subparagraph (i) – the provider will continue to follow the affected investment strategy.
- (3) The issuer must notify the client in one of the following ways:

- (a) in writing; or
 - (b) electronically; or
 - (c) in a way specified in the regulations.
- (4) The notice must give the client the information that is reasonably necessary for the client to understand the nature and effect of the change or event.
- (5) Subject to subsections (6) and (7), at the same time as notifying the client, the provider must give the client:
- (a) where the provider is no longer accepting directions from a person for the first time to follow an investment strategy that involves making a regulated acquisition of the accessible financial product, either:
 - (i) any further information that the client reasonably requires for the purposes of making a decision about whether to give a direction of the kind referred to in paragraph (2)(b); or
 - (ii) a copy of a Product Disclosure Statement (the **current PDS**) for the accessible financial product that would be required to be given under section 1012IA in relation to a regulated acquisition of the product on the instruction of a person who is not a holder of the product on the day the notice is sent; or
 - (b) otherwise – a copy of the current PDS.
- Note: Sections 1014D and 1014E will enable subparagraph (a)(ii) or paragraph (b) to be satisfied in some circumstances by giving a Product Disclosure Statement together with a Supplementary Product Disclosure Statement or just giving a Supplementary Product Disclosure Statement.
- (6) The provider does not have to give the client information or a Product Disclosure Statement under paragraph (5) if:
- (a) the client has already received a Product Disclosure Statement that contains all of the information that the first-mentioned Product Disclosure Statement would be required to contain; or
 - (b) the provider believes on reasonable grounds that paragraph (a) applies.
- (7) The provider does not have to give the client information or a Product Disclosure Statement under paragraph (5) if the provider believes on reasonable grounds that the client has received, or has, and knows that they have, access to, all of the

information that the Product Disclosure Statement would be required to contain through:

- (a) a Product Disclosure Statement; and
- (b) information provided to the client under section 1017B in relation to the superannuation product or through continuous disclosure under Chapter 6CA in relation to the accessible financial product.

Note 1: A material adverse change or a significant adverse event relating to the accessible financial product may need to be notified to the client under section 1017B because the client holds the superannuation product. If the client is notified of the change or event under that section by the time notification is required under subsection (2), the provider may not need to also give the client information or a Product Disclosure Statement under subsection (5).

Note 2: The continuous disclosure provisions in Chapter 6CA apply to accessible financial products that are both managed investment products and ED securities.

- (8) The information referred to in subparagraph (5)(a)(i) may be given by including it in the notice referred to in subsection (2).
- (9) In this section, *investment strategy* means, in relation to a superannuation entity, an investment strategy formulated by the trustee of the entity under the covenant referred to in paragraph 52(2)(f) of the *Superannuation Industry (Supervision) Act 1993*.

Note 1: This section only applies in relation to a client where the provider is holding the relevant financial product as a result of a direction given by the client at the time the change or event occurs. In a case where the provider is not so holding the product at that time, the provider nonetheless may need to give the client an appropriate Supplementary or new Product Disclosure Statement before acquiring the product on their instructions. This is because the Product Disclosure Statement required to be given by subsection 1012IA(2) is a Statement that meets the requirements for such Statements set out in Division 2 of Part 7.9.

Note 2: If a provider decides to stop making regulated acquisitions of a financial product, the provider must notify holders of interests in the superannuation entity in accordance with section 1017B.” and

5 Consequential modifications

- (a) in subsection 1012IA(1), after the definition of *acquirer*, inserting:

“*additional acquisition* means, in relation to a client, a regulated acquisition of a financial product at a time when the provider is already holding a financial product of the same kind as a result of an instruction given by the client.”; and
- (b) in subsection 1012IA(2) omitting “Before” and substituting “Subject to subsection (2A), before”; and

(c) after subsection 1012IA(2), inserting:

“(2A) Exemption for additional acquisitions by superannuation trustees.

(a) A provider who is a trustee of a superannuation entity does not have to comply with subsection (2) in relation to an additional acquisition if at any time (whether before or after the commencement of this subsection) before making the acquisition the provider tells the client in writing, and subject to paragraph (b), obtains the client’s written acknowledgement, that, at the time an additional acquisition of a financial product occurs, the client may not have received:

- (i) the current Product Disclosure Statement for a product; and
- (ii) the disclosure that subsection 1017B(1) would require the issuer of the product to give to the client if the client had made an equivalent direct acquisition of the product.

Note: This subsection applies regardless of whether a current Product Disclosure Statement for the product has been prepared.

(b) The provider does not have to obtain the client’s written acknowledgement if the client held a superannuation product to which the entity relates immediately before 1 July 2007 and has held such a product at all times since.”; and

(d) in subsection 1012IA(5):

(i) inserting after paragraph (a):

“(aa) where the provider is a trustee of a superannuation entity and a current Product Disclosure Statement for the superannuation product to which the entity relates complies with paragraph 1013FB(3)(b) and subparagraph 1013FB(3)(c)(ii) or with subsection 1013FB(5)—the reference to the issuer of the financial product in subsection 1013A(1) included a reference to the provider; and”;

(ii) in paragraph (b), omitting “section.” and substituting “section; and”;

(iii) inserting after paragraph (b):

“(ba) where the provider is a trustee of a superannuation entity—the reference to the person making the offer to sell the financial product in subsection 1013A(2) included a reference to the provider.”; and

(e) after subsection 1012IA(5), inserting:

“(5A) Modification of section 1013C

Section 1013C applies in relation to a regulated acquisition by a provider who is a trustee of a superannuation entity as if the reference to the responsible person in subsection 1013C(2) were:

- (a) in the case of an issue Statement—a reference to the issuer of the financial product; or
- (b) in the case of a sale Statement—a reference to the seller of the financial product.”; and
- (f) in subsection 1013D(1) omitting “sections 1013F and 1013FA,” and substituting “sections 1013F, 1013FA and 1013FB,”; and
- (g) in section 1013E omitting “sections 1013F and 1013FA,” and substituting “sections 1013F, 1013FA and 1013FB,”; and
- (h) after section 1011B, inserting:

“1011BA Definitions relating to regulated acquisitions of financial products by superannuation trustees

In this Division and section 1017CA:

accessible financial product has the meaning given in section 1013FB.

additional acquisition has the meaning given in subsection 1012IA(1).

equivalent direct acquisition has the meaning given in subsection 1012IA(2).

margin loan means a standard margin lending facility.

regulated acquisition has the meaning given in section 1012IA.

Regulations means the *Corporations Regulations 2001*.

simple managed investment scheme has the same meaning as in regulation 1.0.02 of the *Corporations Regulations 2001*; and

- (i) in subregulation 7.9.75A(1) of the Regulations omitting “paragraph 1017B(3)(c)” and substituting “paragraphs 1017B(3)(c) and 1017CA(3)(c)”;
- (j) in subregulation 7.9.75B(1) of the Regulations inserting after paragraph (a):

“(aa) paragraph 1017CA(3)(c) of the Act”; and

- (k) in Part 3 of Schedule 10BA of the Regulations (paragraph (a) of notional section 1017K of the Act):
 - (i) after “1013A,” inserting “1013FB,”; and
 - (ii) omitting “1016E and 1017A” and substituting “1016E, 1017A and 1017CA.”