



# ASIC

Australian Securities &  
Investments Commission

## CONSULTATION PAPER 358

# Remaking ASIC relief on PDSs, superannuation dashboards and FSGs

February 2022

### About this paper

This consultation paper sets out ASIC's proposals to remake our class orders and one legislative instrument on specific disclosure requirements for financial services. Under the *Legislation Act 2003*, some of these instruments will expire ('sunset') if not remade. The relief provided in two instruments will also cease if there is no extension.

We are seeking feedback from financial services licensees, superannuation trustees, platform operators, responsible entities, consumer groups and other interested stakeholders on our proposals to:

- remake, in a single new instrument, relief in class orders relating to Product Disclosure Statement (PDS) in-use notices for employer-sponsored superannuation and product dashboard disclosure;
- remake, in a single new instrument, relief in instruments that relate to shorter PDSs and PDS obligations of superannuation trustees, IDPS operators and responsible entities of IDPS-like schemes; and
- remake, as a new instrument, a class order relating to Financial Services Guides (FSGs) in time critical situations.

Note: The draft ASIC instruments are available on our website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 358.

### About ASIC regulatory documents

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

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

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

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

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

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

## Document history

This paper was issued on 18 February 2022 and is based on the Corporations Act as at the date of issue.

## Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

# Contents

<b>The consultation process .....</b>	<b>4</b>
<b>A Background to our proposals .....</b>	<b>5</b>
Purpose of 'sunsetting' legislative instruments.....	5
Legislative instruments relating to superannuation .....	5
Period of remade instruments.....	6
Our approach to remaking legislative instruments .....	6
<b>B PDSs for employer-sponsored superannuation and product dashboard disclosure .....</b>	<b>7</b>
Class Order [CO 12/415] <i>In-use notices for employer-sponsored superannuation</i> .....	7
Class Orders [CO 13/1534] <i>Deferral of amendments in relation to PDS and periodic statement disclosure</i> and [CO 14/443] <i>Deferral of choice product dashboard and portfolio holdings disclosure regimes</i> .....	10
<b>C Shorter PDSs and PDS obligations and platforms .....</b>	<b>13</b>
Class Order [CO 12/749] <i>Relief from the Shorter PDS regime</i> .....	13
Class Order [CO 13/797] <i>Platform operators and trustees of superannuation entities using an agent to deliver a PDS.....</i>	15
<i>ASIC Corporations (Superannuation: Investment Strategies) Instrument 2016/65 .....</i>	16
<b>D FSGs in time critical situations .....</b>	<b>19</b>
Class Order [CO 12/417] <i>Information in a Financial Services Guide given in a time-critical situation .....</i>	19
<b>Key terms .....</b>	<b>21</b>
<b>List of proposals and questions .....</b>	<b>22</b>

## The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on relief provided in the class orders and instrument to be remade.

### Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at [www.asic.gov.au/privacy](http://www.asic.gov.au/privacy) for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 12 April 2022 to:

Lincoln Rodgers  
Lawyer, Superannuation Team  
Australian Securities and Investments Commission  
GPO Box 9827  
BRISBANE QLD 4001  
email: [remakinginstrumentsconsultation@asic.gov.au](mailto:remakinginstrumentsconsultation@asic.gov.au)

### What will happen next?

<b>Stage 1</b>	18 February 2022	ASIC consultation paper released
<b>Stage 2</b>	12 April 2022	Comments due on the consultation paper
<b>Stage 3</b>	June 2022	Commencement of remade instrument(s)

## A Background to our proposals

### Key points

Most legislative instruments, such as class orders, are repealed automatically, or ‘sunset’, after 10 years, unless action is taken to exempt them or remake them. Some legislative instruments also contain relief with an expiry or cessation date that needs to be extended once that date occurs if the relief is to remain.

We consult when remaking sunseting legislative instruments that have more than a minor or machinery regulatory impact—including if we propose to remake an instrument and include relief from other legislative instruments.

### Purpose of ‘sunseting’ legislative instruments

- 1 Under the *Legislation Act 2003*, legislative instruments cease automatically, or ‘sunset’, after 10 years, unless action is taken to preserve them. Section 50(1) repeals a legislative instrument on either 1 April or 1 October—whichever date occurs first on or after the tenth anniversary of its registration on the Federal Register of Legislation. Repeal does not undo the past effect of the instrument.
- 2 To preserve its effect, a legislative instrument, such as a class order, must be remade before the sunset date. The purpose of sunseting is to ensure that instruments are kept up to date and only remain in force while they are fit for purpose, necessary and relevant.

### Legislative instruments relating to superannuation

- 3 Some classes of legislative instruments are not subject to sunseting: see the list in reg 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. These include instruments (other than a regulation) relating to superannuation.
- 4 While legislative instruments relating to superannuation only are not subject to sunseting, we choose to remake them to ensure they are kept up to date and remain fit for purpose, relevant and necessary.
- 5 That is, our practice has been to treat instruments relating to superannuation as though they sunset, and not to claim the reg 11 exemption on the Federal Register of Legislation, so these instruments are registered with sunseting dates and must be remade after that time.

