



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 221

# Facilitating digital financial services disclosures

March 2016

### About this guide

This is a guide for financial services providers that use (or plan to use) technology, including email and the internet, to deliver financial product and financial services disclosures to clients. It:

- explains how under Pts 7.6–7.9 of the *Corporations Act 2001* (Corporations Act) most disclosures can be delivered digitally;
- outlines our view that in most cases it will be clear from the context that a client has provided or nominated their electronic address for the purpose of receiving disclosure under the Corporations Act, and no higher standard of consent is required to send to an electronic address compared to non-electronic methods;
- describes the relief available under ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647 to facilitate the delivery of disclosures by making the disclosure available digitally and notifying the client;
- describes the relief available under ASIC Corporations (Removing Barriers to Electronic Disclosure) Instrument 2015/649 to remove potential barriers to more innovative disclosure; and
- sets out our 'good practice guidance' on digital disclosure.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This version was issued in March 2016 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 221, issued December 2010, reissued July 2015

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## A Overview

### Key points

While the *Corporations Act 2001* (Corporations Act) expressly permits the digital delivery of financial services disclosures, we understand that some providers have been discouraged from doing so because of uncertainty about what specific practices the law allows.

The purpose of this guide is to clarify our interpretation of the law and to explain the relief we have given in relation to:

- the delivery of digital disclosures; and
- the removal of potential barriers to the use of more innovative Product Disclosure Statements (PDSs), Financial Services Guides (FSGs) and Statements of Advice (SOAs).

This guide also sets out our 'good practice guidance' on digital disclosure, including guidance to facilitate the use of more innovative disclosures, such as interactive PDSs, FSGs and SOAs. This is intended to ensure that consumer protections are retained in the digital environment.

### Our approach to facilitating digital disclosure

- RG 221.1 Financial services disclosures (disclosures) are often lengthy, printed documents that many clients find difficult to understand and engage with. We think that one way to make disclosure more effective and efficient is by encouraging and facilitating the use of digital disclosure. An advantage of digital disclosure for clients is that it can incorporate more engaging forms of media and can be interactive. This can make the information more attractive and easier to understand for clients. It can also be more timely, convenient and reliable.
- RG 221.2 Digital disclosure also has advantages for providers in reducing the costs of printing and mailing.
- RG 221.3 We take a technologically neutral approach to disclosures and do not mandate the delivery of disclosures digitally. It is for providers to determine the method of delivering disclosures that best suits their clients or their products and that will not expose those clients to undue risk of scams and fraud. For example, a margin-lending product might work particularly well online because clients are likely to be monitoring their investments online.

## Our guidance and relief

RG 221.4 While the Corporations Act expressly permits the electronic delivery of financial services disclosures, we understand that some providers have been discouraged from doing so because of uncertainty about what specific practices the law allows.

RG 221.5 To facilitate the use of digital disclosures, we have:

- (a) explained how delivery methods can be used relying on the electronic disclosure provisions under Pts 7.6–7.9 of the Corporations Act, including explaining our views on the requirement that a client nominate an address and how we think providers can use email addresses;
- (b) given relief in ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647 to facilitate the delivery of disclosures by making the disclosure available digitally and notifying the client;
- (c) given relief, also in ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647, to enable superannuation fund trustees to meet their obligation to give a PDS and ongoing disclosures to a default member by using an email address provided by the member's employer;
- (d) given relief in ASIC Corporations (Removing Barriers to Electronic Disclosure) Instrument 2015/649 and provided guidance to facilitate the use of more innovative PDSs, FSGs and SOAs; and
- (e) modified the ePayments Code to allow digital disclosure in a similar manner to that permitted under the Corporations Act (as modified by the ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647).

Note: Although parts of this guide refer to obligations under the Corporations Act, our guidance is also relevant to how persons can meet similar obligations under the ePayments Code.

RG 221.6 We have also provided good practice guidance to help ensure:

- (a) clients continue to receive clear, concise and effective information when disclosures are delivered digitally; and
- (b) consumer protections are retained in the digital environment (see Section D).

RG 221.7 We have not identified a need to give relief or guidance for every part of the Corporations Act that relates to digital disclosure. In most cases, the Corporations Act is drafted in a way that is wide enough to accommodate digital methods of delivery and digital formats for disclosures. For example, reg 7.9.15DA of the Corporations Regulations 2001 (Corporations

Regulations) provides that information need not be included in a PDS if sufficient details are provided to enable a person to identify a document and locate it. This is broad enough to cover a digital document, and a unique identifier could be something such as a URL.

Note: In this document, references to sections, parts and chapters are to the Corporations Act, and references to regulations are to the Corporations Regulations.

RG 221.8 The appendix summarises how different types of disclosure can be delivered under the law.

RG 221.9 Table 1 provides a ‘quick guide’ on how to deliver disclosures digitally.

**Table 1: Quick guide on how to deliver disclosures digitally**

Delivery of disclosure in full to an electronic address	Delivery of disclosure using other digital delivery methods
<p>Disclosures may be delivered digitally in full to an electronic address (e.g. an email address):</p> <ul style="list-style-type: none"> <li>• if the client has provided an email address (or other electronic address) as part of their contact details; or</li> <li>• for superannuation fund trustees, the trustee can rely on ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647 for disclosures to ‘default members’ (i.e. where the member’s email address has been provided by the member’s employer).</li> </ul>	<p>Disclosures may be delivered using any digital method (e.g. a digital message with a hyperlink to the disclosure):</p> <ul style="list-style-type: none"> <li>• if the client has agreed (orally or in writing);</li> <li>• if the client has not agreed, the provider can rely on ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647, which involves making the disclosure available digitally and notifying the client that the disclosure is available (the provider must first give the client the opportunity to opt out of this method); or</li> <li>• If it is specifically permitted by the Corporations Act (e.g. for annual superannuation information and confirmations of transactions).</li> </ul>

## B Delivery of digital disclosures

### Key points

Under the Corporations Act, most financial services disclosures can be delivered digitally using a variety of methods.

This section:

- sets out our interpretation of the electronic disclosure provisions under Pts 7.6–7.9 of the Corporations Act; and
- explains the methods providers can use to deliver disclosures digitally, including the method provided by our relief in ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647, involving making the disclosure available digitally and notifying the client that the disclosure is available.

We also strongly encourage providers to take into consideration our good practice guidance when delivering disclosures digitally: see Section D.

### Corporations Act requirements

- RG 221.10 Parts 7.6–7.9 of the Corporations Act permit a wide range of financial services disclosures to be delivered digitally. The provisions that enable disclosures to be delivered digitally differ depending on the type of disclosure.
- RG 221.11 FSGs, SOAs, PDSs and information statements for Commonwealth Government Securities (CGS) depository interests can be ‘given’ if they are sent to an electronic address or fax number ‘nominated’ by the client or the client’s agent (s940C(1)(a)(ii), 1015C(1)(a)(ii) and 1020AK(1)(a)(ii)): see RG 221.19.
- RG 221.12 The following disclosures may be notified or given to a client in ‘electronic’ form or may be sent ‘electronically’:
- ongoing disclosure (s1017B(3)(b));
  - periodic statements (s1017D(6)(b));
  - confirmations of transactions (s1017F(6)(a)(ii));
  - annual superannuation information (s1017DA(3) and reg 7.9.75A(3)(b));
  - additional information provided by a superannuation trustee (s1017DA(3) and reg 7.9.75A(3)(b)); and
  - unsolicited offers to purchase financial products off-market (s1019E(1)), 1019G(3) and 1019J(2)).

