

Attachment 3 to CP 264: Draft amended instrument

ASIC Class Order [CO 13/763]

Investor directed portfolio services

This instrument has effect under s601QA(1), 655A(1), 673(1), 741(1), 926A(2), 951B(1), 992B(1) and 1020F(1) of the *Corporations Act 2001*.

This compilation was prepared on 15 December 2015 taking into account amendments up to ASIC Corporations (Amendment and Repeal) Instrument 2015/1079 that commenced on 15 December 2015. See the table at the end of this class order.

Prepared by the Australian Securities and Investments Commission.

Australian Securities and Investments Commission
Corporations Act 2001—Subsections 601QA(1), 655A(1), 673(1), 741(1), 926A(2),
951B(1), 992B(1) and 1020F(1)—Exemption, Declaration and Revocation

[Note: Some recitals have not been reproduced for the purposes of consultation.](#)

...

Title

2. This instrument is ASIC Class Order [CO 13/763].

...

Exemption

4. An operator of an IDPS does not have to comply with:
 - (a) subsection 601ED(5) of the Act in relation to the operation of the IDPS; and
 - (b) Parts 6D.2 ~~and or~~ 6D.3 of the Act for an offer ~~of accessible securities to issue~~ equitable rights or interests in accessible securities arising because of an offer to hold, or arrange for the holding of, the accessible securities made through the IDPS ~~(except where the operator is the issuer of those securities); and~~
 - (c) Division 8 of Part 7.8 ~~and or~~ Part 7.9 of the Act in relation to a financial product that is:
 - (i) ~~an equitable right or interest in an accessible financial product arising because of a holding, or an offer to hold or arrange for the holding of, the accessible financial product through the IDPS. an interest in a managed investment scheme arising out of participation or proposed participation in the IDPS; or~~
 - (ii) ~~held or that may be held by a person (first person) because the legal ownership of a financial product is held by another person for the first person as part of the IDPS;—~~

~~including in relation to an offer to issue, an offer to arrange for the issue, the issue, the acceptance of an offer to acquire, and a recommendation to acquire, the financial product.~~

5. ~~An operator of an IDPS cannot rely on Paragraph-paragraph 4 does not apply to the operator of an IDPS~~ if ASIC has given a notice in writing to the operator stating that ~~it may not the operator may not~~ rely on ~~the exemption in that~~ paragraph 4 and has not withdrawn ~~that the~~ notice.

Declaration

6. Part 7.6 of the Act (other than Divisions 4 and 8) applies in relation to an operator of an IDPS as if that Part were modified or varied by, before section 912B, inserting:

“Section 912AD – Requirements for the operation of an IDPS

- (1) This section applies to a financial services licensee that holds an Australian financial services licence authorising it to operate an IDPS.

IDPS Guide

- (2) The licensee must, before entering into an IDPS contract with a person as a retail client, give the person an IDPS Guide.
- (3) The information included in the IDPS Guide must be worded and presented in a clear, concise and effective manner.
- (4) Subject to subsections (7) and (10), an IDPS Guide must include all information a person would reasonably require for the purpose of making a decision, as a retail client, whether to become a client of the IDPS, including such information that the person would reasonably require to:
- (a) understand the nature of the IDPS being offered and any risks associated with participation in the IDPS; and
 - (b) identify the operators and custodians and the nature of their responsibilities and relationships; and
 - (c) understand the method and extent of all charges associated with the IDPS, including any right of the operator or any other person to recoup expenses from a client’s assets; and
 - (d) understand any differences between the rights of a holder of accessible investments and the rights of a client of the IDPS in respect of accessible investments, including information on:
 - (i) cooling-off rights; and
 - (ii) voting rights; and
 - (iii) withdrawal rights under section 724 and section 1016E in relation to accessible securities and accessible financial products; and
 - (e) understand the consequences for a client if at any time the client has not engaged a person, or a person meeting particular requirements, to provide:

- (i) financial product advice to the client in relation to the IDPS; or
- (ii) instructions to the licensee or another operator in relation to accessible investments;

including the ability of the client in such circumstances to:

- (iii) provide instructions in relation to accessible investments; and
- (iv) continue to be a client of the IDPS; and

- (f) understand how and to whom a client may make a complaint in relation to:

- (i) the operation of the IDPS; and
- (ii) accessible financial products held through the IDPS; and
- (iii) financial product advice provided to the client in relation to the IDPS that is not provided by or on behalf of the licensee or another operator; and

- (g) understand clients' rights to disclosure in relation to accessible investments including that a client will have the right to elect to receive copies of communications sent to holders of accessible investments, including those communications which the holder may elect to receive; and

- (h) how the licensee or, if applicable, any other operator, will determine what financial products, securities or other investments are or will be available as accessible investments for the IDPS, including the processes applied and the factors considered for that purpose.

(5) Subject to subsection (10), an IDPS Guide must also include:

- (a) a statement that copies of the following policies in relation to the IDPS are available free of charge on request:

- (i) the IDPS voting policy; and
- (ii) the policy on the consequences for a client in the circumstances referred to in paragraph (4)(e); and

- (b) a statement that a separate document specifying the accessible investments for the IDPS will be provided on request free of charge, if the IDPS Guide does not specify these investments; and

- (c) statements to the effect that:

- (i) the total fees and charges payable by a client will include the costs of the IDPS as well as the cost of any accessible investments chosen by the client; and

- (ii) it is important that the client understand the fees of any accessible investments chosen by the client and that those fees will be in addition to the fees charged for the IDPS, together with transaction and account costs incurred on behalf of the client; and
- (iii) the costs of the accessible investments chosen by the client will generally be set out in a disclosure document or Product Disclosure Statement for the accessible investments; and
- (d) examples, based on estimates, of the total of fees, charges and expenses of the IDPS and the accessible securities and accessible financial products that may be acquired through the IDPS that satisfy the requirements of subsection (6); and
- (e) information about fees and costs in relation to the IDPS that complies with Part 2 of Schedule 10 of the *Corporations Regulations 2001* as if:
 - (i) an interest in the IDPS were a managed investment product; and
 - (ii) the IDPS Guide were a Product Disclosure Statement for a managed investment product;
 except that the costs incurred for accessible investments are not required to be included as management costs.
- (6) The examples referred to in paragraph (5)(d):
 - (a) must express the total estimate of fees, charges and expenses as a proportion of the total price paid in acquiring the accessible securities and accessible financial products through the IDPS; and
 - (b) must be examples that the licensee has reasonable grounds for believing are based on estimates of the fees, charges and expenses that are within the range typically charged for accessible securities and accessible financial products of the relevant kind; and
 - (c) must cover a range of accessible securities and accessible financial products that may be acquired through the IDPS; and
 - (d) need not refer to actual or identified accessible securities or accessible financial products.
- (7) An IDPS Guide does not need to include:
 - (a) information in relation to actual or identified accessible investments; or
 - (b) information (*excluded information*) that would otherwise need to be included under subsection (4) if the information is in writing and is publicly available in a document other than the IDPS Guide, provided the IDPS Guide:
 - (i) refers to the information; and

- (ii) provides sufficient details about the information to enable a person to identify by a unique identifier the document or part of the document containing the information and to locate the information and decide whether to read or obtain a copy of it; and
- (iii) states that the information can be obtained from the licensee on request free of charge; and
- (iv) contains the following information:
 - (A) if the excluded information is information about any significant benefits to which a person will or may become entitled under the IDPS or any other significant characteristics or features of the IDPS or of the rights, terms, conditions and obligations arising under the IDPS—a summary of that excluded information;
 - (B) if the excluded information is information about any significant risks associated with the IDPS—a description, in summary, of the key risks of the IDPS;
 - (C) the name and contact details of each operator of the IDPS;
 - (D) the information required by paragraphs (4)(d) to (h) and subsection (5).
- (8) The licensee must give, as soon as practicable and at no charge, a copy of any excluded information that the licensee has not included in the IDPS Guide, if requested by a client or prospective client.

Provision of IDPS Guide

- (9) Subject to subsection (10), the licensee must not give a person an IDPS Guide for the purposes of subsection (2) once the licensee becomes aware that:
 - (a) a material change has occurred to the information in it; or
 - (b) it has become misleading or deceptive or likely to mislead or deceive.
- (10) If:
 - (a) the licensee has prepared an IDPS Guide (*existing IDPS Guide*) that met the requirements of subsections (4) to (6) when it was prepared; and
 - (b) a new circumstance has arisen since the existing IDPS Guide was prepared that means that it no longer meets the requirements of those subsections;

the licensee may continue to satisfy its obligation under subsection (2) to give an IDPS Guide to a person by using the existing IDPS Guide if and only if:

- (c) the updated information that would be required to be included in a new IDPS Guide is not materially adverse from the point of view of a reasonable person as a retail client of the IDPS; and
- (d) the existing IDPS Guide clearly and prominently:
 - (i) explains that information that is not materially adverse information is subject to change from time to time and may be updated by the means described in the IDPS Guide; and

Note: For example, information that is not materially adverse may be provided through a website.