## Period of remade instruments

- 6 We propose to remake certain legislative instruments for a period of approximately five years so that they expire on 1 October 2027. We consider this period will provide sufficient certainty for industry and, if required, allow progress to be made in amending the primary law or regulations.
- 7 We note that the proposed five-year period is only an indication of the approach we may take and is not our final decision.

## Our approach to remaking legislative instruments

- 8 If it is necessary to remake a legislative instrument, our focus is on making it clear and user friendly. We will also, where possible, simplify and rationalise its content and conditions. For example, we will remove or reduce an obligation or burden in a legislative instrument if we are able to do so without undermining ASIC's vision of a fair, strong and efficient financial system for all Australians.
- 9 We will consult affected stakeholders on all ASIC legislative instruments that have more than a minor or machinery regulatory impact to ensure that:
  - (a) we carefully consider the continuing regulatory and financial impact of the instrument; and
  - (b) the instrument retains its effectiveness in addressing an identified issue or problem.
- 10 Generally, a Regulation Impact Statement (RIS) is required for new and amended policy that has a significant regulatory impact: see the [Australian Government Guide to Regulatory Impact Analysis](#). We will review, including following public consultation, all class orders that have a significant regulatory impact before the scheduled sunset date.
- 11 Where our review finds that a class order is not operating effectively and efficiently, we will undertake regulatory impact analysis to assess our proposed changes to the class order. Where the class order is operating effectively and efficiently, we will remake the instrument without substantive changes and without preparing a RIS.

## B PDSs for employer-sponsored superannuation and product dashboard disclosure

### Key points

We are proposing to remake as a single legislative instrument the following class orders relating to disclosure obligations for superannuation trustees:

- [Class Order \[CO 12/415\]](#) *In-use notices for employer-sponsored superannuation*, which is due to sunset on 1 October 2022;
- [Class Order \[CO 13/1534\]](#) *Deferral of Stronger Super amendments in relation to PDS and periodic statement disclosure*, which is due to expire on 1 July 2023; and
- [Class Order \[CO 14/443\]](#) *Deferral of choice product dashboard and portfolio holdings disclosure regimes*, which is due to expire on 1 July 2023.

We are proposing to remake these class orders without significant changes, while omitting relief that has become redundant.

We have formed the preliminary view that the non-redundant relief in these class orders is operating effectively and efficiently, and they continue to form a necessary and useful part of the legislative framework.

Each class order has been redrafted using ASIC's current style and format, while preserving continuing relief in the instrument.

### Class Order [CO 12/415] *In-use notices for employer-sponsored superannuation*

#### Background

- 12 Section 1015D of the *Corporations Act 2001* (Corporations Act) requires a person (e.g. a superannuation product issuer) to lodge an 'in-use' notice with ASIC in certain circumstances, including where a Product Disclosure Statement (PDS) for a financial product is first given in a recommendation, issue or sale situation. The in-use notice provisions only apply where the PDS for the product is not required to be lodged with ASIC.
- 13 The in-use notice is a tool for making ASIC aware of who is issuing financial products and which financial products are available in the market.
- 14 The in-use notice provisions apply to standard employer-sponsored superannuation products. However, even though separate superannuation products are made available to the employees of different employers, the products are essentially the same, with differences reflecting the limited choices that an employer can make for its own employees.

**Primary notice**

15 [\[CO 12/415\]](#) provides relief to permit the lodgement of a single in-use notice (the ‘primary notice’) where a person, in a recommendation, issue or sale situation, is first given:

- (a) the common part of a PDS for a standard employer-sponsored superannuation product; or
- (b) a Supplementary PDS that relates to the common part.

16 The primary notice must specify each PDS that:

- (a) includes the common part; or
- (b) is supplemented by a Supplementary PDS that relates to the common part.

17 That is, instead of lodging an in-use notice with ASIC in relation to every PDS that is in use, [\[CO 12/415\]](#) allows the lodgement of one primary notice in circumstances where a number of PDSs share the same common part.

**Secondary notice**

18 Trustees using the procedure outlined in paragraphs 15–17 must lodge a further notice with ASIC for any PDS that includes a common part, or has a Supplementary PDS that relates to the common part, and remains available to be given to someone in a recommendation, issue or sale situation.

19 This further notice (the ‘secondary notice’) specifies:

- (a) the PDS that includes the common part or has a Supplementary PDS that relates to the common part; and
- (b) a Supplementary PDS that supplements the PDS but relates to the part of the PDS that is not the common part.

20 The secondary notice should be lodged with ASIC as soon as practicable after the end of each month and, in any event, within five business days of the end of the month. Currently, the arrangements for lodging this notice are set out on the ASIC website.

**Proposal**

**B1** To preserve its effect beyond the sunset date of 1 October 2022, we propose to continue the relief currently given by [\[CO 12/415\]](#) in a new legislative instrument that reflects current drafting practice.

*Note: See draft ASIC Corporations (In-use Notices for Employer-sponsored Superannuation and Superannuation Dashboards) Instrument 2022/XX at Attachment 1 to this paper.*

The only changes proposed are to:

- (a) amend the requirement in notional s1015DA(4) of the Corporations Act to notify ASIC as soon as practicable and within five business days of the end of each month with a requirement to notify ASIC as soon as practicable and within five business days of the end of each financial year;



- (b) update the name of the legislative instrument that provides the relief, and include the relief in an instrument with other relief described in this consultation paper;
- (c) update the format of the current document; and
- (d) provide an expiry date of 1 October 2027.