- RG 221.13 The following disclosures may alternatively be ‘made available in any way agreed to’ by a client or their agent (meaning, provided the client agrees, the disclosure could be delivered digitally or in any other way—this is in addition to the provisions allowing disclosures to be sent to an electronic address: see RG 221.18):
- (a) FSGs and SOAs (s940C(1)(a)(iii));
  - (b) PDSs (reg 7.9.02A);
  - (c) ongoing disclosure (reg 7.9.75A(1));
  - (d) periodic statements (reg 7.9.75A(2));
  - (e) annual superannuation information and additional information provided by a superannuation trustee (reg 7.9.75A(3)(c) and (d)); and
  - (f) additional information on request (s1017A(4)(b)).
- RG 221.14 Annual superannuation information can also be provided to members of a regulated superannuation fund by ‘making [it] available on a website that is maintained by or on behalf of the trustee’ in accordance with reg 7.9.75BA.
- RG 221.15 Confirmations of transactions can be provided ‘by means of a standing facility’ in accordance with s1017F(5)(b) and 1017F(5A).
- RG 221.16 Under Class Order [CO 13/763] *Investor directed portfolio services*, quarterly reports for an investor directed portfolio service (IDPS) can either be delivered electronically, or a client (with their consent) can be given access to their account on an electronic platform, where the Australian financial services (AFS) licensee has no reason to doubt that the client has substantially continuous access.
- RG 221.17 Table 3 in the appendix summarises the disclosure delivery provisions—both printed and digital—that apply to different disclosures.

### **Delivery of disclosures to an electronic address**

- RG 221.18 Many disclosure provisions, including our relief (see RG 221.43), enable a disclosure to be sent, given, provided, notified or delivered digitally, including to an electronic address: see RG 221.12. The legislation does not generally specify how providers might use contact details to give a disclosure digitally.

Note: All of the provisions referred to in in RG 221.11–RG 221.12 allow a provider to send disclosures to an electronic address as text in an email or as an attachment to an email, but in most cases delivery by sending a link or reference to the disclosure can only be with the agreement of the client. This is why we have provided the relief described in RG 221.32–RG 221.48.

- RG 221.19 Some provisions allow delivery of disclosures to an electronic address that has been ‘nominated’ by the client or the client’s agent (e.g. PDSs: see



RG 221.11). For these provisions, the provider should be satisfied that the address has been nominated for that purpose—in the same way that a provider would be required to satisfy itself that a postal address had been nominated for the delivery of a disclosure. We think in most instances this will be clear from the context—for example, if a client has provided their email and postal address as contact information as part of an application, the provider could deliver disclosures for that product to either address.

RG 221.20 In determining whether a provider has met its obligation to give a disclosure or notification where there is a nomination requirement, a provider may wish to consider the context in which the client provided their address (including an electronic address), telephone number or fax number, to satisfy itself that it can use that address to effectively ‘give or notify’.

#### Example 1: Email provided for purpose of delivery of disclosures

In 2014, Rahini entered a relationship with a new financial planner, Anna. Rahini gave Anna all her details, including her email address ([anna@aol.com](mailto:anna@aol.com)) as contact details. Rahini did not provide express consent to use her email address for the purpose of delivery of disclosures and Anna does not normally contact Rahini by email because they meet in person and speak on the telephone. Rahini has asked Anna to purchase units in a registered scheme, BigTrust, on her behalf. Anna gives Big Trust Rahini’s postal address and email address as contact details.

*We think that given Rahini recently provided her email address to her financial planner for contact, one of the purposes of providing that email address was to receive disclosures. We think Big Trust can send most disclosures to that email address because this is an indication that Rahini has either nominated or agreed to her email address being used for contact details. Big Trust would have to be satisfied that either Rahini, or Anna as her agent, had nominated that address. We think that an agency relationship can generally be inferred where the adviser has provided personal contact details such as a personal email address. Big Trust can be satisfied that the address is nominated.*

### Related bodies corporate

RG 221.21 Where a related body corporate has contact details for a client that a provider wishes to use, we think the provider can use those details to meet its disclosure obligations in the same way as if those details were provided to it directly, consistent with privacy laws.

RG 221.22 The *Privacy Act 1988* (Privacy Act) permits related bodies corporate to share personal information (other than sensitive information) in certain circumstances. This permits a provider to collect the contact details for a client from a related body corporate and use those contact details for the same purpose that the related body corporate collected them. Where a provider wishes to use the contact details for a client for a secondary purpose, it can do so in the following circumstances:

- (a) the provider notifies the client of the circumstances in which it has obtained their contact details;
- (b) the client would reasonably expect the provider to use their contact details for the secondary purpose of delivering financial services disclosures; and
- (c) the provider's use of the contact details is related to the primary purpose for which the related body corporate collected the contact details.

RG 221.23 Providers should consider how the Privacy Act and the Australian Privacy Principles (APPs) apply to their particular circumstances. Providers must comply with the APPs when using or holding personal information collected from a related body corporate.

Note: The Office of the Australian Information Commissioner's APP guidelines are a key resource to assist you to comply with the APPs and consider your other APP obligations when handling personal information: see [www.oaic.gov.au/privacy/applying-privacy-law/app-guidelines/](http://www.oaic.gov.au/privacy/applying-privacy-law/app-guidelines/).

RG 221.24 Clients would have the opportunity to opt out of this form of disclosure as described in RG 221.40.

### **Delivering disclosures in any way agreed by the client**

RG 221.25 We consider that the provisions allowing delivery in any way agreed to by the client (see RG 221.13) allow a provider to deliver those disclosures in any way they choose, provided they have client agreement and the disclosure has been given.

RG 221.26 There are no legislative requirements relating to the form of that agreement, and so providers need only satisfy themselves that the client has agreed to this method of delivery.

RG 221.27 The provisions enabling disclosure in any way agreed are a separate, additional option for delivery beyond the sending of disclosures to electronic addresses.

RG 221.28 For ongoing disclosures, an example of digital delivery in a way agreed by the client might be a product that includes in its terms and conditions (which are made clear to the client) that disclosures will be made available on social media, a particular app or an online platform, rather than being given directly. To satisfy itself that it has met its obligation to give the disclosure, the provider might wish to seek specific initial agreement that the client will access the disclosure in one of the ways mentioned.

Note: We have also provided relief to enable providers to initiate a mechanism of delivering disclosure involving making disclosures available digitally, and notifying the client that the disclosure is available, without the need for client agreement to receive the disclosures in that manner, subject to certain conditions ('publish and notify' method): see RG 221.32–RG 221.48.

## Fully digital products and services

- RG 221.29 For products and services that, as part of their terms and conditions, are sold as digital only, providers need not make printed or printable copies of disclosures available. This is on the basis that at the time of purchasing the product or service, the client was made aware that they would receive communications only in digital form. Providers should ensure that when selling fully digital products or services, this condition of purchase is made clear to the client before the purchase takes place.
- RG 221.30 Where a provider of such a product or service does not have a disclosure document capable of being printed, we have given relief in ASIC Corporations (Removing Barriers to Electronic Disclosure) Instrument 2015/649 to the effect that the provider need not give a printed copy of a PDS on request (to a person other than a client) but should notify the requester of other ways of receiving the PDS.
- RG 221.31 Where a provider seeks to shift a product or service from having printed and posted disclosures available to a fully digital product, it must have the agreement of each relevant holder of that product.