 - (ii) explains how that updated information can be obtained at any time; and
 - (iii) states that a copy of any updated information will be given to a person without charge on request; and
- (e) the licensee has taken reasonable steps to:
 - (i) establish and maintain a means by which a person may obtain any updated information, being means that are simple and involve no charge and minimal inconvenience to the person, having regard to the kinds of persons likely to consider becoming a client of the IDPS (including arrangements whereby a person is given a paper copy of the updated information without charge on request); and
 - (ii) make available any updated information as soon as practicable to each regulated person to whom the IDPS Guide has been provided for further distribution.

IDPS Guide may comprise more than one document

(11) An IDPS Guide may comprise more than one document (other than a Supplementary IDPS Guide) provided:

- (a) where the IDPS Guide is given to a person for the purposes of subsection (2), each document is given to the person at the same time; and
- (b) each document refers to each other document.

Note: Even where a Supplementary IDPS Guide is given at the same time as an IDPS Guide that consists of more than one document, it is not treated as one of those documents. A Supplementary IDPS Guide is required to meet the specific identification requirements in subsections (15) and (16).

(12) If there are or may be different versions of a document forming part of an IDPS Guide, the reference required by paragraph (11)(b) does not have to identify any particular one of those versions and may instead identify the document generically.

(13) At the beginning of each document that is, or forms part of, an IDPS Guide, there must be a statement that it is, or forms part of, an IDPS Guide.

Supplementary IDPS Guide

- (14) A **Supplementary IDPS Guide** is a document by which a person who has prepared an IDPS Guide can:
- (a) correct a misleading or deceptive statement in the IDPS Guide; or
 - (b) correct an omission from the IDPS Guide of information required to be contained in the IDPS Guide; or
 - (c) update the information contained in the IDPS Guide.
- (15) At the beginning of a Supplementary IDPS Guide, there must be:
- (a) a statement that it is a Supplementary IDPS Guide; and
 - (b) an identification of the IDPS Guide that it supplements; and
 - (c) a statement that it is to be read together with that IDPS Guide and any other specified Supplementary IDPS Guides.
- (16) A Supplementary IDPS Guide must be dated with the date on which the Supplementary IDPS Guide was prepared or the preparation was completed.
- (17) If:
- (a) a person is given an IDPS Guide; and
 - (b) at the same time, or later, they are given a Supplementary IDPS Guide that supplements the IDPS Guide;
- the IDPS Guide is taken, from when the Supplementary IDPS Guide is given to the person, to include the information and statements contained in the Supplementary IDPS Guide.
- (18) The licensee must keep a copy of each version of the IDPS Guide and any Supplementary IDPS Guide for at least seven years after it ceases to be used.

Entry into IDPS contract

- (19) The licensee must not enter into an IDPS contract with a person as a retail client unless:
- (a) the contract contains a prominent warning that:
 - (i) identifies the key areas of difference between acquiring a financial product directly and through the IDPS, including any differences in respect of the rights referred to in paragraph (4)(d); and
 - (ii) if applicable, that a client of the IDPS may be adversely affected if the client has not engaged a person, or a person meeting particular requirements, to provide financial product advice to the client or provide instructions on behalf of the client in relation to accessible investments; and

- (b) the contract contains cross-references (including page or paragraph references where applicable) to where further information on the matters mentioned in subparagraph (a)(i) and if applicable (a)(ii) can be located in the IDPS Guide; and
- (c) in the case of:
 - (i) a contract that is entered into electronically – the part of the facility that allows the person to enter into the contract contains a prominent statement; and
 - (ii) otherwise – the contract requires the person entering into the contract to sign an acknowledgement;

to the effect that the person entering into the contract acknowledges the matters contained in the warning.

Performance of obligations

- (20) The licensee must perform its obligations under each IDPS contract and this section honestly and with reasonably care and diligence.

Compensation

- (21) The licensee must compensate clients in relation to the functions that the licensee has contracted to perform, for acts and omissions of any of its agents engaged to perform those functions or functions connected with the performance of those functions (including transactional functions), as if they were the acts or omissions of the licensee.

Investments held on trust

- (22) The licensee must do all things necessary to ensure that all IDPS property held by:
 - (a) the licensee is held on trust for the relevant client or clients of the IDPS; or
 - (b) a person the licensee directly or indirectly engages is held in a way so that the relevant client or clients of the IDPS have a beneficial interest in the IDPS property (whether directly or indirectly);

Note: This requirement could be satisfied by a custodian holding IDPS property on trust for the licensee and the licensee holding the beneficial interest in that property on trust for the relevant client or clients of the IDPS.

unless the IDPS property is held under Division 2 or 4 of Part 7.8 or either of the following apply:

- (c) both of the following apply:
 - (i) the IDPS property is located in a place outside of this jurisdiction where trusts are not known to the law;

- (ii) it is reasonable for the IDPS property to be held in accordance with the law in that place; or
- (d) both of the following apply:
 - (i) the IDPS property is located in a place outside of this jurisdiction and it is not reasonable for the property to be held on trust in accordance with the law in that place;
 - (ii) the licensee has documented in writing that:
 - (A) it is satisfied that the property is held in a manner that, having regard to the relevant laws, provides reasonably effective protection in case of insolvency of the person holding the property; and
 - (B) the basis on which the licensee is satisfied.
- (22A) If the licensee was authorised to operate an IDPS before 2 January 2014:
 - (a) subsection (22) does not apply to the licensee until 2 January 2015; and
 - (b) until 2 January 2015, the licensee must ensure that all accessible investments held by it or by a custodian it engages (not including assets held by a client) are held on trust for the relevant client or clients of the IDPS.

Passing on communications from underlying issuers

- (23) The licensee must give to a client on request a copy of all communications that are required by law to be given to the holder of an accessible investment (including communications that are required to be given on request) where that accessible investment is required to be held on trust for the client by the licensee or a custodian acting on its behalf.
- (24) A client may make a request under subsection (23) in relation to a particular communication or make a standing request in relation to a class of communications. The licensee must provide the information as soon as practicable after the information is received or otherwise becomes available to be provided to the client.

Acquisition of accessible investments [that are interests in unregistered scheme](#)

- (25) The licensee must not, and must ensure that any custodian acting on its behalf does not, acquire accessible investments for a client as part of the IDPS that are:
 - (a) interests in a managed investment scheme that is not a registered scheme; or

- (b) interests in a scheme that would be a managed investment scheme but for paragraph (e) of the definition of *managed investment scheme* in section 9;

~~U~~ unless the licensee reasonably believes that:

- (c) ~~in relation to had~~ the client, ~~the licensee is reasonably satisfied that if the client had~~ invested directly in the scheme, the scheme would not have been required to have been registered; and
- (d) ~~so far as the licensee is aware or has reason to suspect, if had~~ all interests in the scheme held in custodial arrangements ~~had~~ been held by the clients (as defined in section 1012IA) of those arrangements, the scheme would not have been required to be registered.

Note: Under section 601ED a managed investment scheme does not generally need to be registered if it has no more than 20 members. If interests held through IDPSs, IDPS-like schemes and nominee and custody services ~~NCSs~~ had been acquired directly, the scheme may have required registration as it may have had more than 20 members.

Acquisitions under direction from client

(26) The licensee must not, and must ensure that any custodian acting on its behalf does not, acquire accessible securities ~~or accessible financial products~~ for a client under a direction of ~~the a~~ client as part of the IDPS unless:

- (a) ~~in the case of an relation to~~ acquisitions of accessible securities – subsection (26A) or (26E) the licensee is reasonably satisfied ~~that;~~ and
- (b) in relation to acquisitions of accessible financial products:
- (i) subsection (26B), (26C), (26D), (26E) or (26F) are satisfied; and
- (ii) from 1 July 2017 – subsection (26G) is satisfied.

(26A) This subsection is satisfied if:

- (a) both of the following are satisfied:
- (i) the licensee reasonably believes that the client has been given a disclosure document for the accessible securities that would have been required had the accessible securities been offered to the client directly at the time of the acquisition ~~of the accessible securities;~~ and
- (ii) ~~and~~ the licensee has no reason to believe that the disclosure document is defective as if it were prepared at that time; or
- (~~#~~b) the licensee reasonably believes that the accessible securities could lawfully have been offered and issued or sold, as the case may be, to the client directly without the client being required to be given a disclosure document other than because of subsection 708(1); ~~or~~

~~(b)~~ (26B) This subsection is satisfied if:

~~in the case of an acquisition of an accessible financial product~~

~~(i)~~ ~~(a)~~ the licensee ~~is~~ reasonably ~~satisfied~~believes that:

~~(A)~~ the client has been given a copy of the Product Disclosure Statement for the accessible financial product that would have been required had the financial product been offered to the client directly at the time of the acquisition of the financial product; and

~~(b)~~ ~~and~~ the licensee has no reason to believe that the Product Disclosure Statement is defective as if it were prepared at the time of the acquisition. ~~;~~ ~~or~~

(26C) This subsection is satisfied if:

(a) the licensee reasonably believes that

~~(B)~~ the accessible financial product could lawfully have been offered and issued or sold, as the case may be, to the client directly without the client being given a Product Disclosure Statement other than because of section 1012E; and

~~(b)~~ the licensee has no reason to believe suspect that a Product Disclosure Statement would have been required to be given to the client if all other holdings of the financial product in custodial arrangements had been issued to held by the clients (as defined in section 1012IA) of those arrangements. ~~;~~ ~~or~~

~~;~~ ~~or~~

Note: Under section 601ED, a managed investment scheme does not generally need to be registered if it has no more than 20 members. If interests held through custodial arrangements such as IDPSs, IDPS-like schemes and nominee and custody services ~~NCSs~~ had been acquired directly, the scheme may have required registration as it may have had more than 20 members.