#### *Your feedback*

- B1Q1 Do you agree with the proposal to amend the conditions of the relief in [CO 12/415]? If not, please provide reasons.
- B1Q2 Should there be additional conditions or further changes to the conditions of relief in [CO 12/415]? If you think so, please provide details.
- B1Q3 Should the relief in [CO 12/415] be remade to expire on 1 October 2027 or for a different period of time?

## **Rationale**

- 21 We have reached the preliminary view that [\[CO 12/415\]](#) continues to form a necessary and useful part of the legislative framework. We note that there have been issues with the timeliness and completeness of lodgement of in-use notices by industry. Otherwise, we are not aware of significant issues with the provisions of the class order.

### **Reduction in frequency of secondary notice period**

- 22 Given our approach to remaking legislative instruments, including the aim to simplify and rationalise instruments where this does not undermine ASIC's consumer protection priorities (see paragraph 8), we propose that secondary notices can be lodged with ASIC less frequently.
- 23 While the information in a secondary notice remains important for ASIC, we do not consider that it needs to be lodged monthly. Rather, we propose that a secondary notice can be given yearly.
- 24 The reduction in frequency would come into effect the day after the new legislative instrument is registered on the Federal Register of Legislation.
- 25 This means that secondary notices would not need to be lodged within five business days from the end of that month of registration, or any remaining months in that financial year, for use of a PDS or Supplementary PDS occurring in the month.
- 26 However, a secondary notice satisfying the requirements in notional s1015DA(5) and (6) under the new instrument would need to be lodged with ASIC as soon as practicable, and in any event:
- (a) within five business days following the end of the financial year; and
  - (b) within five business days of the end of subsequent financial years.

## **Class Orders [CO 13/1534] *Deferral of amendments in relation to PDS and periodic statement disclosure* and [CO 14/443] *Deferral of choice product dashboard and portfolio holdings disclosure regimes***

### **Background**

- 27 [\[CO 13/1534\]](#) defers amendments in relation to PDS and periodic statement disclosure. The relief contained in the first exemption in [CO 13/1534] is no longer relevant because it applies in relation to PDSs given before 1 July 2014 and periodic statements concerning reporting periods ending before 1 July 2014.
- 28 [\[CO 13/1534\]](#) also exempts superannuation trustees from the requirement in reg 7.9.20(1)(o) of the *Corporations Regulations 2001* to include the latest product dashboard for a superannuation product in the product periodic statement (including exit statements) (the second exemption). This requirement was introduced to help members of a superannuation entity (members) understand their investment in the fund by requiring trustees to provide key information on returns, risks, fees and costs.
- 29 The second exemption is provided on the condition that the periodic statement include a website address indicating where the dashboard is displayed on the fund's website and a statement that the latest dashboard can be found at the website address.
- 30 The second exemption was made to address the compliance and administrative costs and burden imposed on superannuation trustees by the requirement to include hard copies of product dashboards in periodic statements. Giving members a website address for the product dashboard is consistent with the policy objectives and achieves more effective and efficient disclosure for members. Current practice indicates that the relief is being relied upon by trustees.
- 31 The second exemption was to apply to periodic statements given in relation to reporting periods ending before 1 January 2015. However, this date has been amended to [1 July 2015](#), [1 July 2016](#), [1 July 2017](#), [1 July 2019](#) and, most recently, [1 July 2023](#). The latest date aligns with the start date for compliance with the choice product dashboard requirements in paragraph 4 of [\[CO 14/443\]](#) *Deferral of choice product dashboard and portfolio holdings disclosure regimes*.
- 32 The deferrals of the second exemption and the relief in paragraph 4 of [\[CO 14/443\]](#) have been made to allow time for successive Governments to make the choice product dashboard regulations. This is because, without regulations to prescribe their content, the Corporations Act obligations relating to choice product dashboards cannot operate effectively.

- 33 By exempting trustees from reg 7.9.20(1)(o) and deferring compliance with s1017BA(1), the second exemption and paragraph 4 of [\[CO 14/443\]](#), respectively, provide certainty for trustees and facilitate the Government considering and settling its policy position on the content of a choice product dashboard.
- 34 The deferral of compliance with portfolio holdings disclosure set out in paragraph 5 of [\[CO 14/443\]](#) has ceased following registration of the [Corporations Amendment \(Portfolio Holdings Disclosure\) Regulations 2021](#).

## Proposal

- B2** We propose to continue the non-redundant relief in [\[CO 13/1534\]](#) and [\[CO 14/443\]](#) in a new legislative instrument that reflects current drafting practice.