## Relief from the client consent requirement: ‘Publish and notify’

- RG 221.32 We have given relief in ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647 to enable providers to make many disclosures available digitally, and notify the client the disclosure is available, without the need for client agreement to receive the disclosures in that manner (‘publish and notify’ method).
- RG 221.33 This relief allows for disclosure by, for example, sending clients:
- (a) an email, SMS, app notification, social media notification or other digital message with a hyperlink or similar connection, or instruction to access the disclosure; or
  - (b) a notification that the disclosure is available digitally.
- RG 221.34 While this method of delivery is already possible under the legislation, the client must agree. Our relief allows the provider to use this method of delivery by default, even if it has not first secured client agreement. To use this method, the provider must first give the client the opportunity to opt out of this method.
- RG 221.35 This is an additional method of delivery that providers may wish to use, and does not limit a provider’s ability or opportunity to gain client agreement to alternative methods of delivery or deliver disclosures in any other way permitted under the Corporations Act (including, for example, sending disclosures in full to an electronic address).

- RG 221.36 The publish and notify method of delivery is available for the following disclosures:
- (a) FSGs and SOAs;
  - (b) PDSs;
  - (c) ongoing disclosure of material changes and significant events;
  - (d) periodic statements; and
  - (e) information statements for CGS depository interests.
- RG 221.37 Rather than seeking agreement to deliver in this way, the provider must merely notify the client that they intend to make disclosures available digitally, and will notify the client when those disclosures are available. The client must then be given at least seven days to opt out of this publish and notify method, should they choose to do so (if the client has not agreed, see RG 221.41).
- RG 221.38 The provider may choose to provide the notification that disclosure is available to access at the same time as the opt-out notice, but it would not satisfy its obligation to deliver the disclosure until the seven-day opt-out period has expired, without the client opting out. If the provider chooses to provide disclosure in this way within the first seven days of sending the notification, it must include in the notification a message that, if the client makes an election to opt out of the publish and notify method, the election will also apply to any disclosure made available in this way within that period. However, the provider need not include this message where the provider has no reasonable grounds for believing it will provide disclosure using the publish and notify method during this seven-day period.
- RG 221.39 The notification need not be specific, but should cover the form of the disclosure the provider intends to use. For example, a notification might say that the provider will deliver disclosures in the future using an online portal, or via an app. If a provider creates a new method not envisaged by the original notification, a new notification and seven-day period to opt out (or other form of agreement) would be necessary.
- RG 221.40 Giving the opportunity to opt out might mean providing an option for the client to have disclosures delivered (in full) either to an electronic address or to a postal address.
- RG 221.41 Alternatively, the provider could secure the client's agreement to this method. If the provider wishes to deliver the disclosure by the publish and notify method immediately, it should obtain agreement from the client. If agreement is secured, no seven-day period for opting out is required. Agreement can be sought in any way—such as orally, in person or over the telephone, by using a tick box on a form, or by SMS. Agreement could be sought as part of the application process.

- RG 221.42 As a consequence, we expect that this method will be most useful when providers wish to use the publish and notify method for disclosure delivery for existing clients. We have also given guidance on situations where providers wish to begin emailing (or otherwise delivering to electronic addresses) entire disclosures to clients: see RG 221.66–RG 221.70.
- RG 221.43 After the provider has delivered the first notice and seven days has passed, a provider may deliver all future disclosures by publishing the disclosure digitally, such as on a website or other digital facility, and notifying the client by any means, provided the notification is able to be retrieved or stored. This could include, for example, a notification sent to the electronic address (including an electronic mailbox address or social media address) or postal address, telephone number or fax number that the client has provided for the purposes of receiving information from the provider.
- RG 221.44 For example, if a client has provided a postal address, the provider could post a letter to the client notifying the client that the disclosure is available. Similarly, this notification could be delivered by email, SMS, or by an app that the client has logged into or from which they have agreed to receive notifications.
- RG 221.45 The relief provides that, each time a provider publishes a disclosure, it must notify the client and that the notification should contain details about how to access the disclosure.
- RG 221.46 When the disclosure contains personal financial information, such as in a periodic statement from a superannuation fund, the provider should ensure that the information is adequately secured, such as by password protection. The requirement that personal financial information is adequately secured should be met in a way that recognises the desirability for the client to actually access the information.
- RG 221.47 Providers should endeavour to make the process of retrieval as easy as possible. For example, if a password or username is required, this should be able to be updated or retrieved immediately, rather than, for example, requiring the client to apply to or contact the provider by telephone or email.
- RG 221.48 If a provider does not have the required technology to implement a secure and relatively seamless process for accessing disclosures, it should consider whether an alternative method may be more appropriate for its clients.

#### **Example 2: The publish and notify method**

*12 July.* BetterSuper sends a letter to Edith's postal address advising that her disclosures will now be delivered digitally using an online portal, and that Edith will receive a notification each time a new disclosure is available. The letter also contains access information for the portal and a telephone number and email address to contact to opt out of digital delivery.

*20 July:* Edith has not responded. BetterSuper sends her a letter advising that her annual statement is available in the portal. The letter includes instructions on how to access the portal and a telephone number and email address to opt out of digital delivery in the future. When Edith accesses the portal, she is asked to input her email address and mobile telephone number.

*20 September:* BetterSuper sends Edith an SMS notifying her that a significant event notice is available on the portal. The text message includes a link to the access page for the portal and the words: 'To opt out of digital communications, respond "NO"'.

*If Edith responds 'NO' she has opted out of digital communications for future disclosures, but BetterSuper has fulfilled its obligation to deliver the significant event notice.*

### Example 3: Concurrent notification

Regional Bank sends Rui an email advising her that her statements and other important information will now be provided to her via the R-Bank App. The email includes instructions and a link to download the app and says that the March statement is available now. The email also includes an email address and a telephone number to contact to opt out of app delivery.

Two days later, Rui emails saying she wants to opt out of app delivery. Regional Bank instead sends Rui's March statement directly to her email address because the seven-day opt-out period has not yet passed.

## Relief relating to default members of superannuation funds

- RG 221.49 We have given relief in ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647 to give certainty to a trustee of a superannuation fund that obtains an email address for a member as part of a default superannuation arrangement (or a successor default superannuation fund, where an email address was supplied by an employer to a predecessor fund), so that the trustee can use that email address for disclosure.
- RG 221.50 There is uncertainty about whether it can always be clearly inferred that an employer would be acting as the employee's agent in passing on an email address in the context of setting up a default account (e.g. there may not necessarily be clear instructions from the employee in relation to this process, which may occur without the employee's specific directions). Whether the email address is nominated by an agent of the employee for the purposes of receiving disclosure will depend on the circumstances.
- RG 221.51 To rely on our relief, the disclosure must be accompanied by a statement that, if requested, the trustee will send the disclosure (and other communications) to another address nominated by the holder (e.g. electronic

or postal). The trustee will not be able to rely on the relief to give relevant disclosures in the future if such a request has been received.

- RG 221.52 Additionally, the trustee must have no reason to believe that the electronic address is not a current electronic address for the holder. If the trustee subsequently, within 14 days of sending the email, has reason to believe the electronic address is not current, it must attempt an alternative method of giving the statement.
- RG 221.53 For example, if the trustee were not receiving contributions for the employee, this would be an indication that it could not hold such a reasonable belief. Similarly, if the trustee received a ‘hard’ email bounce-back (e.g. undeliverable) or similar notification, this would indicate that the electronic address was no longer current.
- RG 221.54 The period of time since acquiring the email address may also be relevant. For example, if the trustee acquired the email address many years ago, it might not have reason to believe it is still current, without checking with the employer. If an employer frequently updates contact details, the address is much more likely to be current.
- RG 221.55 If the trustee does have reason to believe the address is not current, it is unable to rely on this relief, and should give disclosure by another means.
- RG 221.56 Trustees may also rely on our relief to make disclosures available via the publish and notify method, provided that the trustee has no reasonable grounds to believe that the address is not a current address and certain other conditions are satisfied: see RG 221.32–RG 221.48. When the trustee is using the publish and notify method, if within 14 days of sending a notice under that method, the trustee has reasonable grounds for believing that the electronic address is not current, the trustee must make the relevant disclosure by another method.