(26D) This subsection is satisfied if:

~~(a)~~ ~~if~~ the client already holds an accessible financial product of the same kind through the IDPS; and

~~(b)~~ ~~;~~ the licensee has given the client a Product Disclosure Statement for a financial product of the same kind; and;

~~(Ac)~~ the licensee reasonably believes that the client has access to, and knows that they have access to, a Product Disclosure Statement for the financial product; and

~~(Bd)~~ the Product Disclosure Statement the client has access to is the most current in use or does not differ from the most current in use in a way that is materially adverse for the client; and

~~(Ce)~~ the licensee has no reason to believe the Product Disclosure Statement the client has access to is defective as if it were prepared at the time of the acquisition. ~~;~~ ~~or~~

(26E) This subsection is satisfied if (e)—the acquisition is made under a distribution reinvestment plan in relation to a client and the client already has an existing holding of an accessible financial product of the same kind or accessible securities in the same class through the IDPS; ~~or~~

~~(d)~~ (26F) This subsection is satisfied if the acquisition is made under a regular saving acquisition in relation to a client and:

~~(ia)~~ (ia) the client already has an existing holding of an accessible financial product of the same kind or accessible securities in the same class through the scheme; and

~~(ib)~~ (ib) the licensee has complied with its agreement with the client in relation to the regular savings plan to give any missing documents.

(26G) This subsection is satisfied if the licensee reasonably believes that the issuer or seller of the financial products has a dispute resolution system that:

(a) covers complaints against the issuer or seller by each client of the IDPS who:

(i) holds through the IDPS an accessible financial product issued or sold by the issuer or seller; and

(ii) if the issuer or seller had issued or sold the accessible financial product the subject of the direction to the client directly – the client would have acquired the product as a retail client;

where the complaints are made in connection with an accessible financial product issued or sold by the issuer or seller that is held through the IDPS; and

(ii) complies with subsection 912A(2) as if the issuer or seller were a financial services licensee and the issue or sale was a financial service covered by the issuer's or seller's Australian financial services licence provided to the acquirer as a retail client.

Quarterly report or electronic access on a substantially continuous basis

(27) The licensee:

(a) must give to each client a quarterly report complying with subsection (29) within one month after each quarter day; or

(b) give electronic access to the information referred to in subsection (30) on a substantially continuous basis to clients who:

(i) have agreed to obtain information concerning transactions and holdings through the IDPS electronically in lieu of receiving a quarterly report; and

(ii) the licensee has no reason to doubt can electronically access this information on a substantially continuous basis.

- (28) If the licensee provides electronic access to information to clients during a quarter instead of a quarterly report complying with subsection (29):
- (a) the information that was displayed at the quarter's end for the quarter that purports to be the information required under subsection (30) must remain readily accessible to the clients through the same facility by which electronic access was given to clients during the quarter until the end of the IDPS financial year after the IDPS financial year in which the quarter day falls; and
 - (b) the facility on which the information remains accessible must display to clients a statement to the effect that only information displayed at the quarter's end will be considered by the auditor in preparing its annual report relating to the information provided electronically.
- (29) The quarterly report must be a written report which contains the following information:
- (a) all transactions carried out under a direction given by a client or on their behalf during the quarter;
 - (b) the quantity and value of assets held through the IDPS by the client and corresponding liabilities on the quarter day, the value of assets being determined as follows:
 - (i) for financial assets – net market value (being the amount which could be expected to be received from the disposal of the asset in an orderly market after deducting costs expected to be incurred in realising the proceeds of such a disposal); and
 - (ii) for all other assets – the value which would be shown in the books of the IDPS; and
 - (c) the revenue and expenses of the client in relation to the IDPS and assets held through the IDPS by the client during the quarter.
- (30) The following information must be accessible electronically if electronic access is provided instead of quarterly reports:
- (a) all transactions which the client has conducted through the IDPS for a period of at least one year (or such shorter period as the client's account has been in existence) up to a date no more than 48 hours (excluding hours on a day that is not a business day) before the time of access;
 - (b) the quantity and value of assets held through the IDPS by the client and corresponding liabilities at a time no more than 48 hours (excluding hours on a day that is not a business day) before the time of access, the values of the assets being determined in accordance with paragraph 29(b) and being as current as is reasonably practicable;
 - (c) the revenue and expenses of the client in relation to the IDPS and assets held through the IDPS by the client during a period of at least one year (or such shorter period as the client's account has been in existence) up

to a date no more than 48 hours (excluding hours on a day that is not a business day) before the time of access; and

- (d) the time at which the information is current.

Annual investor statement

(31) The licensee must give to each client within three months of the end of each IDPS financial year:

- (a) a report (***annual investor statement***) containing:
 - (i) a summary of the transactions by or on behalf of the client through the IDPS during the financial year containing the particulars that a client may reasonably require in relation to the transactions; and
 - (ii) for each client who has been provided with quarterly reports under paragraph (27)(a), a statement that the client may request a copy of any quarterly report relating to the financial year for the client; and
- (b) a copy of the annual report or reports for the relevant IDPS financial year prepared by a registered company auditor under subsection (32).

Audit reports

(32) A licensee who performs the functions of an operator set out in column 2 of an item in the following table in relation to annual investor statements, quarterly reports or information made electronically accessible under subsection (30), must after the end of each IDPS financial year and in accordance with the following table, cause a registered company auditor to provide one or more reports which:

- (a) set out each of the opinions or statements set out in column 3 of the item in the table; and
- (b) cover the reports or information in relation to which the licensee performed the relevant functions; and
- (c) do not contain any statement that has or purports to have the effect of excluding or disclaiming liability to clients of the IDPS as users of the report.

Item	Functions of operator	Opinions or statements
1.	<p>Full Service Operator</p> <p>An operator who:</p> <ol style="list-style-type: none"> 1. prepares the statements, reports or information; and 2. gives or makes it accessible to 	<p>Auditor’s Report</p> <ol style="list-style-type: none"> 1. The auditor’s opinion as to whether the internal controls and other procedures of the full service operator, each custodian and any other relevant person acting on behalf of that operator were suitably designed and operated effectively in all material respects to ensure that:

	<p>clients, other than by giving the reports or information to a client contact operator covered by item 3.</p> <p>(an operator who performs both these functions is referred to in this table as a full service operator)</p>	<ul style="list-style-type: none"> (a) the annual investor statement for the relevant IDPS financial year is or has been given to clients without material misstatements; and (b) where the annual investor statement does not purport to include particulars of each transaction that would be required in quarterly reports for each quarter during the IDPS financial year: <ul style="list-style-type: none"> (i) any quarterly reports are or have been given to clients without material misstatements; and (ii) any information that is made accessible electronically under subsection (30) in respect of the IDPS financial year is not materially misstated at each quarter's end in the financial year. <p>2. The auditor's opinion as to whether the aggregates of assets (other than assets held by a client), liabilities, revenue and expenses shown in the annual investor statement for the relevant IDPS financial year have been properly reconciled in all material respects to the corresponding amounts shown in the reports prepared by the custodian and which have been independently audited.</p> <p>3. The auditor's statement as to whether or not the auditor has any reason to believe that:</p> <ul style="list-style-type: none"> (a) any annual investor statement for the relevant IDPS financial year given to any client is materially misstated; and (b) if the annual investor statement does not generally purport to include particulars of each transaction that would be required in quarterly reports for each quarter during the IDPS financial year: <ul style="list-style-type: none"> (i) any quarterly reports given for the IDPS financial year are materially misstated; and (ii) any information accessible electronically by members under subsection (30) that relates to any of the following was materially misstated at each quarter's end in
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		<p>the IDPS financial year:</p> <ul style="list-style-type: none"> (A) transactions during the IDPS financial year; (B) assets held during the IDPS financial year and any corresponding liabilities; (C) revenue and expenses for the IDPS financial year.
<p>2.</p>	<p>Back Office Operator</p> <p>An operator who:</p> <ol style="list-style-type: none"> 1. prepares the content of the statements, reports or information; and 2. gives it to a client contact operator covered by item 3 for giving or making available to clients <p>(an operator who performs both these functions is referred to in this table as a <i>back office operator</i>)</p>	<p>Auditor's Report</p> <ol style="list-style-type: none"> 1. The auditor's opinion as to whether the internal controls and other procedures of the back office operator, each custodian and any other relevant person acting on behalf of that operator were suitably designed and operated effectively in all material respects to ensure that: <ul style="list-style-type: none"> (a) the annual investor statement for the relevant IDPS financial year is not materially misstated; and (b) where the annual investor statement does not purport to include particulars of each transaction that would be required in quarterly reports for each quarter during the IDPS financial year: <ol style="list-style-type: none"> (i) any quarterly reports are or have been given to the client contact operator without material misstatements; and (ii) any information given to the client contact operator to be made accessible electronically under subsection (30) during the IDPS financial year is not materially misstated at each quarter's end in the IDPS financial year. 2. The auditor's opinion as to whether the aggregates of assets (other than assets held by a client), liabilities, revenue and expenses shown in an annual investor statement for the relevant IDPS financial year given to the client contact operator have been properly

