



ASIC

Australian Securities &
Investments Commission

REGULATORY GUIDE 129

Business introduction or matching services

September 2022

About this guide

This guide is for persons involved in business introduction services.

It gives an overview of:

- the requirements relating to business introduction services; and
- the nature of the relief that ASIC provides and how it applies.

From 31 July 2023, a notice of reliance required by [ASIC Corporations \(Business Introduction Services\) Instrument 2022/805](#) should be submitted through the [ASIC Regulatory Portal](#).

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 guide was issued in September 2022 and is based on legislation and regulations as at the date of issue. In July 2023, we inserted the note on the front page and updated RG 129.85–RG 129.86 to reflect that the notice of reliance on [ASIC Instrument 2022/805](#) should be submitted via the ASIC Regulatory Portal.

Previous versions:

- Superseded Regulatory Guide 129, issued in July 2007

Disclaimer

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

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

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A Overview

Key points

Business introduction services identify potential investors for issuers or sellers by circulating information about investment opportunities. This is often done through publications and meetings.

The material about an investment that is circulated by an introduction service may constitute an offer or invitation for interests in a management investment scheme (scheme interests).

Those involved in making an offer or invitation must comply with requirements under the Corporations Act. These include the requirements in s992A and Pt 7.9 (referred to in this guide as the 'offer and disclosure requirements') and licensing requirements: see Section B.

Relief from the offer and disclosure requirements is available in certain circumstances for persons involved in business introduction services for scheme interests issued or recommended through such services: see Section C.

The purpose of this relief is to help the growth of managed investment schemes which have less than 20 members and are seeking to raise funds of up to \$5 million and to assist with economic recovery after the COVID-19 pandemic.

From 1 October 2022, any person that seeks to rely on the relief to raise funds for managed investment schemes must give ASIC notice of their intention to do this.

We have clarified that from 1 October 2022, persons involved in business introduction services must comply with the design and distribution obligations where they would need to comply with these obligations under Pt 7.8A of the Corporations Act: see Section D.

What are business introduction services?

- RG 129.1 Business introduction services (also described as 'matching services') identify potential investors for issuers or sellers by circulating information about investment opportunities.
- RG 129.2 Information is circulated in various ways including through publications (e.g. brochures, bulletins or web platforms) and by holding meetings.
- RG 129.3 For the purposes of our relief, an introduction service is defined as a business that has as one of its objects the promotion or encouragement of investment in managed investment schemes. An introduction service achieves this object by identifying potential investors to invest in these managed investment schemes or potential investments for ascertained investors.

Requirements that may apply to persons involved in these services

RG 129.4 Circulating information about an investment opportunity may constitute making an offer or invitation to invest in scheme interests and therefore need to comply with various provisions of the *Corporations Act 2001* (Corporations Act): see Section B.

RG 129.5 These provisions relate to:

- (a) the offer and disclosure requirements in s992A (hawking prohibition) and Pt 7.9 (financial product disclosure); and
- (b) licensing requirements for financial services and markets.

Note: In this guide, references to a section (e.g. s992A) are references to a section of the Corporations Act, unless otherwise specified.

Relief from the offer and disclosure requirements

RG 129.6 We provide relief from the offer and disclosure requirements for persons involved in business introduction services in certain circumstances.

Previous instruments

RG 129.7 In March 2002, ASIC issued relief through [Class Order \[CO 02/273\]](#) *Business introduction or matching services* for persons providing business introduction services. This relief was intended to reduce the regulatory and cost burden associated with fundraising for small and medium-sized enterprises by helping them locate potential investors, provided certain conditions were met.

RG 129.8 Specifically [CO 02/273] gave conditional relief from the fundraising, financial product disclosure, hawking and advertising requirements in the Corporations Act that would otherwise apply to a person making or calling attention to offers of securities or scheme interests through a business introduction service.

RG 129.9 In March 2017, ASIC made [ASIC Corporations \(Repeal and Transitional\) Instrument 2017/186](#) (ASIC Instrument 2017/186). This had the effect of preserving the relief provided by [CO 02/273] until 23 March 2019.

RG 129.10 In March 2019, ASIC made [ASIC Corporations \(Amendment\) Instrument 2019/216](#) which extended ASIC Instrument 2017/186 to 1 April 2022. This interim extension allowed ASIC to assess the impact of the crowd-sourced funding provisions in Pt 6D.3A of the Corporations Act. These provisions were introduced in 2017 for eligible public companies and in 2018 for eligible proprietary companies.

Note: See [Media Release \(19-067MR\)](#) *ASIC extends relief provided for business introduction services* (25 March 2019).

