



Summary of feedback to CS 22 and ASIC's response

In ASIC's consultation *Proposed update to ASIC's guidance on Product Disclosure Statements* ([CS 22](#)), we sought feedback on an updated draft of Regulatory Guide 168 *Product Disclosure Statements: Disclosure and other obligations* (draft RG 168).

We received eight submissions. We have summarised key feedback we received on draft RG 168 and our responses, including how we have addressed the feedback in the final Regulatory Guide 168 *Product Disclosure Statements: Disclosure and other obligations* ([RG 168](#)) where relevant. This document is not intended to be a comprehensive summary of all feedback or all changes to the guidance.

Note: Non-confidential submissions are published on the landing page for [CS 22](#).

Section B: Product Disclosure Statements

Feedback	ASIC's response	Reference in RG 168
One respondent suggested that the list of superannuation products where a PDS may be provided later should be expanded to include superannuation interests issued to standard employer-sponsored members of a public offer fund that is not a successor fund.	We have amended the list of superannuation products where a PDS may be provided later to include superannuation interests issued to standard employer-sponsored members of a public offer fund that is not a successor fund.	RG 168.21
In relation to our guidance on the application form attached to the Product Disclosure Statement (PDS), one respondent suggested that the guidance should avoid commenting on matters outside the requirements in the <i>Corporations Regulations 2001</i> (Corporations Regulations), which only require the application form to contain the applicant's address.	We have not omitted the guidance about inclusion of an Australian financial services (AFS) licensee's address in the application form. This guidance is longstanding and clarifies content obligations for application forms in reg 7.9.74(1) of the Corporations Regulations.	RG 168.14– RG 168.15
One respondent requested guidance on other ways application forms can be attached to, or accompany, a PDS, outlining scenarios involving digital PDSs and digital communications.	We have not amended the guidance to include further guidance about ways to attach or accompany an application form to a PDS. There is guidance in Regulatory Guide 221 <i>Facilitating digital financial services disclosures</i> (RG 221) about how to attach an application form to a digital PDS (see paragraph RG 221.23).	Not applicable

Feedback	ASIC's response	Reference in RG 168
One respondent raised that where advice-related guidance is removed from RG 168, this guidance should be fully replicated in Regulatory Guide 175 <i>AFS licensing: Financial product advisers—Conduct and disclosure</i> (RG 175) to avoid gaps, citing guidance in former RG 168.32 about s946(2) especially.	<p>We have reviewed the guidance in RG 175 and Information Sheet 291 <i>FAQs: FSGs and website disclosure information</i> (INFO 291) to identify potential gaps in regulatory guidance that might result from the proposed update to RG 168.</p> <p>We consider the guidance in RG 175 and INFO 291 captures relevant guidance that has historically been in RG 168. The guidance in former RG 168.32 is in RG 175.88 and accompanying Note 2. RG 175 does not include the guidance from the former RG 168.32 that the accompanying statement must be provided verbally, because the accompanying disclosure may also be provided by a written statement.</p>	Section B

Section C: Tailored PDS requirements

Feedback	ASIC's response	Reference in RG 168
One respondent suggested that Section C should maintain the detailed risk disclosure requirements set out in Regulatory Guide 219 <i>Non-standard margin lending facilities: Disclosure to investors</i> (RG 219)—especially regarding counterparty risks and the risks associated with title transfer.	We have updated the guidance to incorporate more of the detailed risk disclosure requirements set out in RG 219, which has now been withdrawn.	RG 168.47
One respondent suggested that we amend our guidance to address the interaction between non-standard margin lending disclosure and market integrity obligations, cross-reference to other regulatory guidance to assist product issuers and include guidance about shorter PDSs in the superannuation choice context.	<p>We have amended the guidance regarding non-standard margin lending disclosure to note that providers of such facilities may also wish to consider if the PDS needs to include information arising from obligations under the ASIC Market Integrity Rules (Securities Markets) 2017.</p> <p>We list further regulatory guidance to assist financial product issuers and sellers in the RG 168 'Related Information' and have included a reference to Information Sheet 89 <i>Communicating with employees about choice of superannuation fund: What you can and cannot do</i> (INFO 89).</p>	RG 168.49, Related Information