		<p>reconciled in all material respects to the corresponding amounts shown in the reports prepared by the custodian and which have been independently audited.</p> <p>3. The auditor’s statement as to whether or not the auditor has any reason to believe that:</p> <p>(a) any annual investor statement for the relevant IDPS financial year given to the client contact operator is materially misstated; and</p> <p>(b) if the annual investor statement does not generally purport to include particulars of each transaction that would be required in quarterly reports for each quarter during the IDPS financial year:</p> <p>(i) any quarterly reports given for the IDPS financial year are materially misstated; and</p> <p>(ii) any information provided for the purpose of being made accessible electronically under subsection (30) that has been given to the client contact operator and relates to any of the following was materially misstated at each quarter’s end in the IDPS financial year:</p> <p>(A) transactions during the IDPS financial year;</p> <p>(B) assets held during the IDPS financial year and any corresponding liabilities;</p> <p>(C) revenue and expenses for the IDPS financial year.</p>
<p>3.</p>	<p>Client Contact Operator</p> <p>An operator who:</p> <p>1. receives the content of the statements, reports or information from a back office</p>	<p>Auditor’s Report</p> <p>The auditor’s opinion as to whether the internal controls and other procedures of the client contact operator and any other relevant person acting on behalf of the client contact operator were suitably designed and operated effectively in all material respects to ensure that:</p> <p>(a) the annual investor statement for the relevant IDPS financial year is or has been</p>

	<p>operator; and</p> <p>2. gives or makes it available to clients</p> <p>(an operator who performs both these functions is referred to in this table as a <i>client contact operator</i>)</p>	<p>given to clients without material misstatements; and</p> <p>(b) where the annual investor statement does not purport to include particulars of each transaction that would be required in quarterly reports for each quarter during the IDPS financial year:</p> <p>(i) any quarterly reports that have been given to the client contact operator by the back office operator are given to each relevant client without material alteration; and</p> <p>Note: A client contact operator may add information relating to its identity, for example, by printing out statements on its own stationery.</p> <p>(ii) any information given to the client contact operator by the back office operator to be made accessible electronically under subsection (30) that relates to any of the following:</p> <p>(A) transactions during the IDPS financial year;</p> <p>(B) assets held during the IDPS financial year and any corresponding liabilities;</p> <p>(C) revenue and expenses for the IDPS financial year;</p> <p>is so made accessible without material alteration at each quarter's end in the IDPS financial year.</p>
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Internal control procedures

(33) The licensee must:

- (a) maintain, document and comply with adequate internal control procedures to ensure compliance with the financial services laws in relation to all functions that it is responsible for performing and the requirements of this section; and
- (b) after the end of each financial year of the licensee:
 - (i) cause a registered company auditor to conduct an audit and prepare a report setting out the auditor's opinion as to whether:

- (A) the licensee has complied with the internal control procedures; and
- (B) the internal control procedures met the requirements of paragraph (a) at all times during the financial year; and
- (ii) lodge a copy of that report when lodging a profit and loss statement and balance sheet under section 989B; and
- (c) ensure that where any aspect of the performance of functions of the IDPS has been contracted to another person, the contract with that person contains provisions requiring that person:
 - (i) to maintain, document and comply with adequate internal control procedures to ensure compliance with the financial services laws in relation to the functions that the person is to perform; and
 - (ii) to provide the auditor conducting the audit referred to in paragraph (b) with all reasonable assistance and access to allow the auditor to carry out the audit in relation to the functions performed by the person.

Promoting the IDPS

- (34) The licensee must take all reasonable steps to ensure that a person promoting the IDPS is a financial services licensee or a representative of a financial services licensee.

Giving of documents

- (35) A document is given to a person for the purposes of this section:
- (a) when it is received in accessible form by that person or their eligible agent; or
 - (b) if there is no way of sending the document that may reasonably be expected to result in it being received by that person or their eligible agent – when all reasonable steps have been taken to send it to that person or their eligible agent; or
 - (c) one business day after an email is sent to the email address of the person or their eligible agent that the licensee reasonably believes is the email address of the person or eligible agent where the person has agreed to receive the document by email; or
 - (d) one business day after an email is sent containing a hypertext link to the document to the email address of the person or their eligible agent that the licensee reasonably believes is the email address of the person or eligible agent where:
 - (i) the person has agreed to receive documents in that manner; and

- (ii) the licensee has no reason to suspect that the person is unlikely by mere scrolling or use of direct hypertext links to be able to see all of the contents of the document by using the emailed hypertext link; and
 - (iii) the document can be downloaded free of charge (excluding any normal fees payable to the recipient's internet service provider); and
 - (iv) the hypertext link is accompanied by a prominent statement to the effect that the recipient is advised to access the document and download it; or
- (e) when it would be delivered in the ordinary course of post, if it is posted as a letter prepaid from the licensee to an address of the person or their eligible agent that the licensee reasonably believes is the address of the person or eligible agent; or
 - (f) a copy of the document is given in accordance with any of paragraphs (a) to (e) and the giver takes reasonable steps to ensure that the document received by the person is complete and unaltered.

(36) For the purposes of subsection (35):

- (a) an email is "sent" when the email would be taken to be dispatched under section 14 of the *Electronic Transactions Act 1999* if it applied to that subsection; and
- (b) a document is taken to be a copy of another document regardless of:
 - (i) immaterial differences in the sequence in which information is presented; and
 - (ii) prompts and links if they are not likely to:
 - (A) cause a reasonable person to confuse the contents of the document with another document; or
 - (B) reduce the likelihood of a reasonable person reading any part of the document; and
 - (iii) the absence from (or simplification in) the document of graphics of a promotional or decorative nature; and
 - (iv) the inclusion in the document of codes or features to control the display of the document which do not otherwise alter the sense or content of the document.

PI Insurance

(37) The licensee must maintain an insurance policy covering the professional indemnity of, and fraud by, officers of the licensee that:

- (a) is adequate having regard to the nature of the activities carried out by the operator under its Australian financial services licence; and
- (b) covers claims amounting in aggregate to the lesser of:
 - (i) \$5 million; or
 - (ii) the sum of the value of IDPS property of all IDPSs for which it is the operator.

Policies of the IDPS

- (38) The licensee must ensure that the policies referred to in paragraph (5)(a) are in place in relation to the IDPS and are administered by the licensee or another operator.
- (39) If the licensee is responsible for administering the IDPS voting policy, it must ensure that the policy:
- (a) identifies the rights, if any, a client will have in relation to any voting rights attaching to accessible investments held through the IDPS; and
 - (b) states whether a client may give directions to the licensee about exercising any voting rights arising from accessible investments; and
 - (c) if the client may give directions about exercising voting rights:
 - (i) require that the licensee will only vote when, and as, instructed by a client, including under a standing instruction; and
 - (ii) require that clients are given any information relating to proposed company or managed investment scheme resolutions that is made available to the licensee or a custodian acting on its behalf as soon as practicable; and
 - (iii) identify how such information will be given to clients; and
 - (iv) identify the steps that will be taken once voting instructions have been communicated by a client to the licensee; and
 - (v) identify whether any cost will be charged to the client for exercising the voting rights; and
 - (d) if the client is not able to give directions about exercising voting rights, requires that the licensee may not exercise any voting rights in respect of accessible investments.

Agreement with person performing transactional functions of the IDPS

- (40) If the licensee appoints another person (**administrator**) to perform the transactional functions of the IDPS, the licensee must ensure that at all times a written agreement is in place between the licensee and the administrator that clearly specifies:

- (a) the nature of the arrangement and the obligations of each party; and
- (b) the rights that the licensee will have in relation to ongoing review and monitoring of the administrator and the standards against which the administrator's performance will be assessed; and
- (c) how instructions will be given by:
 - (i) the licensee to the administrator; and
 - (ii) where the administrator is not the custodian—by the administrator to the custodian; and
- (d) how clients will be compensated by the administrator if the clients suffer any loss due to a failure by the administrator to comply with its duties under its agreement with the licensee and the extent to which the administrator must maintain a minimum level of professional indemnity insurance; and
- (e) how records of the IDPS will be kept and maintained by the administrator; and
- (f) requirements for reporting by the administrator to the licensee, including notifications of any transfers to, or from, the IDPS's accounts; and
- (g) requirements for the administrator to provide all reasonable access and assistance to any registered company auditor engaged to conduct an audit in relation to the IDPS.