## Relief relating to receipt of disclosure

- RG 221.57 Regulations 7.7.01(2) and 7.9.02A(1) require that PDSs, FSGs and SOAs be delivered in a way that allows the provider to be satisfied, on reasonable grounds, that the client or the client’s agent has received the disclosure. This could be considered an additional barrier to providers delivering PDSs, FSGs and SOAs through hyperlinks or references to a digital disclosure.
- RG 221.58 To promote greater confidence for providers in delivering PDSs, FSGs and SOAs digitally, we have given relief in ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647 from the requirement for the provider to be reasonably satisfied that the client has received the disclosure where the provider delivers the disclosure

digitally, including by the publish and notify method outlined at RG 221.32–RG 221.48.

- RG 221.59 This relief means it is clear that if a provider delivers disclosure through hyperlinks or references to a digital disclosure, they are not required to use a mechanism to track whether a client has accessed the disclosure.

## **‘Keeping a copy’ of the disclosure**

- RG 221.60 Regulations 7.7.01 (SOAs and FSGs), 7.9.02B (PDSs), 7.9.63I (confirmations of transactions) and 7.9.75B (periodic statements, material changes and signification events, annual superannuation information and additional superannuation information) require the disclosure, if it is in digital form, to be presented in a way that allows the client to ‘keep a copy so that the person has ready access to [the disclosure] in the future’.
- RG 221.61 We do not think this requirement prevents the use of hyperlinks and references to website addresses in delivering disclosures, provided there is some capacity for the client to either store the disclosure, or continue to have access to that disclosure.
- RG 221.62 We also do not think this requirement prevents delivery of disclosures to, for example, smartphones or tablet apps or online facilities, as long as the provider satisfies itself that the client will have access to the disclosure in future and the ability to keep a copy. This might include, for example, multimedia online disclosures that can be saved/downloaded or continually accessed for a reasonable period (see our good practice guidance (no. 5) in Section D), or an app that can be kept on a smartphone or tablet, or a disclosure that can be saved offline, printed or forwarded to an email address.
- RG 221.63 This requirement is a general principle of delivering disclosures.

## **Individual relief to facilitate digital disclosure**

- RG 221.64 The methods of delivery discussed above relate to specific areas where industry participants have sought clarification and where we have made additional methods available through our relief. By providing these descriptions of how disclosures can be delivered digitally, we do not intend to restrict the ways in which disclosures can be delivered. We recognise that there will be other methods of delivery that are also possible under the law, including, for example, delivery through apps or other multimedia channels or web-based platforms.



RG 221.65 We encourage providers to explore more innovative forms of disclosure and, where providers are concerned that there are remaining regulatory barriers, we are open to granting individual relief to facilitate the use of these kinds of disclosure (email [applications@asic.gov.au](mailto:applications@asic.gov.au)) where they are consistent with ASIC's Good Disclosure Principles.

Note: See RG 221.94 and Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168) for more details on ASIC's Good Disclosure Principles. See also Regulatory Guide 169 *Disclosure: Discretionary powers* (RG 169), Regulatory Guide 167 *Licensing: Discretionary powers* (RG 167) and Regulatory Guide 51 *Applications for relief* (RG 51).

## Making the transition to digital disclosure: Notification

RG 221.66 Where providers intend to change the way they deliver disclosures to existing clients, we expect providers to notify clients using their existing method of communication before doing so. This is a condition of the relief for the specific publish and notify method of delivery and we would expect that, as a matter of good practice, providers would also do this more generally when making the transition from one delivery method to another (e.g. from paper to email delivery).

RG 221.67 Providing notification before the switch to digital delivery would be in addition to our suggested good practice that a provider monitor bounce-backs and attempt an alternative method of delivery where a 'hard' bounce-back is received: see the good practice guidance in Section D.

RG 221.68 The notification should provide a clear statement that the client can opt out of the new form of delivery (i.e. request an alternative form of delivery).

RG 221.69 Providers could also consider using software or technology to monitor for emails being opened and attempt other methods of delivery if there is a pattern of unopened emails. We understand that this will not be possible or appropriate in all circumstances, but we encourage providers to use technology to provide the best possible service for their clients.

RG 221.70 Both notification and possible monitoring are intended to mitigate against situations such as where a client gave an incorrect email address, where the passage of time has meant the email address given is no longer accessed, or where a client, not expecting a communication from their financial services provider, does not open an email.

## Complying with industry codes and other legal obligations

RG 221.71 Providers need to consider whether other laws or requirements restrict how they may deliver disclosures or impose additional consent requirements. We

note that we have modified the ePayments Code to allow digital disclosure in a similar manner to that permitted under the Corporations Act (as modified by the ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647).

RG 221.72 Providers also need to consider their other legal obligations when delivering disclosures digitally (e.g. providers should ensure they comply with the *Spam Act 2003* and meet privacy obligations, including under the APPs).

## C Facilitating the use of more innovative PDSs, FSGs and SOAs

### Key points

We encourage providers to explore new formats for disclosures.

This section sets out our relief to remove potential legal barriers to the use of more innovative PDSs, FSGs and SOAs, including relief from:

- various provisions that require a copy of the PDS to be given on request;
- the requirement for certain PDSs under the shorter PDS regime to be a particular page length; and
- provisions that require the use of certain words on the cover or 'at or near the front of' a disclosure.

This section also sets out some specific guidance on the use of more innovative PDSs, FSGs and SOAs.

Section D sets out good practice guidance for digital disclosure.

- RG 221.73 We are removing barriers to more innovative forms of disclosure to enable providers to harness the opportunities of digitisation, and explore new ways for investors to understand and engage with their investments.
- RG 221.74 The relief and guidance in this section is intended to remove any barriers that remain to the use of more innovative disclosure and it is not intended to mandate any particular form or type of disclosure.
- RG 221.75 We encourage providers to explore new ways of delivering mandated information and disclosures to meet consumer expectations and to facilitate better understanding of financial products and services.
- RG 221.76 PDSs, SOAs and FSGs can already, without our relief, be presented in electronic form (s940C and 1015C) and delivered electronically. This means the disclosure can potentially incorporate a range of digital features such as video, audio, interactive menu features, radio buttons, Q&A, animation and gamification.
- RG 221.77 There are two sets of barriers that our relief and guidance address. The first are potential legal barriers that could discourage the use of less traditional formats. The second relates to various requirements in the legislation to provide a copy of a PDS, SOA or FSG on request, which may limit the ability to have multiple versions of disclosures in different formats. We understand that providers may still want to have printed or printable versions of disclosures available, even where they have a more innovative format in use. It may also be challenging to provide a copy of a disclosure document in

a particular medium in some circumstances (e.g. providing a digital PDS to a postal address or in person).

## Relief to remove potential barriers to more innovative disclosures

RG 221.78 We have provided relief in ASIC Corporations (Removing Barriers to Electronic Disclosure) Instrument 2015/649 to facilitate the use of more innovative PDSs, SOAs and FSGs.

### Giving a copy of ‘any’ current PDS

RG 221.79 Various provisions require a copy of a PDS to be given on request: regs 7.9.11G, 7.9.11R and 7.9.11Z and s1012G(3) (as modified by reg 7.9.15H). The provider would be able to give the digital PDS to the client if they had nominated an electronic address, but because it might be challenging or expensive to send a copy of a digital PDS to a postal address or to give it in person, we have given relief to allow a provider to give a copy of *any* current PDS for that financial product in use for the relevant product. This means that a provider could provide a copy of a *different* printed PDS for that financial product instead of the digital PDS where the client had not nominated an electronic address.