*Note: See draft ASIC Corporations (In-use Notices for Employer-sponsored Superannuation and Superannuation Dashboards) Instrument 2022/XX at Attachment 1 to this consultation paper.*

The only changes proposed are to:

- (a) omit the relief in the first exemption in [\[CO 13/1534\]](#) and the relief in paragraph 5 of [\[CO 14/443\]](#) as they have become redundant;
- (b) remove the expiry dates for the relief in the second exemption in [\[CO 13/1534\]](#) and the relief in paragraph 4 of [\[CO 14/443\]](#);
- (c) update the name of the legislative instrument that provides the relief, and include the relief in an instrument with other relief described in this consultation paper (specifically, concerning obligations of superannuation trustees);
- (d) update the format of the current documents; and
- (e) provide an expiry date of 1 October 2027.

### Your feedback

- B2Q1 Do you agree with the proposal in relation to relief in [\[CO 13/1534\]](#) and paragraph 4 of [\[CO 14/443\]](#)? If not, please provide reasons.
- B2Q2 Should there be changes to the conditions of relief in [\[CO 13/1534\]](#)? If so, please provide details.
- B2Q3 Are there any additional protections to assist consumers that we should include in the relief? If so, please provide reasons.
- B2Q4 Should the relief in [\[CO 13/1534\]](#) and paragraph 4 of [\[CO 14/443\]](#) be remade to expire on 1 October 2027 or for a different period of time?

## Rationale

- 35 We have reached the preliminary view that the second exemption in [\[CO 13/1534\]](#) (to allow an alternative means for trustees to inform members about product dashboards as part of periodic reporting) and the deferral in paragraph 4 of [\[CO 14/443\]](#) (in relation to choice dashboards) are operating effectively and efficiently, and continue to form a necessary and useful part of the legislative framework. We are not aware of significant issues with the current operation of the class orders.
- 36 This deferral does not represent a policy view by ASIC about the application of the choice product dashboard provisions, or any view on the time likely to be taken by Government in settling a policy position.

## C Shorter PDSs and PDS obligations and platforms

### Key points

We are proposing to remake as a single legislative instrument and without significant changes the following class orders and instrument relating to PDSs:

- [Class Order \[CO 12/749\]](#) *Relief from the Shorter PDS regime*, which is due to expire on 30 June 2022;
- [Class Order \[CO 13/797\]](#) *Platform operators and trustees of superannuation entities using an agent to deliver a PDS*, which is due to sunset on 1 October 2023; and
- [ASIC Corporations \(Superannuation: Investment Strategies\) Instrument 2016/65](#) (ASIC Instrument 2016/65), which is due to sunset on 1 April 2026.

Relief under each instrument that is due to expire would be extended as part of this process, where applicable.

We have formed the preliminary view that these class orders and instrument are operating effectively and efficiently, and continue to form a necessary and useful part of the legislative framework.

Each instrument has been redrafted using ASIC's current style and format, while preserving the current effect of the instrument.

### Class Order [CO 12/749] *Relief from the Shorter PDS regime*

#### Background

- 37 The Shorter PDS regime was introduced to help consumers engage with disclosure documents and better understand their financial products. The regime requires a PDS to be no more than eight A4 pages in length and to comply with certain heading and content requirements.
- 38 On 22 December 2011, the then Minister announced a consultation with industry and consumer groups to determine whether certain products should be excluded from the shorter PDS regime, or included in the regime but with modified content requirements.
- Note: See Hon. Bill Shorten, Minister for Financial Services and Superannuation, [Shorter Product Disclosure Statements](#), media release, 22 December 2011.
- 39 In that announcement, it was stated that superannuation platforms and multifunds will be excluded from the shorter PDS regime. However, relief will be provided by ASIC so that superannuation platforms and multifunds can, at the discretion of the provider, be included in the shorter PDS regime.

- 40 The announcement also stated that ‘other complex products such as hedge funds will continue to remain excluded from the [shorter PDS regime], in accordance with the original policy intent, until these products can be fully considered in respect of the policy intent of the shorter PDS regime’.
- 41 Regulations to give effect to these proposals were not made, and the following year ASIC made [\[CO 12/749\]](#) pending further work by Government. The class order was to have effect until 22 June 2013 but, in the absence of regulations, this date has been extended to [22 June 2014](#), [30 June 2015](#), [30 June 2016](#), [30 June 2017](#), [30 June 2018](#) and, most recently, [30 June 2022](#).
- 42 Regulations are not yet in force and, accordingly, [\[CO 12/749\]](#) continues to give effect to the announcement, meaning that superannuation platforms, multifunds and hedge funds are excluded from the shorter PDS regime.
- 43 ASIC has observed that many product issuers who offer these complex products have relied on this relief and prepared longer PDSs.
- 44 The relief in [\[CO 12/749\]](#) is referred to in [Information Sheet 155 Shorter PDSs—Complying with requirements for superannuation products and simple managed investment schemes](#) (INFO 155).

## Proposal

- c1 We propose to continue the relief currently given by [\[CO 12/749\]](#) in a new legislative instrument that reflects current drafting practice.

Note: See draft *ASIC Corporations (Shorter PDS and Delivery of Accessible Financial Products Disclosure by Platform Operators and Superannuation Trustees) Instrument 2022/XX* at Attachment 2 to this consultation paper.

The only changes proposed are to:

- (a) update the name of the legislative instrument that provides the relief, and include the relief in an instrument with other relief described in this consultation paper;
- (b) update the format of the current document; and
- (c) provide an expiry date of 1 October 2027.