Arranging for another person to hold IDPS property

(40A) A licensee that engages a custodian to hold IDPS property must ensure that:

- (a) if the licensee holds a beneficial interest in the IDPS property on behalf of the relevant client or clients, it has a written agreement with the custodian that meets the requirements of paragraphs (c) to (e) except:
 - (i) to the extent that, in relation to IDPS property held outside of this jurisdiction, the licensee holds documents that demonstrate that it is not reasonably practicable to engage another person to hold the IDPS property who is willing to include such matters in the agreement; or
 - (ii) where the custodian is controlled by the licensee and the licensee is liable to the relevant client or clients for the acts and omissions of the custodian as if they were the acts or omissions of the licensee; and
- (b) if the licensee does not hold a beneficial interest in the IDPS property on behalf of the relevant client or clients:

- (i) it has a written agreement with the custodian that meets the requirements of paragraphs (c) to (e); and
- (ii) it does all things necessary to ensure that the custodian has a written agreement with each person that the custodian engages to hold the IDPS property and the written agreement meets the requirements of paragraphs (c) to (e) as if the person were the custodian and the custodian were the licensee except:
 - (A) to the extent that, in relation to IDPS property held outside of this jurisdiction, the licensee holds documents that demonstrate that it is not reasonably practicable to engage another person to hold the IDPS property who is willing to include such matters in the agreement; or
 - (B) where the person is controlled by the custodian and the custodian is liable to its client for the acts and omissions of the person as if they were the acts or omissions of the custodian; and
- (c) the agreement with the custodian has provisions:
 - (i) specifying reasonable rights that the licensee has for the ongoing review and monitoring of the custodian and any sub-custodian and the standards against which their performance will be assessed; and
 - (ii) to the effect that the custodian must certify to the licensee in writing at least every 13 months that the custodian believes on reasonable grounds that the custodian and each sub-custodian have met since the date of the previous statement in writing or the commencement of the agreement, and the custodian has no reason to believe that the custodian and each sub-custodian will not continue to meet:
 - (A) in the case of the custodian, the terms of the agreement; and
 - (B) in any case, the requirements that the licensee must do all things necessary to ensure under subsections (40C) to (40J) and paragraphs (40K)(a), (c) and (e) are met by the custodian or the sub-custodian in relation to IDPS property held by the custodian or a sub-custodian (except to the extent that the licensee is not complying with a requirement under paragraph (40D)(a) or (b) and the custodian is not aware of any non-compliance);

other than:

 - (C) as disclosed in writing to the licensee; or
 - (D) that the custodian reasonably believes are trivial, and

the custodian acknowledges that it or the sub-custodian must continue to meet those obligations; and

- (iii) to the effect that the custodian must acknowledge to the licensee on request that the IDPS property to which the agreement relates is held for the licensee or the relevant client or clients and notify any other person where the custodian is aware to do so might protect the rights or equitable interest of the licensee or the client or clients that the property is so held, unless the licensee directs in writing otherwise; and
- (iv) specifying how instructions will be given by the licensee to the custodian; and
- (v) to the effect that the custodian must not take or grant a security interest, mortgage, lien or other encumbrance over, or in relation to, the IDPS property held under the agreement unless it is accordance with the agreement and does not cover unpaid fees of the custodian; and
- (vi) specifying how the custodian will maintain records of the IDPS property to which the agreement relates and the transactions in relation to that IDPS property including by whom, when and how transactions were authorised; and
- (vii) specifying procedures for reconciliation each business day or if it is ordinary and reasonable commercial practice to reconcile certain property less frequently, in accordance with that practice, by checking information the custodian is given as to the existence and quantity of the IDPS property against the records of the custodian and for reporting by the custodian concerning the outcomes of the reconciliation in case of any unreconciled matter; and
- (viii) to the effect that the custodian must provide all reasonable access and assistance to any auditor engaged to audit the licensee's financial statements or statements and records concerning clients' holdings or transactions;
- (ix) to the effect that the custodian will provide the licensee with written notice of and contact information for any other person holding IDPS property or to be appointed by the custodian:
 - (A) as soon as reasonably practicable; and
 - (B) in any event before the property is held, except in exceptional circumstances identified in the agreement; and
- (x) to the effect that the licensee may terminate the agreement without:
 - (A) payment other than in relation to entitlements previously accrued or the reasonable expenses involved in transfer of the assets to the licensee or another custodian; and

(B) limiting any right to damages the licensee may have under the agreement, including recovering expenses referred to in sub-subparagraph (A) if the custodian is in breach;

if the licensee has reasonable grounds for believing that:

(C) there is or has been an act or omission of the custodian or a sub-custodian that results in the custodian being in breach of the agreement; and

(D) as a result of the act or omission, to a material extent the custodian or a sub-custodian is not complying with or is unlikely to comply with the requirements that the licensee must do all things necessary to ensure under subsections (40C) to (40J) and paragraphs (40K)(a), (c) and (e) are met by the custodian or the sub-custodian in relation to IDPS property held by the custodian or that the custodian arranged to be held, having regard to any remedy provided or that may be expected to be provided by the custodian or the sub-custodian; and

(xi) to the effect that on termination of the engagement, the IDPS property must be transferred to the licensee or as the licensee directs within a reasonable period subject to reasonable provisions for the obligations of the parties at termination, including the payment of outstanding fees and charges to the custodian and any costs of the transfer; and

(xii) to the effect that the custodian must notify material or systemic breaches of the agreement by it or by the licensee in writing to the licensee within a reasonable time of becoming aware of the breach; and

(xiii) specifying the terms on which the custodian is authorised to engage a person to hold the IDPS property to which the agreement relates and providing that any such engagement must be either:

(A) under a written agreement meeting the requirements of paragraphs (c) to (e) (including this sub-subparagraph and sub-subparagraph (B)) as if the person engaged were the custodian and the custodian were the licensee except to the extent that, in relation to assets held outside of this jurisdiction, the custodian has provided written reasons to the licensee as to why it reasonably considers that it is not practicable to engage a person that is willing to include such matters in the agreement; or

(B) an arrangement with a related body corporate of the custodian, where the custodian has a written agreement with the licensee that it is liable to its client for the acts and omissions of that the related body corporate as if those acts and omissions were the acts or omissions of the custodian; and

- (xiv) to the effect that the custodian must establish and maintain business continuity arrangements that are reasonable for a business of the nature, scale and complexity of the custodian's business; and
- (xv) to the effect that the custodian must not disclose any confidential information relating to the IDPS, apart from any disclosure to ASIC or as required or permitted by law or by the licensee in writing; and
- (d) the agreement with the custodian has reasonable liability provisions and does not include provisions that exclude the liability of the custodian for direct loss that it would have if the exclusion were not included except in particular circumstances that the licensee considers to be reasonable and contains, if appropriate, reasonable indemnity provisions in relation to losses caused to the licensee, as IDPS operator or to the relevant client or clients by the custodian's acts and omissions that relate to that agreement; and
- (e) it does not, under the agreement with the custodian or otherwise, permit the granting of a security interest, mortgage, lien or other encumbrance in favour of the custodian or its associates unless the licensee reasonably believes for reasons it has recorded in writing that any conflict that may arise as a result of the security interest, mortgage, lien or encumbrance will not materially increase the risks that the custodian will fail to meet its obligations and the licensee must keep the written record of reasons for 7 years after the security interest, mortgage, lien or encumbrance has ceased.

(40B) A licensee that complies with subsection (40A) in relation to an arrangement with a custodian is taken to comply with any condition on its Australian financial services licence concerning the arrangement.

Minimum standards for licensees

(40C) The licensee must:

- (a) have reasonable procedures for giving instructions to a custodian it engages or where there is no custodian, custodial staff in relation to the accessible investments that include how the instructions are given, and reasonable controls to ensure that the instructions are properly authorised and carried out; and
- (b) ensure that it and do all things necessary to ensure that any person the licensee directly or indirectly engages to hold IDPS property:
 - (i) as far as practicable identifies the IDPS property as property held on behalf of the person for whom it is held; and
 - (ii) holds the IDPS property separately from property in which the licensee or the person holding the IDPS property has an interest and from the property of any other person, other than clients of the IDPS, except in relation to:

- (A) Australian or foreign currency; or
- (B) a deposit taking facility of a body carrying on a business of accepting money on deposit including rights under that facility; or
- (C) securities (as defined in subsection 92(1)); or
- (D) derivatives;

held separately from property in which the licensee or person holding the IDPS property has an interest other than as a trustee for a person other than the licensee, except where property is not held separately to comply with paragraph (40D)(f).

(40D) The licensee must do all things necessary to ensure that, if IDPS property is not held separately from property in which the licensee or a person it directly or indirectly engages has an interest and separately from the property of any person other than clients of the IDPS:

- (a) the licensee has put in place, and keeps for 7 years after it was last relied on, a written policy in relation to not holding IDPS property separately which sets out its reasons why that policy is appropriate having regard to any extent to which it might expose its clients to the risks arising from the IDPS property not being held separately and its duties to each client; and
- (b) the licensee reviews the policy at least every 13 months, prepares a written record of the outcome of the review and keeps that record for 7 years; and
- (c) adequate records are kept at all times showing each client's entitlement to IDPS property that includes the IDPS property not held separately; and
- (d) reconciliation procedures are performed on each business day in relation to the IDPS property not held separately or if because of the nature of the property, it is ordinary and reasonable commercial practice in the place where the property is located to reconcile property of that kind less frequently, as frequently as would be performed in accordance with that practice; and
- (e) not holding the IDPS property separately does not restrict the capacity of the licensee to exercise its powers in relation to the IDPS property in accordance with its duties including in relation to voting rights; and
- (f) if the property that includes the IDPS property is not sufficient to meet the entitlements of all persons in relation to that property, the insufficiency ceases by the second business day after the insufficiency arises, whether through the provision of additional property by the licensee or otherwise.

(40E) The licensee must do all things necessary to ensure that it, if it holds IDPS property, and any custodian it engages to hold IDPS property has an organisational structure that supports compliance with subparagraph (40C)(b)(ii).