RG 221.80 Section 1015D also requires copies to be provided to any person, as long as this is a reasonable request. We think that this is broad enough to accommodate giving a copy of any current PDS in use for the relevant product, based on the format that is reasonable to provide in the circumstances.

### Page length

RG 221.81 We have given relief from the requirement for certain PDSs under the shorter PDS regime to be a particular page length (Sch 10C (margin loans), Sch 10D (some superannuation products) and Sch 10E (simple managed investment schemes) to the Corporations Regulations) where the PDS, or some part of the PDS, is not capable of being printed.

RG 221.82 This relief is specifically intended to accommodate innovative PDS formats and we remind providers that the other provisions of the shorter PDS regime still apply, including content requirements. We also note that, for these kinds of PDSs, we will take the fact that the shorter PDS regime aims for more concise PDSs into account when considering whether a PDS is clear, concise and effective. This means that innovative PDSs should also meet this requirement and contain a similar level of detail or volume of content (appropriate to the format) that would be in a shorter PDS.

### **On the cover or ‘at or near the front of’**

- RG 221.83 While we think the language ‘at or near the front of’ can be applied equivalently to printed and digital PDSs, FSGs and SOAs, we have given relief to assure providers that when they are using a digital format for disclosure, the requirement for the title ‘Product Disclosure Statement’, ‘Financial Services Guide’ or ‘Statement of Advice’ to be used on the cover or at or near the front of the document will be satisfied. We have done this by allowing the words to also be used ‘at or near the beginning’ of the disclosure.
- RG 221.84 For example, if the title ‘Product Disclosure Statement’ appears at the top of a webpage, on launch of an app or is spoken at the beginning of a video, we think this requirement would be satisfied.
- RG 221.85 If the words ‘Product Disclosure Statement’ are, for example, only found after scrolling down a webpage, we do not think this requirement would be satisfied.
- RG 221.86 These requirements for particular words to be used at the beginning of the disclosure are not intended to limit the form of the disclosure, but to ensure that consumers are made aware that they are looking at a disclosure document early in the process of engaging with it.
- RG 221.87 The same principles apply to the various other requirements for specific words to be included at or near the front of the disclosure—including, for example, ‘Supplementary Product Disclosure Statement’ (s1014B), ‘Combined Financial Services Guide and Product Disclosure Statement’ (reg 7.7.08A), ‘Statement of Advice’ (s942A) and ‘Financial Services Guide’ (s947A).

## **Guidance on the use of more innovative disclosures**

- RG 221.88 This section sets out some specific guidance on the use of more innovative digital disclosures: see also Section D for our good practice guidance on digital disclosure, including the more innovative forms.

### **More than one version of a disclosure**

- RG 221.89 We consider Pt 7.9 operates to allow a provider to have more than one PDS for a financial product, more than one FSG for a financial service or more than one SOA for a single instance of advice (e.g. a printed version and a separate interactive version) provided that each version of the disclosure satisfies the requirements of Pt 7.9 and the client can rely on each one of the disclosures.

RG 221.90 The legislation does not require, and we do not expect that, all products will have a PDS that is capable of being printed and posted. Nor is there a requirement that an FSG or SOA have a printable version. This is a choice for each provider to make, based on its own client preferences, and in the context of its overriding obligations to provide disclosure: see RG 221.29–RG 221.31.

### **Lodgement of PDSs with ASIC**

RG 221.91 The requirement for some PDSs to be lodged with ASIC in s1015B (PDSs for managed investment products that are traded on a financial market or are able to be traded on a financial market) is a practical barrier to producing more innovative PDSs. ASIC does not currently have facilities to accept electronic lodgement automatically; however, we are open to enabling electronic lodgement to facilitate the use of more innovative PDSs where they are required to be lodged with ASIC (email [applications@asic.gov.au](mailto:applications@asic.gov.au)).

### **Application forms**

RG 221.92 We think that the requirement that an application form be ‘included in or accompanied by’ a PDS (s1016A) is wide enough to enable a provider to incorporate an application form into a digital PDS, or give the application at the same time as the PDS.

### **Overriding requirement of ‘clear, concise and effective’ disclosure**

RG 221.93 We think that consumers and providers can benefit from more innovative ways of presenting mandated disclosure information, but we remind providers of the overriding requirement that the information in the PDS, FSG or SOA must be worded and presented in a clear, concise and effective manner: s1013C(3), 947B(6) and 942B(6A).

RG 221.94 Providers should apply the Good Disclosure Principles for PDSs in RG 168 and other product-specific guidance on disclosure. The Good Disclosure Principles for PDSs are that disclosure should:

- (a) be timely;
- (b) be relevant and complete;
- (c) promote product understanding;
- (d) promote product comparison;
- (e) highlight important information; and
- (f) have regard to consumers’ needs.

RG 221.95 The Good Disclosure Principles apply regardless of the form of the disclosure and we encourage providers to consider how they might apply to

more innovative disclosures. In some cases a disclosure in digital form will enable providers to more easily satisfy the Good Disclosure Principles.

- RG 221.96 For example, digital disclosure can allow a more timely delivery of the document and may be more easily personalised, potentially increasing the likelihood that the information will be retained by the consumer. Digital disclosures, by using a range of communication methods, can also promote product understanding for consumers who have varying communication needs.
- RG 221.97 We encourage providers to undertake consumer testing of proposed and existing disclosures to inform the design to help ensure disclosures are meeting consumer needs.

### **Requirements to protect consumers**

- RG 221.98 We think that the digital environment presents some unique challenges to consumers. There may be more opportunity for distraction or important information being downplayed. As such, the legislation and our guidance include some requirements to protect consumers.

#### **Identifying the information that is part of the disclosure and understanding the scope of the disclosure**

- RG 221.99 Regulations 7.9.02B (PDSs) and 7.7.01(3) (FSGs and SOAs) provide that where the disclosure is to be given in electronic form, it must be presented in a way that clearly identifies the information that is part of the disclosure.
- RG 221.100 In the case of a disclosure that uses multimedia, compliance with this requirement is particularly important. We think that a client should be able to easily identify exactly what is part of the disclosure, and anything that is not part of the mandated disclosure.
- RG 221.101 It may also be desirable for clients to have the ability to estimate how much time they might need to view and understand the information in the disclosure (in the same way a client could quickly estimate the time and effort it would take to absorb the contents of a printed booklet based on whether it was thick or thin with large or fine print). In terms of current technology, this might mean a time-clock on a video or an upfront estimate as to how long the disclosure would take a client to go through.
- RG 221.102 These examples (including Example 4 below) reflect our views on how the law might apply to some forms of digital disclosure; they are not intended to limit or dictate how the law might be applied to different forms of digital disclosure, either now or in the future.

**Example 4: Identifying and understanding the scope of the disclosure**

Amanda is going overseas and wants to purchase a prepaid travel card. She contacted a travel card provider, who emailed a link to the PDS for the product. Amanda clicks on the link and it prompts her to download the travel money app. She does so and opens the app on her tablet. On first opening, the app prompts her to view the PDS. Amanda has 10 minutes before her next meeting and so clicks 'Yes', and a new screen titled 'Product Disclosure Statement' opens.

*We think this clearly shows Amanda that this is the mandated PDS.*

Amanda starts swiping through some text and gets to a screen that asks her to drag boxes with each risk described to a box titled 'Risks' before she can swipe through to the next screen. Amanda is concerned that she will not have time to finish going through the PDS. At the top of the app screen is a menu icon. Amanda taps this icon, which drops down the following options: 'Exit PDS'; 'Show progress'; and 'Skip to'. She hits 'Show progress' and a progress bar appears at the bottom of the screen. It looks like she is half way through.