RG 129.11 In March 2022, ASIC extended the relief in ASIC Instrument 2017/186 until 1 October 2022 through [ASIC Corporations \(Business Introduction Services\) Instrument 2022/77](#). This had the effect of preserving the relief provided by [CO 02/273] on substantively the same terms as ASIC Instrument 2017/186 for an additional six months, subject to an additional requirement that persons relying on the relief from 1 April 2022 must notify ASIC.

Note: See [Media Release \(22-070MR\)](#) *ASIC extends relief for business introduction services*, 30 March 2022.

Current instrument

- RG 129.12 On 1 October 2022, ASIC remade the relief through [ASIC Corporations \(Business Introduction Services\) Instrument 2022/805](#) (ASIC Instrument 2022/805) so that:
- (a) the relief for the offer, issue or recommendation of scheme interests continues until 1 April 2025, subject to the notification requirement in ASIC Instrument 2022/805;
 - (b) the relief for the offer of Ch 6D and 2L securities was allowed to expire; and
 - (c) the relief for the offer, issue or recommendation of scheme interests does not affect a person's obligations under Pt 7.8A.
- RG 129.13 The relief was not extended for offers of Ch 6D and 2L securities because crowd-sourced funding provides an alternative low-cost regime for companies to raise funds.
- RG 129.14 In this guide, 'relief' means the relief provided by ASIC Instrument 2022/805.

Nature of the relief

- RG 129.15 Our relief applies to persons involved in business introduction services and is limited to offers of scheme interests.
- RG 129.16 Persons involved in these services may include:
- (a) operators of business introduction services;
 - (b) issuers or sellers of scheme interests through the use of business introduction services;
 - (c) persons who endorse or verify information which appears in business introduction service publications ('endorsers'); and/or
 - (d) publishers of business introduction service publications.
- RG 129.17 Table 1 summarises how the relief applies and where to find our guidance in Section C.

Table 1: Summary of our relief

Category	Circumstances under which the relief applies	Our guidance
Operator	<p>Scheme interests do not exceed \$5 million in total.</p> <p>The operator and their associates have no pecuniary interest in the outcome of investment decisions.</p> <p>The operator ensures that certain information is disclosed in publications and meetings are conducted in a certain way.</p>	RG 129.45–RG 129.60
Issuer and seller	<p>Scheme interests do not raise more than \$5 million in any 12-month period in relation to any one business or scheme.</p> <p>There is a limit of 20 investors who have purchased the scheme interests in the preceding 12 months.</p> <p>The issuer or seller ensures that certain steps are taken and disclosures included for information disclosed through the business introduction service.</p> <p>The issuer or seller ensures that the nature of the scheme interests is consistent with the relief and other requirements are met.</p>	RG 129.61–RG 129.75
Endorser	<p>The endorser indicates the extent of inquiries undertaken to verify, endorse or assess information in the publication.</p>	RG 129.76–RG 129.79
Publisher	<p>The information published has been authorised by the operator, issuer or seller.</p>	RG 129.80–RG 129.83

Why we have provided relief

- RG 129.18 ASIC recognises that there are barriers which prevent potential investors and people issuing or selling scheme interests from being able to locate each other.
- RG 129.19 Business introduction services perform an important role in bringing information to the marketplace about opportunities to invest in managed investment schemes where funds being raised are under \$5 million and there are less than 20 investors.
- RG 129.20 [ASIC Instrument 2022/805](#) extends the relief for a two-and-a-half-year period so we can assess whether reliance on the relief is consistent with ASIC’s strategic priority to promote economic recovery during the COVID-19 pandemic.
- RG 129.21 To the extent that investor protections are not significantly diminished, we are prepared to allow business introduction services to operate with relief from certain obligations under the Corporations Act in certain circumstances.

- RG 129.22 We consider that providing relief for persons involved in business introduction services:
- (a) gives commercial certainty by clarifying the extent to which the law regulates these services; and
 - (b) assists the efficiency and development of the economy after the COVID-19 pandemic by:
 - (i) improving the ability of managed investment to access funds for offers under \$5 million and from no more than 20 investors so they can continue to grow; and
 - (ii) playing a role in bringing information to the marketplace.

B Requirements relating to business introduction services

Key points

Various requirements under the Corporations Act may apply to persons involved in a business introduction service for scheme interests.

These requirements apply if the service amounts to an offer or invitation for scheme interests.

The requirements include provisions relating to:

- offer and disclosure (see RG 129.27–RG 129.32); and
- licensing (see RG 129.30–RG 129.39).

When is an offer of scheme interests made?