(40F) The licensee must do all things necessary to ensure that it, if it holds IDPS property, and any custodian it engages to hold IDPS property segregates custodial staff from persons performing other functions, in a way that minimises the potential for conflict, if a conflict of interest exists or might arise between:

- (a) their duties as custodial staff; and
- (b) the interests served or advanced by persons who perform duties to make investment decisions, trading decisions or other discretionary decisions resulting in the transfer or disposal of IDPS property other than discretionary decisions in relation to holding a deposit account with a corporation that is regulated for the taking of deposits where the balance of the deposit account is payable on demand and discretionary decisions relating to buying or selling foreign currency.

(40G) The licensee must do all things necessary to ensure that it and any custodian it engages to hold IDPS property has a documented policy that is:

- (a) approved by its directors or governing body, or a senior manager authorised to give approval on behalf of the directors or governing body or in the case of a custodian that is a foreign company that is carrying on business in this jurisdiction or registered under Division 2 of Part 5B.2, its most senior officer or employee in this jurisdiction with responsibility for managing the functions of custodial staff; and
- (b) designed to ensure that custodial staff are not influenced because of a conflict mentioned in subsection (40F) to act other than in accordance with their duties.

(40H) The licensee must undertake reasonable checks to find out and document if there has been any attempt to inappropriately influence custodial staff and take reasonable action in the event this happens.

(40I) The licensee must do all things necessary to ensure that it and any custodian it engages to hold IDPS property structures its business so that:

- (a) custodial staff can report to the directors of the licensee directly or through other custodial staff; and
- (b) the duties of:
 - (i) direct managers of custodial staff; and
 - (ii) indirect managers of custodial staff that are not the most senior officer of the licensee or the most senior officer or employee of the custodian in this jurisdiction or, for a custodian, the jurisdiction in which the custodian is based; and

(iii) custodial staff;

do not extend to other functions that may create conflicts of interest including that custodial staff and those managers are not responsible for investment decisions, trading decisions or other discretionary decisions resulting in the transfer or disposal of IDPS property, other than discretionary decisions in relation to holding a deposit account with a corporation that is regulated for the taking of deposits where the balance of the deposit account is payable on demand and discretionary decisions relating to buying and selling foreign currency; and

- (c) custodial staff and persons involved in investment decisions, trading decisions or other discretionary decisions resulting in the transfer or disposal of IDPS property, other than discretionary decisions in relation to holding a deposit account with a corporation that is regulated for the taking of deposits where the balance of the deposit account is payable on demand and discretionary decisions relating to buying and selling foreign currency are located sufficiently separately during the performance of their duties to reduce, so far as reasonably practicable, the risk of inappropriate influence on decisions relating to holding of IDPS property.

(40J) The licensee must, for its custodial staff ensure that, and for custodial staff of any custodian do all things necessary to ensure that the custodian ensures that:

- (a) custodial staff have the knowledge and skills necessary to perform their duties properly; and
- (b) ongoing training and educational programs are provided to custodial staff that provide reasonable assurance that they have knowledge that remains at a level necessary for performing their assigned duties including knowledge of the licensee's obligations under this Part to the extent relevant to enable the custodial staff to perform their particular duties; and
- (c) custodial staff have the necessary time and authority to perform their duties as custodial staff; and
- (d) resources are made available to custodial staff to the extent necessary for them to adequately perform their duties as custodial staff.

(40K) The licensee must:

- (a) if the licensee has engaged a custodian, also comply with subsections (40E) to (40J) as if any sub-custodian were the custodian, except to the extent that, in relation to IDPS property outside of this jurisdiction, it is not reasonably practicable for the licensee to do all things necessary to ensure that the sub-custodian does a particular thing; and

Note: For example, if the custodian engaged a sub-custodian, the licensee would need to do all things necessary to ensure that the requirements of subsections (40E) to (40J) were

satisfied in relation to the custodian, the sub-custodian and their custodial staff, subject to the exception in relation to property outside this jurisdiction.

- (b) keep for 7 years records demonstrating how it complies with subsections (22) and (40C) to (40J) and paragraph (40K)(a); and
- (c) set out in writing and implement a reasonable process to monitor and assess the performance, by any custodian it engages, of its obligations as a custodian and must do all things necessary to ensure that a custodian it engages sets out in writing and implements a reasonable process to monitor and assess the performance of its obligations by any sub-custodian; and
- (d) not permit a custodian it engages or a sub-custodian to be involved in discretionary decisions concerning a deposit account, unless the licensee is satisfied that the custodian or sub-custodian has set out in writing and implements reasonable processes for:
 - (i) determining which account to use; and
 - (ii) monitoring performance by the issuer of the account of the issuer's obligations in relation to that account; and
 - (iii) taking action in case of failure of the issuer of the account of the issuer's obligations in relation to that account; and
- (e) ensure that it keeps records of the IDPS property in a way that enables the holding of the IDPS property to be conveniently and properly audited by an auditor of the IDPS operator and do all things necessary to ensure that any custodian or sub-custodian keeps such records in relation to any IDPS property that is held by the custodian or the sub-custodian; and
- (f) set out in writing and implement a reasonable process for determining if it should hold IDPS property or engage a custodian, unless either choice is determined by its contractual obligations, and if it is to engage a custodian, which person will be the custodian and on what terms. The process must involve the application of a reasonable written policy approved by the directors which addresses potential conflicts of interest and other considerations relevant to the interests of each client; and
- (g) do the following:
 - (i) review the appropriateness of the written policies and processes that the licensee is required to ensure exists under paragraphs (c), (d) and (f) at least once in every 13 months; and
 - (ii) as directed by ASIC in writing, arrange for a report on the effectiveness or the reasonableness of any of the processes or policies to be prepared and given to ASIC.

The written direction may specify who is to prepare the report and the time by which it must be given to ASIC.

(40L) A licensee that complies with subsections (40C) to (40K) is taken to comply with conditions (if any) of its Australian financial services licence that refer to ASIC Policy Statement 133 or ASIC Regulatory Guide 133 as applying on a certain date.

(40M) If a licensee was authorised to operate an IDPS before 2 January 2014:

- (a) subsections (40A) and (40B) do not apply to the licensee until 1 November 2015; and
- (b) subsections (40C) to (40L) do not apply to the licensee until 2 January 2015.

Facilitating dispute resolution

(41) If a client notifies the licensee that it has a complaint in relation to an accessible investment, the licensee must take reasonable steps to facilitate resolution of the dispute between the client and the issuer of the accessible investment, including informing the client whether the issuer has an internal dispute resolution system that is available to the client.

Interpretation

(42) In this section:

accessible financial products means financial products that may be held through an IDPS.

accessible investments means assets or property that may be held through an IDPS, including accessible securities and accessible financial products.

accessible securities means securities that may be held through an IDPS.

annual investor statement has the meaning given by paragraph (31)(a).

client means a client of an IDPS.

custodial arrangement has the same meaning as in subsection 1012IA(1).

custodial functions means holding property for clients and incidental functions.

custodial staff means natural persons who under an arrangement with the licensee or a custodian have duties relating to holding IDPS property, record keeping relating to IDPS property, checking authorisations for instructions to transact or functions incidental to these functions other than making investment decisions, trading decisions or other discretionary decisions resulting in the transfer or disposal of IDPS property, other than discretionary decisions in relation to holding a deposit account with a corporation that is regulated for the taking of deposits where the balance of the deposit account is payable on demand and discretionary decisions relating to buying or selling foreign currency.

custodian means a person (other than a client) that holds property to which an IDPS relates.

Note: The custodian may also be an operator of the IDPS.

defective ~~in relation to~~:

- (a) ~~in relation to~~ a Product Disclosure ~~Statement~~ Statement – has the same meaning as in section 1021B; and
- (b) ~~in relation to~~ a disclosure document ~~–~~ means a disclosure document in relation to which a person offering securities under the disclosure document must not issue securities or must deal under subsection 724(2) with any applications for securities made under the disclosure document that have not resulted in an issue or transfer of the securities.

~~**disclosure document** means a prospectus, a profile statement or an offer information statement which is lodged with ASIC, or a document required by an instrument under section 741 setting out information about an offer of accessible securities.~~

distribution reinvestment plan means a written arrangement between an operator and a client to the effect that the client instructs the operator to:

- (a) reinvest distributions from specified accessible investments held through the IDPS by the client in some or all of the accessible investments held through the IDPS by the client; and
- (b) carry out the reinvestment of distributions referred to in paragraph (a) according to an agreed method;

where before entering into the arrangement the client has been given an IDPS Guide containing a statement to the effect that the client may not have:

- (c) the current Product Disclosure Statement for an accessible financial product held through the IDPS; or
- (d) the current disclosure document for accessible securities held through the IDPS;

at the time an additional holding of the accessible financial product or accessible securities is acquired under the distribution reinvestment plan.

eligible agent, in relation to a person who is a client of an IDPS, means an agent of the person, other than an operator of the IDPS or an associate of the operator, who is authorised under an eligible agreement.

eligible agreement, in relation to an eligible agent, means a written agreement between the person and the agent which authorises the agent to receive a document on the person's behalf in relation to the IDPS.

financial assets has the same meaning as that term has in paragraph 11 of Accounting Standard AASB 132 *Financial Instruments: Presentation* as in force on 28 June 2013 and as amended from time to time by a disallowable

legislative instrument within the meaning of the *Legislative Instruments Legislation Act 2003*.