*We think this is a good way to show the scope of a PDS and also, depending on how it is structured, could be a good way of showing Amanda how much time it will take her to view and understand the PDS.*

Amanda uses the menu to skip straight to a section called 'Benefits of a travel card' and watches a short video where a person goes through the key points. She then shuts out of the app. Later, she reopens the app and it prompts her to view the PDS again. When she opens the PDS she is taken directly to the place she last looked at in the PDS. When she taps 'Skip to' on the menu, the sections she has already visited are in green text, while the others are in red text.

*We think this is a good way for Amanda to navigate through the PDS.*

When Amanda has been through all of the sections of the PDS, the app screen shows a big tick and prompts her to exit the PDS. The screen now shows a menu with the following options: 'Check your balance'; 'Upload'; 'Why travel money?'; 'Product Disclosure Statement'; and 'Apply online'. Amanda clicks 'Why travel money?' and a warning screen pops up saying 'You should read this in conjunction with the Product Disclosure Statement'. Amanda clicks 'Yes'.

*We think this clearly delineates between the PDS and the promotional material.*

**Navigability**

RG 221.103 Our good practice guidance in Section D suggests that digital disclosures be readily navigable. This is to ensure that a client can easily access those parts of the disclosure that might be most important to them. Key parts of the disclosure should be available to the client without them having to see or go through the whole disclosure to locate them.



- RG 221.104 This might mean a menu feature in an app, chapters in a video or a contents sidebar or similar on a webpage, which the client can use to immediately go to sections of the disclosure. In the case of a PDS, this might be sections such as significant benefits and risks, the cost of the product, factors affecting returns, significant taxation implications, or how to complain. A search feature could also enable ready navigation.

#### Example 5: Navigability

Investment Factory Australia is opening a new investment fund and has developed an interactive PDS. Clare is interested in the fund and opens the PDS online.

The PDS starts with a video animation highlighting the features of the fund, how it works and the benefits. This takes around four minutes. After the video finishes, text flows onto the screen, with music playing in the background. The text speeds by with headings such as 'Fees and costs', 'How funds like these are taxed' and 'Risks'. It lasts about two minutes. At the end of the PDS, there is an option to play again.

Clare is particularly interested in the taxation implications of the fund, but does not want to go through the whole presentation again. She cannot find a way to get straight to that point in the presentation, so she watches it again, but cannot stop the text speeding by and so has to take a screen shot.

*We do not think this PDS is readily navigable. To meet the requirements, Investment Factory Australia could add a menu feature that would allow the user to jump to sections, enabling the presentation to be paused and using back and forward buttons.*

*We also think that the PDS may potentially be misleading or deceptive because it does not give equal prominence to the risks and the benefits of the product and does not highlight important information. Investment Factory Australia could ensure this is the case by including risks in the initial video and slowing down the subsequent presentation.*

#### Distraction/diversion

- RG 221.105 As is the case for printed disclosures, we also expect providers to ensure that the method or form of the disclosure does not divert clients away from any parts of the disclosure. To ensure disclosure is clear, concise and effective, appropriate prominence should be given to each aspect of the product that the consumer should understand before purchasing the product.
- RG 221.106 We are concerned that the digital environment might make it easier for a disclosure to channel a consumer away from parts of the disclosure that may be less appealing or for which it might not be in the provider's interest to draw the client's attention to. We think a provider should consider whether the disclosure flows logically in a way that aids understanding of the product.

## D Good practice guidance for digital disclosure

### Key points

We have set out good practice guidance for the digital delivery of financial services disclosures: see Table 2.

- RG 221.107 Table 2 sets out our good practice guidance for digital disclosure. It applies to any method of digital delivery of financial services disclosures. We have given good practice guidance to help ensure clients receive clear, concise and effective information, regardless of the method by which those disclosures are delivered or the form in which they are delivered.
- RG 221.108 We encourage providers to apply our good practice guidance when delivering disclosures digitally. In some cases, our good practice guidance reflects regulatory requirements for delivering certain disclosures.

**Table 2: Good practice guidance**

Guidance	Explanation
1 <b>Disclosure documents should be easy to retrieve, view and understand</b>	<p>This is currently required by law for some types of digital disclosure, including when delivering annual superannuation information by making it available on a website or other digital facility.</p> <p>The disclosure should be easy to access. It is up to the provider to determine which means is most appropriate for the client to easily access the disclosure.</p> <p>This also means that a disclosure should be readily navigable, so the client can easily identify particularly relevant sections, or move around in the disclosure in a way that is meaningful to them. This could be achieved by including features such as a menu on an app, chapters in a video or a contents bar on a webpage.</p> <p>If a generic website address, hyperlink or other direction device that does not take a client directly to the disclosure is given, instructions should be provided on how to access the disclosure (e.g. in a document notifying a client of the availability of the disclosure, such as a letter, or on a website).</p> <p>The instructions should be clear and easy to understand. Providers should ensure that any process to access the disclosure is simple.</p> <p>If a specific document address or a hyperlink that takes a client directly to the disclosure is given, the address or the hyperlink should take a client to the beginning of the disclosure (e.g. a hyperlink should not take the client straight to an application form).</p>
2 <b>Disclosures should not distract or divert clients from relevant information</b>	<p>Disclosures should not include features that channel clients away from important information or distract them from key features of the disclosure.</p>

Guidance	Explanation
<p><b>3 Clients should be able to identify the disclosure</b></p>	<p>For many types of disclosure the law requires that an electronic document is clearly identified as, or as part of, a specified disclosure document. This also means that the client should be able to readily identify the whole disclosure.</p> <p>This includes PDSs, FSGs, SOAs, annual superannuation information, confirmations of transactions and periodic statements.</p>
<p><b>4 Providers should use their reasonable efforts to ensure that the client or their agent receives a copy of the disclosure</b></p>	<p>If a provider becomes aware that a client has not received the disclosure (e.g. it receives an undeliverable email notice (a 'hard' bounce-back) or the post is returned to sender), it should make reasonable attempts to contact the client by other means to give them the disclosure (e.g. by sending the disclosure to an alternative electronic address of the client if one has been provided or by sending a printed copy of the disclosure to the client).</p>
<p><b>5 Clients should be able to keep a copy so that they can access the disclosure in the future</b></p>	<p>This is required by law for many types of disclosure, including PDSs, FSGs, SOAs, annual superannuation information, confirmations of transactions and periodic statements.</p> <p>This could include the ability to save a digital copy.</p> <p>When the disclosure is provided through a hyperlink or a reference to a website or digital facility, a provider should direct clients to take a digital or, where practical, a printed copy of the disclosure.</p> <p>So that clients can keep a copy of the disclosure, the provider should also ensure the disclosure continues to be accessible from the link, at the website address or through the digital facility, for a period that is reasonable for that information.</p> <p>We think that a period of two years would be reasonable for most disclosures, unless the disclosures have been superseded or updated sooner or have become out of date (e.g. because the product or service is no longer available and there are no longer any clients affected by it). If it is not possible to continue to make the disclosure available from the specified link, website address or digital facility throughout that period, the provider should make it easy for clients to request a digital copy of the disclosure at no cost to the client (e.g. by providing a toll-free telephone number or an electronic address or a request button clients can use to request a copy).</p>
<p><b>6 Clients should be able to prove which version of the disclosure they relied on</b></p>	<p>The provider must retain a copy of all versions of the disclosure and use technology, where possible, to maintain records of when each version was available. As a matter of good practice, these records should be kept for a period of at least seven years (or as required by law).</p> <p>When the disclosure is provided through a hyperlink or a reference to a website address or digital facility, the provider should make it clear to clients that they can request a copy of the disclosure at no cost to the client during this period.</p>