### Your feedback

- C1Q1 Do you agree with the proposal in relation to relief in [\[CO 12/749\]](#)? If not, please provide reasons.
- C1Q2 Should there be changes to the conditions of relief in [\[CO 12/749\]](#)? If so, please provide details.
- C1Q3 Are there any additional protections to assist consumers that we should include in the relief? If so, please provide reasons.
- C1Q4 Should the relief in [\[CO 12/749\]](#) be remade to expire on 1 October 2027 or for a different period of time?

## Rationale

- 45 We have reached the preliminary view that [\[CO 12/749\]](#) is operating effectively and efficiently, and continues to form a necessary and useful part of the legislative framework. We are not aware of significant issues with the current operation of this class order.
- 46 This deferral does not represent a policy view by ASIC about the application of the shorter PDS regime or a view as to the time likely to be taken by Government in settling a policy position.

## Class Order [\[CO 13/797\]](#) *Platform operators and trustees of superannuation entities using an agent to deliver a PDS*

### Background

- 47 Under s1015C(3)(a) and (b) of the Corporations Act, a PDS cannot be given to a person by giving it to an Australian financial services (AFS) licensee, or the authorised representative of an AFS licensee, acting as the person's agent to receive a PDS.
- 48 [\[CO 13/797\]](#) grants relief from this prohibition. It allows superannuation trustees, operators of an investor directed portfolio service (IDPS) and responsible entities of IDPS-like schemes that are required to give PDSs about financial products available through a platform to an investor to do so through an agent who is an AFS licensee or authorised representative. This is generally a financial product adviser.
- 49 The superannuation trustee, IDPS operator or responsible entity must have received evidence of a written agreement between the agent and the investor, appointing the agent, before they give the PDS. Where an agent receives a PDS as an investor's agent, it must give or send the PDS to the investor promptly.
- 50 This class order applies to PDSs for accessible financial products that can be acquired through platforms and superannuation entities. It is not intended to apply to:
- (a) IDPS Guides;
  - (b) PDSs for IDPS-like schemes or superannuation entities; or
  - (c) annual client statements and reports from auditors.

### Proposal

- c2 To preserve its effect beyond the sunset date of 1 October 2023, we propose to continue the relief currently given by [\[CO 13/797\]](#) in a new legislative instrument that reflects current drafting practice.

Note: See draft ASIC Corporations (Shorter PDS and Delivery of Accessible Financial Products Disclosure by Platform Operators and Superannuation Trustees) Instrument 2022/XX at Attachment 2 to this consultation paper.

The only changes proposed are to:

- (a) update the name of the legislative instrument that provides the relief, and include the relief in an instrument with other relief described in this consultation paper;
- (b) update the format of the current document; and
- (c) provide an expiry date of 1 October 2027.

#### *Your feedback*

C2Q1 Do you agree with the proposal in relation to relief in [CO 13/797]? If not, please provide reasons.

C2Q2 Should there be changes to the conditions of relief in [CO 13/797]? If so, please provide details.

C2Q3 Are there any additional protections to assist consumers that we should include in the relief? If so, please provide reasons.

C2Q4 Should the relief in [CO 13/797] be remade to expire on 1 October 2027 or for a different period of time?

### **Rationale**

- 51 We have reached the preliminary view that [\[CO 13/797\]](#) is operating effectively and efficiently, and continues to form a necessary and useful part of the legislative framework. We are not aware of significant issues with the current operation of this class order.

## ***ASIC Corporations (Superannuation: Investment Strategies) Instrument 2016/65***

### **Background**

- 52 [ASIC Instrument 2016/65](#) continues the substance of the relief originally given under Class Order [CO 06/636] *Superannuation: Delivery of product disclosure for investment strategies*, with some technical changes to clarify the operation of the PDS provisions where the relief applies.
- 53 The relief applies to superannuation trustees who offer a choice of investment strategies to members where, if the member instructs the trustee to follow a particular strategy, the trustee will acquire accessible financial products on behalf of the member. In this situation, s1012IA of the Corporations Act will apply.

Note: For the definition of accessible financial product, see 'Key terms'.

- 54 [ASIC Instrument 2016/65](#) modifies the relevant PDS requirements in s1012IA, 1013D, 1013E and 1013F of the Corporations Act by providing three options for giving disclosure about accessible financial products: see Table 1.