IDPS means a scheme under which an investor directed portfolio service, consisting of a number of functions including a custody, settlement and reporting system and service with the following features is provided:

- (a) the clients of the investor directed portfolio service have the sole discretion to decide what (but not necessarily when) assets will be acquired or disposed of, except where:
 - (i) there are any prior written directions (that the client has agreed not to vary) to acquire or dispose of a particular asset in particular circumstances (other than a circumstance that is affected by a discretion of an operator); or
 - (ii) the client has authorised an operator or another person to give directions on their behalf, for the purpose of the other person receiving or securing payment of moneys owing by the client to the person; and
 - (b) subject to any prior contrary directions in order to ensure payment of moneys for which the client is liable, a client may direct an operator to:
 - (i) take reasonable steps to transfer assets to or to the order of the client; and
 - (ii) realise assets held on account for the client and either:
 - (A) pay the proceeds to or to the order of the client; or
 - (B) if the operator and the client agree, hold the proceeds under the IDPS in an account with an Australian ADI designated as a trust account;
- unless the assets cannot be transferred or realised under law or the terms of their issue; and
- (c) except where otherwise mentioned in paragraph (a) or (b), any discretion of the holder of assets held through the investor directed portfolio service may be exercised only in accordance with the directions from time to time of the relevant client; and
 - (d) the investor directed portfolio service is provided in such a way that clients are led to expect, and are likely to receive, benefits in the form of:
 - (i) access to investments that the client could not otherwise access directly; or
 - (ii) cost reductions by using assets contributed by the client or derived directly or indirectly from assets contributed by the client with

assets contributed by other clients or derived directly or indirectly or indirectly from assets contributed by other clients; and

does not include a scheme under which material terms of any rights that may be acquired on behalf of a client are negotiated, or substantially determined.-

Note: Cost reductions may arise from the pooling of client funds to make large investments that can be acquired on more favourable terms than if the investments were made by each client on their own behalf. They may also arise from the “netting” of transactions whereby directions of clients to buy and sell assets are offset against each other and a transaction for the net amount is entered into.

IDPS contract means a contract between an operator and a client under which the operator provides the client with an IDPS or the performance of some functions which together with others constitute an IDPS.

IDPS financial year means a period of 12 months commencing on 1 July and ending on 30 June.

IDPS Guide means an IDPS Guide required to be given in the circumstances referred to in subsection (2).

IDPS property means, in relation to an IDPS, all property acquired or held through the IDPS, other than property held by a client of the IDPS.

IDPS voting policy means a policy that applies in relation to the exercise of voting rights arising from accessible investments held by clients through an IDPS.

IDPS-like scheme has the same meaning as in ASIC Class Order [CO 13/762].

internal controls and other procedures of an operator include any alternative controls and procedures employed by the operator to address deficiencies in the design or operation of established internal controls or other procedures.

missing document has the same meaning as in the definition of **regular savings plan**.

nominee and custody services ~~NCS~~ has the same meaning as in ASIC Corporations (Nominee and Custody Services) Instrument 2016/XX ~~ASIC Class Order [CO 02/295] as in force on 28 June 2013 and as amended from time to time by a disallowable legislative instrument within the meaning of the Legislative Instruments Act 2003.~~

operator means a public company that is a holder of an Australian financial services licence that is authorised to operate an IDPS and who provides an IDPS or a function that forms part of the IDPS.

quarter means a period of three months ending on a quarter day.

quarter's end means, in relation to electronic access to information under paragraph (27)(b):

- (a) at the end of a day that is a quarter day; or
- (b) where such access is not given at the time mentioned in paragraph (a), the time at which access is first given after that time.

quarterly report means a report for a quarter under subsection (29).

regular savings acquisition has the same meaning as in the definition of **regular savings plan**.

regular savings plan means a written arrangement between an operator and a client to the effect that:

- (a) the client instructs the operator to acquire specified accessible financial products by way of periodic payments of a specified amount and at specified intervals (each such acquisition is a **regular savings acquisition**); and
- (b) the client acknowledges that under the regular savings plan, a regular savings acquisition of an accessible financial product may occur without the client having been given a current Product Disclosure Statement in relation to the accessible financial product (**missing document**); and
- (c) the operator agrees to give access to the client to what it reasonably believes is the most current missing document relating to an accessible financial product (unless this would not be required if the acquisition were not under a regular savings plan) that may be acquired under the regular savings plan as soon as reasonably practicable and in any event by the fifth business day after the operator receives what the operator reasonably believes is the most current missing document; and
- (d) the client acknowledges that regular savings acquisitions will continue to be made under the regular savings plan until the client instructs the operator otherwise or the arrangement constituting the regular savings plan is terminated; and

where the client:

- (e) before entering into the arrangement has been given an IDPS Guide containing a statement; and
- (f) has been given advice quarterly in writing,

to the effect that the client may not have the current Product Disclosure Statement for an accessible financial product at the time a regular savings acquisition of the accessible financial product is made.

regulated person has the same meaning as in section 1011B.

sub-custodian means, in relation to a custodian engaged by the licensee, a person directly or indirectly engaged by the custodian to hold IDPS property.

Supplementary IDPS Guide has the meaning given by subsection (14).

transactional functions means:

- (a) acquisition and disposal of accessible investments in accordance with the instructions of the client or the terms of the IDPS contract; or
- (b) maintenance of records of investments of clients for the purposes of consolidated reporting functions under the IDPS.

value of IDPS property means, in relation to an IDPS, the market value of the IDPS property of the IDPS.

(43) For the purposes of this section:

- (a) the circumstances in which the operator of an IDPS or a custodian acquires an accessible investment under a direction of a client include:
 - (i) an allocation of entitlements relating to an accessible investment to the interest of the client in the IDPS; and
 - (ii) an increased investment in an accessible financial product in respect of which a client's interest in the IDPS has been allocated entitlements;under a direction of the client; and
- (b) a financial product is of the same kind as another financial product if the products would be of the same kind for the purposes of section 1012D.

(44) For the purposes of subsections (22), (40A) to (40M), the definition of sub-custodian in subsection (42) and this subsection:

- (a) a person (first person) engages another person if the first person engages or authorises the other person; and
- (b) a person (first person) indirectly engages another person (second person) if:
 - (i) the first person engages a person and that person engages the second person; or
 - (ii) a person who is indirectly engaged by the first person under subparagraph (i) or this subparagraph (ii) engages the second person.

(45) For the purposes of this section, an affected auditor (as defined in ASIC Class Order [CO 14/757]) is taken to be a registered company auditor.

912ADA IDPS dispute resolution

~~[Deleted.]~~

~~(1) If a financial services licensee who issues accessible financial products through an IDPS provides a notice in writing to an operator of the IDPS that states that it will comply with the internal dispute resolution requirements of~~

~~this section, the licensee must have and maintain an internal dispute resolution procedure that:~~

- ~~(a) covers complaints against the licensee by each person who:~~
- ~~(i) holds through the IDPS an accessible financial product issued by the licensee; and~~
- ~~(ii) if the licensee had issued the accessible financial product to the person directly, would have been issued the product as a retail client;~~

~~where the complaints are made in connection with the accessible financial product; and~~

~~(b) complies with the following standards and requirements:~~

- ~~(i) the procedure covers a “complaint” as defined in AS ISO 10002—2006;~~
- ~~(ii) the “Guiding principles” in section 4 of AS ISO 10002—2006;~~
- ~~(iii) the following sections of AS ISO 10002—2006:~~
 - ~~(A) section 5.1—Commitment;~~
 - ~~(B) section 6.4—Resources;~~
 - ~~(C) section 8.1—Collection of Information;~~
 - ~~(D) section 8.2—Analysis and evaluation of complaints; and~~
- ~~(iv) the procedure must include adequate measures for informing complainants about the availability and accessibility of an external dispute resolution scheme (if any) of which the relevant person is a member.~~

~~Note: A notice under subsection 912ADA(1) cannot be revoked.~~

- ~~(2) In this section, *AS ISO 10002—2006* means Australian Standard AS ISO 10002—2006 known as Customer Satisfaction—Guidelines for complaints handling in organizations published by Standards Australia as in force as at 5 April 2006.”.~~

Declaration – Liability provisions for FSG disclosure

7. Part 7.7 of the Act applies in relation to an operator of an IDPS as if:

- (a) Subdivision A of Division 7 of Part 7.7 were modified or varied by, after section 952B, inserting:

“952BA Apportionment of liability for Financial Services Guide

For the purposes of section 952E and 952G, a financial services licensee does not commit an offence if the Financial Services Guide or Supplementary Financial Services Guide is defective by reason only of a statement in or an omission from a part of the Financial Services Guide for

which another financial services licensee states it is responsible in the Financial Services Guide and which relates to financial services that are to be or are likely to be performed by that other financial services licensee.”; and

- (b) Subdivision B of Division 7 of Part 7.7 were modified or varied by, after section 953B, inserting:

“953BA Apportionment of liability for Financial Services Guide

For the purposes of section 953B, a providing entity is not liable for loss or damage in the situation referred to in paragraph 953B(1)(b) if a Financial Services Guide or Supplementary Financial Services Guide is defective by reason only of a statement in or an omission from a part of the Financial Services Guide for which another financial services licensee states it is responsible in the Financial Services Guide and which relates to financial services that are to be or are likely to be performed by that other financial services licensee.”.