Guidance	Explanation
<p><b>7</b> <b>Clients should be able to opt out of digital disclosure</b></p>	<p>Providers should give a clear opportunity for clients to opt out of digital disclosure at any time and at no cost.</p> <p>For example, a notification that a disclosure is available should include a clear statement to the effect that the client may use an electronic address or telephone number set out in the message to send an opt-out message to the provider.</p> <p>This is not necessary where the terms and conditions of the product exclude certain methods of communication, provided those terms and conditions are made clear to the client before purchasing or the client has clearly agreed to those terms and conditions after purchase (such as fully digital products: see RG 221.29–RG 221.31).</p>
<p><b>8</b> <b>Disclosure documents should be delivered in a way that does not unreasonably expose clients to security risks (e.g. phishing or identity theft)</b></p>	<p>When a provider delivers a generic disclosure by email with a hyperlink to the disclosure, the email should state that the client will not be asked to provide their personal financial details online (e.g. to access the disclosure). This is to mitigate the risk of phishing.</p> <p>If a disclosure contains personal financial information, providers should ensure that the information is adequately protected (e.g. by password protection and encryption). This should be done in a way that reflects the need to ensure disclosure is easy to access.</p> <p>Providers should continue efforts to educate clients about internet scams and other security risks and may wish to direct clients to <a href="http://www.staysmartonline.gov.au">www.staysmartonline.gov.au</a> and <a href="http://www.moneysmart.gov.au">www.moneysmart.gov.au</a>.</p>

## Appendix: Summary of how providers can use digital disclosure

**Table 3: How different types of disclosures can be delivered digitally under Pts 7.6–7.9 (and in accordance with our relief and guidance)**

Type of disclosure	Disclosure delivery requirements	Legislation	Notes
<b>PDS</b>	<p>A PDS must be:</p> <ul style="list-style-type: none"> <li>• given personally to the person; or</li> <li>• sent to the person at an address (including an email address) or a fax number nominated by the person; or</li> <li>• otherwise made available to the person as agreed; or</li> <li>• published electronically and notified in accordance with the ASIC instrument.</li> </ul> <p>If sent to an address, the envelope or container must be addressed to the person or the accompanying message must be addressed to the person.</p> <p>If electronic, it must be presented in a way that:</p> <ul style="list-style-type: none"> <li>• as far as practicable allows the person to keep a copy and access it in the future; and</li> <li>• clearly identifies the information that is part of the document.</li> </ul>	<p>s1015C</p> <p>reg 7.9.02A</p> <p>ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647</p> <p>reg 7.9.02B</p>	<p>The ASIC instrument ‘switches off’ the requirement in reg 7.9.02A that, if the PDS is made available in a way that is agreed, would otherwise require the provider to be reasonably satisfied that the client or their agent has received a copy of the PDS.</p>

Type of disclosure	Disclosure delivery requirements	Legislation	Notes
<b>FSG</b>	<p>An FSG must be:</p> <ul style="list-style-type: none"> <li>• given personally to the person; or</li> <li>• sent to the person at an address (including an email address) or a fax number nominated by the person; or</li> <li>• otherwise made available to the person as agreed; or</li> <li>• published digitally and notified in accordance with the ASIC instrument.</li> </ul> <p>If sent to an address, the envelope or container must be addressed to the person or the accompanying message must be addressed to the person.</p> <p>If electronic (including where published and notified), it must be presented in a way that:</p> <ul style="list-style-type: none"> <li>• as far as practicable allows the person to keep a copy and access it in the future; and</li> <li>• clearly identifies the information that is part of the document.</li> </ul>	<p>s940C</p> <p>ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647</p> <p>reg 7.7.01(3)</p>	<p>The ASIC instrument 'switches off' the requirement in reg 7.7.01(2) that would otherwise require a provider to make the FSG available in a way that is agreed, and be reasonably satisfied that the client or their agent has received a copy in the case of electronic FSGs.</p>
<b>SOA</b>	<p>An SOA must be:</p> <ul style="list-style-type: none"> <li>• given personally to the person; or</li> <li>• sent to the person at an address (including an email address) or a fax number nominated by the person; or</li> <li>• otherwise made available to the person as agreed; or</li> <li>• published electronically and notified in accordance with the ASIC instrument.</li> </ul> <p>If sent to an address, the envelope or container must be addressed to the person or the accompanying message must be addressed to the person.</p> <p>If electronic, it must be presented in a way that:</p> <ul style="list-style-type: none"> <li>• as far as practicable allows the person to keep a copy and access it in the future; and</li> <li>• clearly identifies the information that is part of the document.</li> </ul>	<p>s940C</p> <p>ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647</p> <p>reg 7.7.01(3)</p>	<p>The ASIC instrument 'switches off' the requirement in reg 7.7.01(2) that would otherwise require a provider to make the SOA available in a way that is agreed, and be reasonably satisfied that the client or their agent has received a copy in the case of electronic SOAs.</p>

Type of disclosure	Disclosure delivery requirements	Legislation	Notes
<b>CGS depository interest information statement</b>	<p>A CGS depository interest statement must be:</p> <ul style="list-style-type: none"> <li>• given personally to the person; or</li> <li>• sent to the person at an address (including an email address) or a fax number nominated by the person; or</li> <li>• otherwise made available to the person as agreed; or</li> <li>• published electronically and notified in accordance with the ASIC instrument.</li> </ul> <p>If sent to an address, the envelope or container must be addressed to the person or the accompanying message must be addressed to the person.</p>	<p>s1020AK(1)</p> <p>ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647</p>	<p>A CGS depository interest statement is prepared by the Commonwealth. For the publish and notify method of delivery, the regulated person may give the reference to the relevant Australian Government website.</p> <p>The ASIC instrument allows a CGS depository interest statement to be provided to the client or their agent in any way agreed.</p>
<b>Annual superannuation information</b>	<p>The information must be:</p> <ul style="list-style-type: none"> <li>• given in writing; or</li> <li>• given electronically; or</li> <li>• made available in any way as agreed with the person; or</li> <li>• published on a website and notified in accordance with the requirements of reg 7.9.75BA.</li> </ul> <p>If electronic, it must be presented in a way that:</p> <ul style="list-style-type: none"> <li>• as far as practicable allows the person to keep a copy and access it in the future; and</li> <li>• clearly identifies the information that is part of the document.</li> </ul>	<p>s1017DA(3) and reg 7.9.75A(3)</p> <p>reg 7.9.75BA</p> <p>reg 7.9.75B</p>	<p>ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647 does not apply to annual superannuation information because reg 7.9.75BA already allows annual superannuation information to be published on a website.</p>

Type of disclosure	Disclosure delivery requirements	Legislation	Notes
<b>Periodic statements</b>	<p>A periodic statement must be:</p> <ul style="list-style-type: none"> <li>• given in writing; or</li> <li>• given electronically; or</li> <li>• made available in any way as agreed with the person; or</li> <li>• published electronically and notified in accordance with the ASIC instrument.</li> </ul> <p>If electronic, it must be presented in a way that:</p> <ul style="list-style-type: none"> <li>• as far as practicable allows the person to keep a copy and access it in the future; and</li> <li>• clearly identifies the information that is part of the document.</li> </ul>	<p>s1017D(6) and reg 7.9.75A</p> <p>ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647</p> <p>reg 7.9.75B</p>	
<b>Ongoing disclosure of material changes and significant events</b>	<p>The provider must notify the person:</p> <ul style="list-style-type: none"> <li>• in writing; or</li> <li>• electronically; or</li> <li>• in any way as agreed with the person; or</li> <li>• by publishing electronically and notifying in accordance with the ASIC instrument.</li> </ul> <p>If electronic, notification must be presented in a way that:</p> <ul style="list-style-type: none"> <li>• as far as practicable allows the person to keep a copy and access it in the future; and</li> <li>• clearly identifies the information that is part of the document.</li> </ul>	<p>s1017B(3)</p> <p>ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647</p> <p>regs 7.9.75A(1) and 7.9.75B</p>	