**Table 1: Three options for giving disclosure about accessible financial products**

Option	Who must prepare the PDS and who must give the PDS	PDS minimum content requirements
1	<p>The trustee must prepare the superannuation entity's PDS and the accessible product PDS. The trustee may elect to prepare a PDS that covers two or more accessible financial products.</p> <p>The trustee is responsible for giving a member the superannuation entity's PDS. If a member requests an accessible product PDS, the trustee is responsible for giving that PDS to the member.</p>	<p>The superannuation entity's PDS must meet the general PDS requirements including, where applicable, the shorter PDS requirements, plus general information about each accessible financial product.</p> <p>The superannuation entity's PDS must also include a statement to the effect that a member has the right to obtain a separate PDS for each accessible financial product.</p> <p>The accessible product PDS must satisfy the general PDS requirements; however, information may be tailored to minimise repetition and duplication. Trustees may also adapt information about accessible financial products so that it is relevant and meaningful for each recipient who is or will become a member of the superannuation entity.</p>
2	<p>The trustee must prepare the integrated PDS and is responsible for giving the member the integrated PDS.</p> <p>The integrated PDS combines the product disclosure information for the superannuation entity and each accessible financial product.</p>	<p>The integrated PDS must comply with the PDS requirements for the superannuation entity and each accessible financial product. The shorter PDS requirements may apply to the superannuation entity and/or some or all of the accessible financial products.</p> <p>An integrated PDS must contain the information that a person would reasonably require as a retail client to understand the investment strategy under which each accessible financial product is acquired.</p>
3	<p>The trustee must prepare the superannuation entity's PDS. The product issuer must prepare the accessible product PDS.</p> <p>The trustee is responsible for giving a member the superannuation entity's PDS. If a member requests an accessible product PDS, the trustee is also responsible for giving that PDS to the member.</p>	<p>The superannuation entity's PDS must meet the general PDS requirements including, where applicable, the shorter PDS requirements, plus general information about each accessible financial product.</p> <p>The superannuation entity's PDS must also include a statement to the effect that a member has the right to obtain a PDS from the trustee on request for each accessible financial product that the issuer of the product has prepared.</p>

55 [ASIC Instrument 2016/65](#) streamlines the disclosure obligations where an additional investment is made in an accessible financial product under an investment strategy that the member has instructed the trustee to follow so that a PDS does not have to be provided for each additional investment.

56 Also, the instrument sets out requirements for a trustee to give updated disclosure to a member where the member has given the trustee instructions to follow an investment strategy that involves the acquisition of an accessible financial product.

- 57 The updated disclosure requirements are triggered when a material adverse change, or a significant event that adversely affects a matter, occurs and the change or event would have been required to be included in a PDS for the accessible financial product prepared on the day before the change or event occurs.
- 58 The purpose and effect of [ASIC Instrument 2016/65](#) are also discussed in [Regulatory Guide 184](#) *Superannuation: Delivery of product disclosure for investment strategies* (RG 184).

## Proposal

- c3 We propose to continue the relief currently given by [ASIC Instrument 2016/65](#) in a new legislative instrument.

*Note: See draft ASIC Corporations (Shorter PDS and Delivery of Accessible Financial Products Disclosure by Platform Operators and Superannuation Trustees) Instrument 2022/XX at Attachment 2 to this consultation paper.*

The only changes proposed are to:

- (a) update the name of the legislative instrument and include the relief in an instrument with other relief described in this consultation paper;
- (b) simplify the drafting to give greater clarity; and
- (c) provide an expiry date of 1 October 2027.

### Your feedback

- C3Q1 Do you agree with the proposal in relation to relief in ASIC Instrument 2016/65? If not, please provide reasons.
- C3Q2 Do you consider Option 2 for giving disclosure under this relief, involving an integrated PDS, to be unnecessary? If not, please provide reasons.
- C3Q3 Should there be changes to the conditions of relief in ASIC Instrument 2016/65? If so, please provide details.
- C3Q4 Are there any additional protections to assist consumers that we should include in the relief? If so, please provide reasons.
- C3Q5 Should the relief in ASIC Instrument 2016/65 be remade to expire on 1 October 2027 or for a different period of time?

## Rationale

- 59 We have reached the preliminary view that [ASIC Instrument 2016/65](#) is operating effectively and efficiently, and continues to form a necessary and useful part of the legislative framework. We are not aware of significant issues with the current operation of this legislative instrument.

## D FSGs in time critical situations

### Key points

We are proposing to remake, in a new legislative instrument and without significant changes, [Class Order \[CO 12/417\] Information in a Financial Services Guide given in a time-critical situation](#), which is due to sunset on 1 October 2022.

We have formed the preliminary view that this class order is operating effectively and efficiently, and continues to form a necessary and useful part of the legislative framework.

The class order has been redrafted using ASIC's current style and format, while preserving the current effect of the instrument.

### **Class Order [CO 12/417] *Information in a Financial Services Guide given in a time-critical situation***

#### Background

- 60 A Financial Services Guide (FSG) is a key disclosure document under the Corporations Act that sets out the terms and basis on which an AFS licensee, or an authorised representative, will provide a financial service to a retail client.
- 61 In a time critical situation, such as during the provision of a financial service over the telephone, it may not be reasonably practicable to provide an FSG before the financial service is provided. Instead, s941D of the Corporations Act permits a statement of certain key information to be given, with the FSG given to the retail client within five days, or sooner if practicable.
- 62 Section 941E of the Corporations Act requires an FSG to be up to date when it is given to the client. This means an FSG provided later may contain different information than an FSG that would have been given if the time critical situation did not arise. For example, the FSG given later to comply with s941D will need to contain information that becomes known after the financial service has been provided. Providing this customised information may result in an increased compliance burden.
- 63 [\[CO 12/417\]](#) provides relief so that an FSG given in a time critical situation only needs to be as up to date as the earlier statement of key information that was given to the client. In other words, an FSG given after the provision of a financial service in a time critical situation will be the same as an FSG that is given before the provision of a financial service in normal cases.
- 64 The relief in [\[CO 12/417\]](#) is referred to in [Regulatory Guide 175 Licensing: Financial product advisers—Conduct and disclosure](#) (RG 175).