Feedback	ASIC's response	Reference in RG 168
One respondent suggested that RG 168 should clarify that transaction-specific PDSs can be used for securities that transition from unlisted to continuously quoted securities. They also suggested that we should clarify that the meaning of 'securities' in this section does not cover securities for which disclosure is regulated by Ch 6D of the <i>Corporations Act 2001</i> (Corporations Act).	We have included a note referencing our guidance in Regulatory Guide 254 <i>Offering securities under a disclosure document</i> (RG 254) but have not provided further guidance about securities that qualify for transaction-specific PDSs. Pursuant to s1013FA(1), the transaction-specific PDS regime is for continuously quoted securities.	RG 168.55
One respondent suggested that we change our guidance so that PDSs must incorporate liquidity disclosures without cross references to additional documents. They also suggested that PDSs should include a definition on whether the fund is considered liquid and the typical timeframe for withdrawal requests.	We have amended the guidance to clarify that liquidity disclosures must be included in a PDS and cannot be incorporated by reference, consistent with reg 7.9.15DA(4) of the Corporations Regulations. Such liquidity disclosures need to include whether the fund is considered liquid. We have also included that timeframes for meeting withdrawal receipts are a key feature of the product and must be included in a PDS.	RG 168.65
One respondent suggested that we include guidance on consumer rights where a consumer exercises their cooling-off rights under s1019B of the Corporations Act.	We have not included guidance on cooling off right entitlements as we do not consider further guidance is required because it goes beyond the scope of RG 168, which is focused on providing product disclosure guidance.	Not applicable
One respondent suggested that ASIC should include an exemption that allows industry codes to be referenced in consumer contracts rather than fully reproduced in PDSs. The respondent suggested that ASIC could consider putting this exemption in Regulatory Guide 183 <i>Approval of financial services sector codes of conduct</i> (RG 183) if ASIC chooses not to include it in RG 168.	We have not amended the guidance to reference that industry codes may be incorporated into PDSs for consumer contracts. We note that, so long as their information does not fall within the information in RG 168.67, it could be incorporated. The suggested content is not relevant to RG 183, which is about ASIC approval of industry codes and does not address PDS content.	Not applicable

Section D: Compliance risks and considerations

Feedback	ASIC's response	Reference in RG 168
<p>One respondent requested that a heading within Section D be changed, and additional guidance be included to explain that the section has examples of:</p> <ul style="list-style-type: none"> • circumstances that cause a PDS to be defective • what 'defective' means • what avenues of enforcement action ASIC may take if a PDS is defective. <p>Another respondent expressed concern that the revised RG 168 is relatively silent on the existence and nature of consequence for breaches.</p>	<p>We have amended headings throughout Section D to better reflect the guidance in this Section.</p> <p>We have amended the wording to explain that Section D discusses compliance risks for a PDS and that we may take enforcement action when PDS requirements are not complied with.</p> <p>Our approach to enforcement is primarily covered in Information Sheet 151 <i>ASIC's approach to enforcement</i> (INFO 151). We have moved the reference to INFO 151 in Section D to be more prominent. We have also included a new heading: 'When product issuers do not comply with PDS requirements'.</p>	Section D, Key points, RG 168.83
One respondent sought clarification on breach reporting obligations for 'minor' technical breaches of disclosure obligations.	We have included a reference to Regulatory Guide 78 <i>Breach reporting by AFS licensees and credit licensees</i> (RG 78), which product issuers as AFS licensees can follow to comply with the obligation to report to ASIC certain breaches of the law.	RG 168.83
One respondent sought clarity on the 'enhanced focus on misleading and deceptive conduct', including how the examples of the general disclosure concerns (or compliance risks) will be used in regulatory practice.	<p>We have not amended the guidance as requested as our approach to enforcement is primarily covered in INFO 151.</p> <p>The amendments we have made to RG 168 do not reflect a change in ASIC's focus on misleading and deceptive conduct. Rather, the amendments are intended to better communicate our existing approach to misleading and deceptive conduct.</p>	Not applicable

Feedback	ASIC's response	Reference in RG 168
<p>One respondent sought specific guidance in RG 168 about providing digital PDS disclosures. This included guidance on the following areas:</p> <ul style="list-style-type: none"> • how layered fee structures, especially for superannuation and managed investments, should be presented digitally with clarity and comparability; • standards for digital PDSs so clients can find relevant information efficiently; and • guidance on how PDSs can conform with Australian statutory and other accessibility standards. 	<p>We have not included guidance on the further areas raised relevant to PDSs. For guidance on these areas, see Section D of RG 221, which applies to digital PDS disclosures and any other method of digital delivery of financial services disclosure.</p>	<p>Not applicable</p>

Section E: Good Disclosure Principles

Feedback	ASIC's response	Reference in RG 168
<p>One respondent suggested that ASIC Corporations (Updated Product Disclosure Statements) Instrument 2016/1055 should be incorporated in legislation and moved in RG 168 from a footnote to the body.</p>	<p>We have moved ASIC Instrument 2016/1055 from a footnote to the substantive text of RG 168 so that it is more prominent.</p> <p>Developing legislation is generally a matter for Government, and decisions on legislation are made by Parliament. ASIC is unable to incorporate the instrument into legislation as part of this review.</p>	<p>RG 168.95</p>
<p>One respondent suggested expanding Principle 2 to require that disclosures should be 'relevant, complete and accurate'.</p>	<p>We have not expanded Principle 2 to include that disclosures have to be accurate, as it is already implied by the expectation that disclosures should be 'relevant and complete'. However, we have added clarification that disclosures will not be complete unless they are accurate.</p>	<p>RG 168.96– RG 168.99</p>
<p>One respondent suggested that we should provide specific guidance on presenting complex information in digital formats, including navigation requirements and accessibility standards in line with <i>Disability Discrimination Act 1992</i>.</p> <p>They also suggested that ASIC provide insights from behavioural economics to show how consumers process information especially about complex financial products.</p>	<p>We have not added any specific guidance on presenting information in digital requirements, as RG 221 deals with accessibility and format standards.</p> <p>We also note that the Good Disclosure Principles are informed by consumer behavioural insights. As such, we have not made any further amendments to our guidance.</p>	<p>Not applicable</p>