Type of disclosure	Disclosure delivery requirements	Legislation	Notes
<b>Confirmation of transactions</b>	<p>Confirmations of transactions must be provided to the person:</p> <ul style="list-style-type: none"> <li>• in writing; or</li> <li>• electronically; or</li> <li>• by access to a facility through which the person can, for themselves, get a confirmation of a transaction in writing or electronically.</li> </ul> <p>If electronic, it must be presented in a way that:</p> <ul style="list-style-type: none"> <li>• as far as practicable allows the person to keep a copy and access it in the future; and</li> <li>• clearly identifies the information that is part of the document.</li> </ul>	<p>s1017F(6), 1017F(5)(b) and 1017F(5A)</p> <p>regs 7.9.63I and 7.9.61D</p>	<p>For most products, the client must have agreed to accessing confirmations through the facility or have been informed about the facility, and not advised the provider that they do not agree to use the facility. That is, the client can opt out of accessing a facility to confirm transactions themselves.</p> <p>For transactions involving certain superannuation products (see reg 7.9.61D) the facility made available can allow the client to access by telephone, writing or some other method that the responsible person knows, or reasonably believes the client is able to use. There is no opt-out option for these products.</p>
<b>Additional information on request</b>	<p>The information must be:</p> <ul style="list-style-type: none"> <li>• given by making it available for inspection by the person at a suitable place during business hours (with photocopying facilities); or</li> <li>• given in some other way that is agreed with the client; or</li> <li>• published electronically and notified in accordance with the ASIC instrument.</li> </ul>	<p>s1017A(4)–(6)</p> <p>ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647</p>	<p>The client may be required to pay a reasonable charge.</p>

Type of disclosure	Disclosure delivery requirements	Legislation	Notes
<b>Additional information provided by superannuation trustees</b>	<p>The information must be:</p> <ul style="list-style-type: none"> <li>• given in writing; or</li> <li>• given electronically; or</li> <li>• given in any way that is agreed with the person; or</li> <li>• published electronically and notified in accordance with the ASIC instrument.</li> </ul> <p>If electronic, it must be presented in a way that:</p> <ul style="list-style-type: none"> <li>• as far as practicable allows the person to keep a copy and access it in the future; and</li> <li>• clearly identifies the information that is part of the document.</li> </ul>	<p>s1017DA and reg 7.9.75A(3)</p> <p>ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647</p> <p>reg 7.9.75B(1)(c)</p>	
<b>Unsolicited offers to purchase financial products off-market</b>	<p>The offer document must be addressed and sent to an address (including an email address) of the offeree.</p> <p>A supplementary offer document or a withdrawal offer must also be addressed and sent to an address (including an email address).</p> <p>If sent to an address, the envelope or container must be addressed to the person, or the accompanying message must be addressed to the person.</p>	<p>s1019E(1)</p> <p>s1019J(2) and 1019G(3)</p>	<p>The publish and notify method of disclosure under ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647 is not available for unsolicited offers to purchase financial products.</p>

## Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services  Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act  Note: This is a definition contained in s761A.
annual superannuation information	Information that a trustee of a superannuation entity must provide under s1017DA (does not include private disclosures)
APPs	Australian Privacy Principles
ASIC	Australian Securities and Investments Commission
bounce-back	An automatic electronic message responding to an email message advising that the message has not been received. A soft bounce-back may be an 'out of office' reply or similar, while a hard bounce-back indicates that the message is not delivered or is undeliverable
CGS depository interests	Commonwealth Government Securities depository interests
client	A retail client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of Ch 7 of the Corporations Regulations
[CO 10/1219] (for example)	An ASIC class order (in this example numbered 10/1219)  Note: Legislative instruments made from 2015 are known as ASIC instruments.
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
default method of delivery of disclosures	The provider's first choice of communication method for financial services disclosures, where the consumer has provided or nominated details for one or more methods of communication (e.g. if a provider chooses default digital delivery, it would deliver disclosures digitally as a matter of course and allow clients or consumers to opt in to printed and posted delivery)
digital facility	An electronic medium for accessing or sending information

Term	Meaning in this document
disclosures	Financial services disclosures
electronic address	Any electronic personal identifier to which private mail can be sent and received, such as an email address, a Facebook account, a Twitter handle or a LinkedIn profile
financial services disclosure	A disclosure required under Pts 7.6–7.9 of the Corporations Act
Financial Services Guide (FSG)	A document required by s941A or 941B of the Corporations Act to be given in accordance with Div 2 of Pt 7.7  Note: This is a definition contained in s761A.
private disclosure	A disclosure that providers give to members or clients that contains personal information relating to the member or client or their investment. Examples include SOAs, periodic statements of a client's holding under s1017D and confirmations of transactions under s1017F of the Corporations Act
Product Disclosure Statement (PDS)	A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act  Note: See s761A for the exact definition.
provider	Any person (including a responsible entity, product issuer, AFS licensee or authorised representative) who is required to give a financial services disclosure to a client under the Corporations Act or an instrument of relief
Pt 7.6 (for example)	A part of the Corporations Act (in this example numbered 7.6)
reg 7.7.01 (for example)	A regulation in the Corporations Regulations (in this example numbered 7.7.01)
REP 391 (for example)	An ASIC report (in this example numbered 391)
s1017F (for example)	A section of the Corporations Act (in this example numbered 1017F)
shorter PDS regime	The requirements set out in Div 3A of Pt 7.9 of the Corporations Act as modified by Subdivs 4.2 to 4.2C and Schs 10B, 10C, 10D and 10E of the Corporations Regulations, which prescribe the content and length of the PDS for first home saver accounts, margin loans, superannuation products and simple managed investment schemes
Statement of Advice (SOA)	A document that must be given to a retail client for the provision of personal advice under Subdivs C and D of Div 3 of Pt 7.7 of the Corporations Act  Note: See s761A for the exact definition.

## Related information

### Headnotes

consent, digital disclosure, electronic PDS, interactive PDS, financial services disclosure, Financial Services Guide, FSG, PDS, Product Disclosure Statement, SOA, Statement of Advice, ongoing disclosure, periodic statement

### Legislative instruments and class orders

[CO 13/763] *Investor directed portfolio services*

ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647

ASIC Corporations (Removing Barriers to Electronic Disclosure) Instrument 2015/649

### Legislation

Corporations Act, Ch 7, Pts 7.6–7.9, s940C, 942A, 942B, 947A, 947B, 1012G, 1013C, 1014B, 1015B, 1015C, 1015D, 1016A, 1017A, 1017B, 1017D, 1017DA, 1017F, 1019E, 1019G, 1019J, 1020AK

Corporations Regulations, Schs 10C, 10D and 10E, regs 7.7.01, 7.7.08A, 7.9.02A, 7.9.02B, 7.9.11G, 7.9.11R, 7.9.11Z, 7.9.15DA, 7.9.15H, 7.9.61D, 7.9.63I, 7.9.75A, 7.9.75B, 7.9.75BA

*Privacy Act 1988*

*Spam Act 2003*

### Regulatory guide

RG 51 *Applications for relief*

RG 167 *Licensing: Discretionary powers*

RG 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)*

RG 169 *Disclosure: Discretionary powers*

### Consultation papers and reports

CP 93 *Facilitating online financial services disclosures*

*CP 121 Facilitating online financial services disclosures*

*CP 224 Facilitating electronic financial services disclosures*

*REP 223 Response to submissions on CP 121 Facilitating online financial services disclosures*

*REP 443 Response to submissions to CP 224 Facilitating electronic financial services disclosures*