Declaration – section 1012IA

8. Part 7.9 of the Act applies in relation to the operator of an IDPS as if the provisions of that Part were modified or varied by, after subsection 1012IA(8), inserting:

“(9) An operator (as defined in subsection 912AD(42)) of an IDPS (as defined in subsection 912AD(42)) does not need to give a client a Product Disclosure Statement for a regulated acquisition that complies with subsection 912AD(26).”.

Declaration – offers of securities through an IDPS

9. Chapter 6D of the Act applies to all persons as if Part 6D.2~~in relation to the operator of an IDPS as if the provisions of that Chapter~~ were modified or varied by, after section 704, inserting:

“704A Offers through an IDPS

- (1) A person who makes an offer of accessible securities ~~(as defined in subsection 912AD(42)) or interests in accessible securities~~ through an IDPS ~~(as defined in subsection 912AD(42))~~ that needs disclosure under this ~~Part:~~

~~(a) must~~Part must promptly notify an operator (as defined in subsection 912AD(42)) or a custodian ~~(as defined in subsection 912AD(42))~~ of the IDPS if:

- (~~ai~~) a supplementary or replacement document has been lodged in relation to the disclosure document; or
- (~~ib~~) the person is prohibited under Division 1 of Part 6D.3 from making offers of securities under the disclosure document; or
- (~~ic~~) the disclosure document is withdrawn before the expiry date specified in the disclosure ~~document; and~~

~~(b) must not issue any accessible securities through the IDPS if the person is aware of any non-compliance by the operator with the requirements of section 912AD.~~

- (2) Nothing in this Part or Part 6D.3 requires a disclosure document for offers of accessible securities ~~or interests in accessible securities~~ through an IDPS to include information about the IDPS or the rights attached to the accessible securities where they differ from the rights that a person would have if they acquired the accessible securities directly.
- (3) ~~A person cannot rely on S~~subsection (2) ~~does not apply in relation to an offer of accessible securities or interests in accessible securities~~ if ASIC has given a notice in writing to the person ~~making the offer~~ stating that ~~it cannot rely on that~~ ~~subsection (2) does not apply in relation to offers of securities by the person~~ and has not withdrawn ~~that the~~ notice.

(4) In this section:

accessible securities, custodian, IDPS and operator have the same meanings as in subsection 912AE(42)”.

Exemption – Persons involved in the operating operation or of promoting an IDPS

10. A person (other than an operator) who operates a managed investment scheme by reason of being involved in the operation or promotion of an IDPS does not have to comply with section 601ED(5) of the Act in relation to the IDPS.
11. A person (other than an operator) who is involved in the operation or promotion of an IDPS does not have to comply with:
- (a) Parts 6D.2 and 6D.3 of the Act for an offer securities to issue equitable rights of accessible securities or interests in accessible securities arising because of an offer to hold, or arrange for the holding of, the accessible securities through the IDPS ~~(except where the person is the issuer of those securities);~~ and
- (b) Division 8 of Part 7.8 ~~and or~~ Part 7.9 of the Act in relation to a financial product that is equitable rights or interest in an accessible financial product arising because of a holding, or an offer to hold or arrange for the holding of, the accessible financial product through the IDPS.:
- ~~(1) an interest in a managed investment scheme arising out of participation or proposed participation in the IDPS; or~~
- ~~(2) held or that may be held by a client because the legal ownership of a financial product is held by a custodian for the client as part of the IDPS (but not in relation to the financial products that the custodian holds);~~
- ~~including in relation to an offer to issue, an offer to arrange for the issue, the issue, the acceptance of an offer to acquire, and a recommendation to acquire, the financial product.~~

Note: ~~This subsection does not apply to the accessible securities or accessible financial products that are held through the IDPS. Paragraphs 10 and 11 would apply in relation to a managed investment product that is an equitable right in an interest in a registered scheme where the custodian is the member of the scheme. No exemption is given for any requirements that apply to the financial product held by the custodian. For example, an issuer of financial products to the custodian would have to comply with section 1017E of the Act in relation to money paid by the custodian for financial products.~~

Conditions

12. ~~[A person relying on paragraphs 10 or 11 must not:~~
 - ~~(a) knowingly cause or procure the operator or any custodian of the IDPS to breach section 912AD of the Act (as notionally inserted by this instrument); or~~
 - ~~(b) engage in misleading or deceptive conduct likely to mislead or deceive in connection with the IDPS Deleted.]~~
13. A person cannot rely on paragraphs 10 or 11 if ASIC has given a notice in writing to the person which states that the person ~~cannot~~ may not rely on the paragraphs ~~10 or 11~~ and has not withdrawn ~~that the~~ the notice.

Revocation, consequential and transitional

14. ASIC Class Order [CO 02/294] is revoked.
15. ASIC Class Order [CO 02/295] is varied by, in paragraph 1, omitting “[CO 02/294]” in the definition of “IDPS” and substituting “[CO 13/763]”.
17. Paragraphs 4 to 9 do not apply in relation to an operator of an existing IDPS until the earlier of (the application date):
 - (a) each operator of the IDPS publishing a notice on its website and lodging a notice with ASIC that it will rely on this instrument in relation to the IDPS; and

Note: A notice under subparagraph 17(a) cannot be revoked.

 - (b) 1 July 2014.
18. Paragraphs 10 to 13 do not apply to a person who is involved in the operation or promotion of an existing IDPS until the application date.
19. ASIC Class Order [CO 02/294] as in force immediately before the commencement of this instrument continues to apply despite paragraph 14:
 - (a) in relation to an operator of an existing IDPS; and
 - (b) to a person (other than an operator) who is involved in the operation or promotion of an existing IDPS;

in relation to the period ending immediately before the application date.
20. Until 1 July 2014, Part 7.6 of the Act (other than Divisions 4 and 8) applies in relation to an operator of an IDPS covered by subparagraph 17(a) as if the provisions of that Part were modified or varied by inserting after section 912ADA (as notionally inserted by this instrument):

“912ADB Notice of reliance

An operator (as defined in subsection 912AD(42)) that has elected to rely on ASIC Class Order [CO 13/763] in relation to an IDPS (as defined in subsection 912AD(42)) must lodge with ASIC and publish and maintain on its website a notice that it will rely on that instrument.”.

Interpretation

21. In this instrument:

accessible financial products means financial products that may be held through an IDPS

accessible investments means assets or property that may be held through an IDPS, including accessible securities and accessible financial products.

accessible securities means securities that may be held through an IDPS.

application date, in relation to an existing IDPS, has the meaning given by paragraph 17.

client means a client of an IDPS.

existing IDPS means an IDPS that was an IDPS immediately before commencement of this instrument.

IDPS means [a scheme under which](#) an investor directed portfolio service, consisting of a number of functions including a custody, settlement and reporting system and service with the following features [is provided](#):

- (a) the clients of the investor directed portfolio service have the sole discretion to decide what (but not necessarily when) assets will be acquired or disposed of, except where:
 - (i) there are any prior written directions (that the client has agreed not to vary) to acquire or dispose of a particular asset in particular circumstances (other than a circumstance that is affected by a discretion of an operator); or
 - (ii) the client has authorised an operator or another person to give directions on their behalf, for the purpose of the other person receiving or securing payment of moneys owing by the client to the person; and
- (b) subject to any prior contrary directions in order to ensure payment of moneys for which the client is liable, a client may direct an operator to:
 - (i) take reasonable steps to transfer assets to or to the order of the client; and
 - (ii) realise assets held on account for the client and either:
 - (A) pay the proceeds to or to the order of the client; or
 - (B) if the operator and the client agree, hold the proceeds under the IDPS in an account with an Australian ADI designated as a trust account;

unless the assets cannot be transferred or realised under law or the terms of their issue; and

- (c) except where otherwise mentioned in paragraph (a) or (b), any discretion of the holder of assets held through the investor directed portfolio service may be exercised only in accordance with the directions from time to time of the relevant client; and
- (d) the investor directed portfolio service is provided in such a way that clients are led to expect, and are likely to receive, benefits in the form of:
 - (i) access to investments that the client could not otherwise access directly; or
 - (ii) cost reductions by using assets contributed by the client or derived directly or indirectly from assets contributed by the client with assets contributed by other clients or derived directly or indirectly or indirectly from assets contributed by other clients; and

does not include a scheme under which material terms of any rights that may be acquired on behalf of a client are negotiated, or substantially determined.

Note: Cost reductions may arise from the pooling of client funds to make large investments that can be acquired on more favourable terms than if the investments were made by each client on their own behalf. They may also arise from the “netting” of transactions whereby directions of clients to buy and sell assets are offset against each other and a transaction for the net amount is entered into.

issuer means a person who is capable of issuing, transferring or making available accessible securities.

operator means a public company that is a holder of an Australian financial services licence that is authorised to operate an IDPS and who provides an IDPS or a function that forms part of the IDPS.

securities has the meaning given by section 92(4).

...