Feedback	ASIC's response	Reference in RG 168
One respondent suggested that the requirement to update a PDS with costs for the previous financial year should not apply from 1 July, but from one to two months after the end of the financial year.	We have not made any amendments to our guidance as the requirement to update a PDS with costs for the previous financial year is contained within regulations and is covered by Regulatory Guide 97 <i>Disclosing fees and costs in PDSs and periodic statements</i> (RG 97).	Not applicable

Section F: Lodgement and notification

Feedback	ASIC's response	Reference in RG 168
One respondent suggested that a brief reference should be included to ASIC Corporations (In-use Notices for Employer Sponsored Superannuation and Superannuation Dashboards) Instrument 2022/496 , as the instrument provides for an alternative means of providing PDS notice information.	We have added a new paragraph under the 'Relief from notification requirements' section. This paragraph summarises the relief in section 8 of ASIC Instrument 2022/496.	RG 168.139
One respondent requested that ASIC clarify the notification requirements for both material and immaterial changes to a PDS and retain relief from notification obligations for 'immaterial' PDS changes.	We have not included guidance on notification requirements for material and immaterial PDS changes. We do not consider it necessary to notify ASIC of events other than those listed in s1015D(2) (as modified by reg 7.9.16T of the Corporations Regulations). This position is reflected in Section F of the updated RG 168.	Not applicable

Appendices and key terms

Feedback	ASIC's response	Reference in RG 168
<p>One respondent requested that RG 168 explain the interrelationship of the s1013DA guidelines (in Appendix 1) with the:</p> <ul style="list-style-type: none"> • general anti-greenwashing principles; and • sustainability reporting and mandatory climate-related financial disclosure obligations. 	<p>We have amended Appendix 1 to refer to:</p> <ul style="list-style-type: none"> • Regulatory Guide 280 <i>Sustainability reporting</i> (RG 280), which explains how other sustainability reporting requirements for companies, registered schemes, registrable superannuation entities and retail corporate collective investment vehicle (CCIVs) interact with the PDS requirements; and • Information Sheet 271 <i>How to avoid greenwashing when offering or promoting sustainability-related products</i> (INFO 271), which defines greenwashing and explains the relevant regulatory settings and questions to consider when offering or promoting sustainability-related products. 	RG 168.141
<p>One respondent suggested that the s1013DA guidelines (in Appendix 1) should be a discrete subsection within Section B to increase their prominence.</p>	<p>We have not amended the guidance to relocate the s1013DA guidelines to Section B as that section contains a high-level overview of the content requirements for a PDS and is not intended to be exhaustive. We consider that elevating one specific content requirement within Section B may incorrectly imply it is more important than the other content requirements. However, Section B includes a reference to Appendix 1 to ensure entities are aware of the guidance on s1013DA.</p> <p>Our view is that the s1013DA guidelines should remain as an appendix to RG 168.</p> <p>We have also amended Appendix 1 to include guidance about the inter-relationship between RG 168, INFO 271 and RG 280, and guidance from Regulatory Guide 65 <i>Section 1013DA disclosure guidelines</i> (RG 65) about our expectations on product issuers to explain policies and approaches used. The guidance in RG 65 has now been withdrawn.</p> <p>We confirm, consistent with the draft RG 168, that we no longer consider that s1013D and s1013DA do not apply to shorter PDSs. Issuers may incorporate information disclosed in accordance with s1013DA by reference into a shorter PDS.</p>	<p>RG 168.141</p> <p>RG 168.9</p>

Other

Feedback	ASIC's response	Reference in RG 168
<p>Respondents did not express concern with our proposal to withdraw the following regulatory guides and information sheets and consolidate their guidance into the updated RG 168:</p> <ul style="list-style-type: none"> • Information Sheet 94 <i>Notification requirements for Product Disclosure Statements</i> (INFO 94) • Information Sheet 155 <i>Shorter PDSs—Complying with requirements for superannuation products, simple managed investment schemes and simple sub-fund products</i> (INFO 155) • RG 65 • Regulatory Guide 66 <i>Transaction-specific disclosure for PDSs</i> (RG 66) • Regulatory Guide 197 <i>Warrants: Out-of-use notices</i> (RG 197) • RG 219. <p>However, one respondent requested that ASIC maintain the webpages for withdrawn guidance for a temporary period.</p> <p>They also suggested that ASIC include an index that tracks the relocation of sections that were changed and the previous sections.</p>	<p>We note the support for our proposal to consolidate our guidance on PDSs into one guide and have retained that approach in the updated RG 168.</p> <p>In relation to the request that ASIC maintain a webpage for withdrawn guidance, superseded regulatory guidance is published in the ASIC Digest.</p>	<p>Not applicable</p>