- RG 129.23 A business introduction service may constitute an offer or invitation for scheme interests.
- RG 129.24 ‘Offer’ is not limited to a technical or contractual meaning, but includes distribution of material that would encourage a member of the public to enter into a course of negotiations calculated to result in the issue or sale of securities: see *Attorney-General for New South Wales v Australian Fixed Trusts Limited* [1974] 1 NSWLR 110.
- RG 129.25 Various requirements under the Corporations Act must be met in connection with an offer of scheme interests. These include requirements in relation to offers and disclosures, financial services licensing and the operation of a financial market.

Offer and disclosure requirements

- RG 129.26 In this guide, the term ‘offer and disclosure requirements’ refers to:
- (a) s992A (prohibition on hawking of financial products); and
 - (b) Pt 7.9 (financial product disclosure and other provisions relating to the issue, sale and purchase of financial products) of the Corporations Act.

Hawking prohibition

- RG 129.27 Under s992A(1), a person must not offer financial products for issue or sale to a retail client if the offer is made in the course of, or because of, an

unsolicited contact. The hawking prohibition extends to requesting or inviting a retail client to ask or apply for the purchase of a financial product.

Note 1: For further guidance about the hawking prohibition, see Explanatory Memorandum to the Financial Sector Reform (Hayne Royal Commission Response) Bill 2020, paragraphs 52.8 and 5.31 and [Regulatory Guide 38](#) *The hawking prohibition* (RG 38).

Note 2: The prohibition on hawking does not apply to:

- offers over the telephone for the issue or sale of listed scheme interests; or
- offers of securities or scheme interests to a client who has bought or sold securities or scheme interests in the last 12 months.

- RG 129.28 Unsolicited contact is any contact by telephone or face-to-face in meetings or any other real-time interaction involving a discussion or conversation to which the consumer did not consent: see s992A(4).
- RG 129.29 A breach of the hawking prohibition in s992A(1) is a strict liability offence: see s992A(9).

Financial product disclosure

- RG 129.30 Under Pt 7.9 of the Corporations Act, a Product Disclosure Statement (PDS) must be prepared for the issue or offer of a financial product to a retail client: see s1012B. This includes the issue or offer of scheme interests: see s764A.
- RG 129.31 Product issuers are responsible for ensuring that a PDS meets the requirements in Div 2 of Pt 7.9 and the related regulations.
- RG 129.32 A PDS must meet various content requirements, including providing information about the significant benefits of the product, significant risks associated with holding the product, and information about commissions or other similar payments that may affect the product's return: see s1013D.

Note: For further guidance about preparing a PDS that complies with the requirements in the Corporations Act, see [Regulatory Guide 168](#) *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168).

Licensing requirements

Providing financial services

- RG 129.33 A person who carries on a financial services business in Australia must, unless an exemption applies, hold an Australian financial services (AFS) licence that authorises them to provide financial services: see s911A(1).
- RG 129.34 ASIC has not provided persons that are involved in a business introduction service with relief from the obligation to hold an AFS licence. We expect that persons involved in a business introduction service will consider whether they will be providing financial services to their clients and therefore need to hold an AFS licence: see s766A.

RG 129.35 For example, an AFS licence is required where a person provides financial product advice about scheme interests (see s766B) or deals in scheme interests (see s766C) and carries on a financial services business in respect of these financial services.

Note 1: For guidance on the meaning of ‘provide financial product advice’ and ‘deal in a financial product’, see [Regulatory Guide 36](#) *Licensing: Financial product advice and dealing* (RG 36).

Note 2: For guidance about when a person carries on a financial services business in Australia, see [Regulatory Guide 121](#) *Doing financial services business in Australia* (RG 121).

RG 129.36 When ASIC assesses an application for an AFS licence, we consider whether the applicant is likely to contravene the general licence obligations under s912A.

Note 1: For information about applying for or varying an AFS licence, see the AFS Licensing Kit ([Regulatory Guide 1](#) *Applying for and varying an AFS licence* (RG 1), [Regulatory Guide 2](#) *Preparing your AFS licence or variation application* (RG 2) and [Regulatory Guide 3](#) *Preparing your additional proofs* (RG 3)).

Note 2: For information about the general licence obligations, see [Regulatory Guide 104](#) *AFS licensing: Meeting the general obligations* (RG 104).

Operating a financial market

RG 129.37 A person who operates, or holds out that they operate, a financial market in Australia must, unless an exemption applies, hold an Australian market licence that authorises them to operate a market in Australia: see s791A.