## Proposal

- D1** To preserve its effect beyond the sunset date of 1 October 2022, we propose to continue the relief currently given by [\[CO 12/417\]](#) in a new legislative instrument that reflects current drafting practice.

Note: See draft *ASIC Corporations (Financial Services Guide Given in a Time Critical Situation) Instrument 2022/XX* at Attachment 3 to this consultation paper.

The only changes proposed are to:

- (a) update the name of the legislative instrument that provides the relief;
- (b) update the format of the current document; and
- (c) provide an expiry date of 1 October 2027.

### Your feedback

- D1Q1 Do you agree with the proposal in relation to relief in [\[CO 12/417\]](#)? If not, please provide reasons.
- D1Q2 Are there any additional protections to assist consumers that we should include in the relief? If so, please provide reasons.
- D1Q3 Should the relief in [\[CO 12/417\]](#) be remade to expire on 1 October 2027 or for a different period of time?

## Rationale

- 65 We have reached the preliminary view that [\[CO 12/417\]](#) is operating effectively and efficiently, and continues to form a necessary and useful part of the legislative framework. We are not aware of significant issues with the current operation of this class order.

## Key terms

Term	Meaning in this document
accessible financial product	<p>A particular financial product (e.g. XYZ Managed Fund) that will be acquired by the trustee making a regulated acquisition</p> <p>Note: See also s1013FB of the Corporations Act and ASIC Instrument 2016/65.</p>
AFS licence	<p>An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services</p> <p>Note: This is a definition contained in s761A.</p>
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
ASIC	Australian Securities and Investments Commission
<a href="#">ASIC Instrument 2016/65</a>	<i>ASIC Corporations (Superannuation: Investment Strategies) Instrument 2016/65</i>
authorised representative	<p>A person authorised by an AFS licensee, in accordance with s916A or 916B of the Corporations Act, to provide a financial service or services on behalf of the licensee</p> <p>Note: This is a definition contained in s761A.</p>
CO 12/415 (for example)	<p>An ASIC class order (in this example numbered 12/415)</p> <p>Note: Legislative instruments made from 2015 are referred to as ASIC instruments.</p>
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
FSG	Financial Services Guide
IDPS	An investor directed portfolio service as defined in <a href="#">Class Order [CO 13/763]</a> <i>Investor directed portfolio services</i> or any instrument that amends or replaces that class order
member	A member of a superannuation entity, and includes a prospective member
PDS	Product Disclosure Statement
regulated acquisition	Has the meaning given in s1012IA of the Corporations Act
sunsetting	The practice of specifying a date at which a given regulation or legislative instrument will cease to have effect

## List of proposals and questions

Proposal	Your feedback
<p>B1 To preserve its effect beyond the sunset date of 1 October 2022, we propose to continue the relief currently given by [CO 12/415] in a new legislative instrument that reflects current drafting practice.</p> <p>Note: See draft <i>ASIC Corporations (In-use Notices for Employer-sponsored Superannuation and Superannuation Dashboards) Instrument 2022/XX</i> at Attachment 1 to this paper.</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> <li>(a) amend the requirement in notional s1015DA(4) of the Corporations Act to notify ASIC as soon as practicable and within five business days of the end of each month with a requirement to notify ASIC as soon as practicable and within five business days of the end of each financial year;</li> <li>(b) update the name of the legislative instrument that provides the relief, and include the relief in an instrument with other relief described in this consultation paper;</li> <li>(c) update the format of the current document; and</li> <li>(d) provide an expiry date of 1 October 2027.</li> </ul>	<p>B1Q1 Do you agree with the proposal to amend the conditions of the relief in [CO 12/415]? If not, please provide reasons.</p> <p>B1Q2 Should there be additional conditions or further changes to the conditions of relief in [CO 12/415]? If you think so, please provide details.</p> <p>B1Q3 Should the relief in [CO 12/415] be remade to expire on 1 October 2027 or for a different period of time?</p>

Proposal	Your feedback
<p>B2 We propose to continue the non-redundant relief in [CO 13/1534] and [CO 14/443] in a new legislative instrument that reflects current drafting practice.</p> <p>Note: See draft <i>ASIC Corporations (In-use Notices for Employer-sponsored Superannuation and Superannuation Dashboards) Instrument 2022/XX</i> at Attachment 1 to this consultation paper.</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> <li>(a) omit the relief in the first exemption in [CO 13/1534] and the relief in paragraph 5 of [CO 14/443] as they have become redundant;</li> <li>(b) remove the expiry dates for the relief in the second exemption in [CO 13/1534] and the relief in paragraph 4 of [CO 14/443];</li> <li>(c) update the name of the legislative instrument that provides the relief, and include the relief in an instrument with other relief described in this consultation paper (specifically, concerning obligations of superannuation trustees);</li> <li>(d) update the format of the current documents; and</li> <li>(e) provide an expiry date of 1 October 2027.</li> </ul>	<p>B2Q1 Do you agree with the proposal in relation to relief in [CO 13/1534] and paragraph 4 of [CO 14/443]? If not, please provide reasons.</p> <p>B2Q2 Should there be changes to the conditions of relief in [CO 13/1534]? If so, please provide details.</p> <p>B2Q3 Are there any additional protections to assist consumers that we should include in the relief? If so, please provide reasons.</p> <p>B2Q4 Should the relief in [CO 13/1534] and paragraph 4 of [CO 14/443] be remade to expire on 1 October 2027 or for a different period of time?</p>
<p>C1 We propose to continue the relief currently given by [CO 12/749] in a new legislative instrument that reflects current drafting practice.</p> <p>Note: See draft <i>ASIC Corporations (Shorter PDS and Delivery of Accessible Financial Products Disclosure by Platform Operators and Superannuation Trustees) Instrument 2022/XX</i> at Attachment 2 to this consultation paper.</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> <li>(a) update the name of the legislative instrument that provides the relief, and include the relief in an instrument with other relief described in this consultation paper;</li> <li>(b) update the format of the current document; and</li> <li>(c) provide an expiry date of 1 October 2027.</li> </ul>	<p>C1Q1 Do you agree with the proposal in relation to relief in [CO 12/749]? If not, please provide reasons.</p> <p>C1Q2 Should there be changes to the conditions of relief in [CO 12/749]? If so, please provide details.</p> <p>C1Q3 Are there any additional protections to assist consumers that we should include in the relief? If so, please provide reasons.</p> <p>C1Q4 Should the relief in [CO 12/749] be remade to expire on 1 October 2027 or for a different period of time?</p>

Proposal	Your feedback
<p>C2 To preserve its effect beyond the sunset date of 1 October 2023, we propose to continue the relief currently given by [CO 13/797] in a new legislative instrument that reflects current drafting practice.</p> <p>Note: See draft <i>ASIC Corporations (Shorter PDS and Delivery of Accessible Financial Products Disclosure by Platform Operators and Superannuation Trustees) Instrument 2022/XX</i> at Attachment 2 to this consultation paper.</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> <li>(a) update the name of the legislative instrument that provides the relief, and include the relief in an instrument with other relief described in this consultation paper;</li> <li>(b) update the format of the current document; and</li> <li>(c) provide an expiry date of 1 October 2027.</li> </ul>	<p>C2Q1 Do you agree with the proposal in relation to relief in [CO 13/797]? If not, please provide reasons.</p> <p>C2Q2 Should there be changes to the conditions of relief in [CO 13/797]? If so, please provide details.</p> <p>C2Q3 Are there any additional protections to assist consumers that we should include in the relief? If so, please provide reasons.</p> <p>C2Q4 Should the relief in [CO 13/797] be remade to expire on 1 October 2027 or for a different period of time?</p>
<p>C3 We propose to continue the relief currently given by ASIC Instrument 2016/65 in a new legislative instrument.</p> <p>Note: See draft <i>ASIC Corporations (Shorter PDS and Delivery of Accessible Financial Products Disclosure by Platform Operators and Superannuation Trustees) Instrument 2022/XX</i> at Attachment 2 to this consultation paper.</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> <li>(a) update the name of the legislative instrument and include the relief in an instrument with other relief described in this consultation paper;</li> <li>(b) simplify the drafting to give greater clarity; and</li> <li>(c) provide an expiry date of 1 October 2027.</li> </ul>	<p>C3Q1 Do you agree with the proposal in relation to relief in ASIC Instrument 2016/65? If not, please provide reasons.</p> <p>C3Q2 Do you consider Option 2 for giving disclosure under this relief, involving an integrated PDS, to be unnecessary? If not, please provide reasons.</p> <p>C3Q3 Should there be changes to the conditions of relief in ASIC Instrument 2016/65? If so, please provide details.</p> <p>C3Q4 Are there any additional protections to assist consumers that we should include in the relief? If so, please provide reasons.</p> <p>C3Q5 Should the relief in ASIC Instrument 2016/65 be remade to expire on 1 October 2027 or for a different period of time?</p>



Proposal	Your feedback
<p>D1 To preserve its effect beyond the sunset date of 1 October 2022, we propose to continue the relief currently given by [CO 12/417] in a new legislative instrument that reflects current drafting practice.</p> <p>Note: See draft <i>ASIC Corporations (Financial Services Guide Given in a Time Critical Situation) Instrument 2022/XX</i> at Attachment 3 to this consultation paper.</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> <li>(a) update the name of the legislative instrument that provides the relief;</li> <li>(b) update the format of the current document; and</li> <li>(c) provide an expiry date of 1 October 2027.</li> </ul>	<p>D1Q1 Do you agree with the proposal in relation to relief in [CO 12/417]? If not, please provide reasons.</p> <p>D1Q2 Are there any additional protections to assist consumers that we should include in the relief? If so, please provide reasons.</p> <p>D1Q3 Should the relief in [CO 12/417] be remade to expire on 1 October 2027 or for a different period of time?</p>