RG 129.38 A financial market includes a wide range of venues. It generally includes a facility through which offers to acquire or dispose of financial products are regularly made or accepted or offers or invitations are regularly made to acquire or dispose of financial products: see s767A.

RG 129.39 In some cases, the operator of a business introduction service may circulate information about the price of issued scheme interests that are being sold through the service. In this situation, the operator should consider whether they are operating a facility through which offers to acquire or dispose of financial products are regularly made.

RG 129.40 The key factual issue is whether the business introduction service provides potential buyers or sellers with a reasonable expectation that they can regularly execute orders at the prices quoted on the system.

Note: For further guidance about the licensing regime and regulatory obligations for operators of financial markets, see [Regulatory Guide 172](#) *Financial markets: Domestic and overseas operators* (RG 172).

C Relief from the offer and disclosure requirements

Key points

The relief in [ASIC Instrument 2022/805](#) exempts persons that are involved in business introduction services from the hawking prohibition in s992A and the product disclosure requirements in Pt 7.9 (together, the offer and disclosure requirements).

The relief applies to the following persons that are involved in business introduction services and that rely on the relief:

- operators of business introduction services;
- persons who propose to issue or sell scheme interests through the use of business introduction services;
- persons who endorse or verify information which appears in business introduction services; and
- persons who publish business introduction services.

From 1 October 2022, any person that seeks to rely on the relief in ASIC Instrument 2022/805 must give ASIC notice of their intention to do so.

We may consider granting relief in relation to a service that is not covered by the exemptions in ASIC Instrument 2022/805.

Nature of our relief

RG 129.41 Relief is provided from the following provisions of the Corporations Act (i.e. the offer and disclosure requirements) in certain circumstances:

- (a) s992A—the prohibition on hawking of scheme interests; and
- (b) Pt 7.9—financial product disclosure and other provisions relating to the issue, sale and purchase of scheme interests.

RG 129.42 For the purposes of the relief, a business introduction service is a ‘business that has as one of its objects the promotion or encouragement of investment in managed investment schemes’.

Note: See the definition of ‘introduction service’ in [ASIC Instrument 2022/805](#).

RG 129.43 Our relief is provided for persons involved in business introduction services. It is provided separately in the form of exemptions for each of the following categories:

- (a) *operators*—persons who conduct business introduction services;
- (b) *issuers and sellers*—persons who propose to issue or sell scheme interests through the use of business introduction services;

- (c) *endorsers*—persons who endorse, verify or provide an assessment of any information about the scheme interests provided by an issuer or seller; and
- (d) *publishers*—persons who publish any document relating to business introduction services.

RG 129.44 Without this relief, each of these persons would need to comply with the offer and disclosure requirements whenever they:

- (a) offer scheme interests;
- (b) advertise an offer or intended offer of scheme interests;
- (c) recommend that a person acquire those scheme interests; and/or
- (d) publish a statement that refers to the offer or intended offer or is reasonably likely to induce people to apply for a scheme interest.

How the relief applies

Operators

RG 129.45 Relief from the offer and disclosure requirements is available for operators of a business introduction service where they engage in the activities described in RG 129.44 through a publication or meeting and they have notified ASIC of their reliance on the relief.

Note: See RG 129.84–RG 129.85 for details on how to notify ASIC.

RG 129.46 Certain circumstances must exist if the operator is to rely on the relief as set out in paragraph 5(1) of [ASIC Instrument 2022/805](#).

RG 129.47 In particular, operators can only rely on the relief for offers or invitations through the business introduction service for scheme interests that do not exceed \$5 million in total in relation to a scheme. These offers can only be communicated through a service with the prior written authorisation of the relevant issuer or seller.

RG 129.48 The operator must also ensure that, apart from fees (including commissions) that are charged for providing the business introduction service, the operator and their associates have no pecuniary interest in the outcome of investment decisions made by users of the service.

RG 129.49 Other relevant matters for operators who seek to rely on the relief relate to:

- (a) information disclosed in publications through the business introduction service (see RG 129.50–RG 129.56); and
- (b) the conduct of meetings organised through the service (RG 129.57–RG 129.60).

Information disclosed in publications

- RG 129.50 To rely on the relief, operators must ensure that certain information is disclosed in publications that are published through the business introduction service.
- RG 129.51 A 'publication' means any document or series of documents that is published to solicit investments through a business introduction service.
- RG 129.52 Operators must ensure that publications contain prominent statements that:
- (a) investments in new businesses carry high risks and are highly speculative;
 - (b) investors should take appropriate professional advice before investing in any project or accepting an offer of scheme interests;
 - (c) the publication is made on behalf of the issuer or seller of scheme interests;
 - (d) neither the operator nor the publisher (if any) has undertaken an independent review of the publication;
 - (e) it is not intended that the publication is the only source of information on which to base an investment decision and the publication is not a substitute for a PDS. Potential investors may need to consider detailed information before making an investment decision (e.g. financial statements, a business plan, information about ownership of intellectual or industrial property, and expert opinions such as valuations and auditor's reports);
 - (f) prospective investors should be aware that no established market exists to trade any scheme interests offered through the business introduction service; and
 - (g) the publication is subject to [ASIC Instrument 2022/805](#).
- RG 129.53 Operators must ensure these statements are made prominent and in a manner that is appropriate to the medium of the publication. For example, if the publication is made on a website, the statements should appear at or near the top of the webpage.
- RG 129.54 The operator must also ensure that the publication does not contain the name, trademark or logo of anyone involved in the issue or sale of the scheme interests on offer through the business introduction service, unless:
- (a) the publication is available only on subscription;
 - (b) before accessing the publication under a subscription, the person acknowledges that there are limitations to the information in the publication; and
 - (c) the publication includes prominent statements addressing RG 129.52(a) and RG 129.52(e).

- RG 129.55 If the publication is not made through a subscription service, the operator must give a prospective investor a notice containing the statements in RG 129.52(a) and RG 129.52(e) when first disclosing the name of the proposed issuer or seller of the scheme interests through the business introduction service.
- RG 129.56 In addition, if the operator seeks to rely on the relief, publications must not contain the following:
- (a) an application form for the scheme interest; and
 - (b) any statement that the introduction service, or any persons associated with it, have been endorsed or approved by ASIC.

Conduct of meetings

- RG 129.57 To rely on the relief, operators must ensure that meetings conducted through a business introduction service are conducted in a certain way.
- RG 129.58 A ‘meeting’ includes any meeting between an issuer or seller and potential investors that an operator conducts and organises and that is not held at the potential investor’s premises.
- RG 129.59 To rely on the relief, at these meetings the operator must ensure that an application form for the scheme interests is not issued.
- RG 129.60 The operator must also state, at the beginning of the meeting and through notices to each attendee, that:
- (a) before applying or buying the scheme interests on offer, the prospective investors should obtain further information from the relevant issuer or seller about these products;
 - (b) the prospective investor can request from the issuer or seller further information about a proposed investment in the scheme interests;
 - (c) a prospective investor is strongly advised to obtain appropriate professional advice about the scheme interests on offer to determine whether the proposed investment is suitable for their circumstances;
 - (d) prospective investors are unable to enter into a contract for purchasing a scheme interest discussed at the meeting on the day that the meeting is held; and
 - (e) prospective investors have a 10-day cooling off period after purchasing a scheme interest within a five-day period that commences on the day the meeting is held.

Issuers and sellers

RG 129.61 Relief from the offer and disclosure requirements is available for issuers and sellers to the extent that their scheme interests are offered, recommended, published or advertised through a business introduction service and where they have notified ASIC of their reliance on the relief.

Note: See RG 129.84–RG 129.85 for details on how to notify ASIC.

RG 129.62 Certain circumstances must exist if issuers and sellers are to rely on the relief as set out in in paragraph 6(1) of [ASIC Instrument 2022/805](#).

RG 129.63 Issuers and sellers can only rely on the relief where:

- (a) the scheme interests on offer through the business introduction service do not raise more than \$5 million in any 12-month period in relation to any one business or managed investment scheme; and
- (b) there is a limit of 20 investors who have purchased the scheme interests in the preceding 12 months (see RG 129.70–RG 129.75).

RG 129.64 Other relevant matters for issuers and sellers who seek to rely on the relief relate to:

- (a) information disclosed through the business introduction service (see RG 129.65–RG 129.69); and
- (b) the nature of the scheme interests made available through the service (see RG 129.70–RG 129.75).

Information disclosed through the business introduction service

RG 129.65 To rely on the relief, issuers and sellers must take all reasonable steps to ensure that all material included in a publication or provided at a meeting does not contain false, misleading or deceptive statements. Issuers and sellers should have regard to s1041E and 1041H when considering whether a statement is false, misleading or deceptive.

RG 129.66 If an issuer or seller engages a professional to verify and endorse material about their scheme interests in information that is communicated through a business introduction service, the issuer or seller must ensure that certain steps are taken and certain information is disclosed: see RG 129.68.

RG 129.67 An ‘endorser’ can include any persons that endorse, assess or verify the value of information about a product (e.g. an accountant, patent attorney or lawyer).

RG 129.68 Where material about a scheme interest communicated through a business introduction service is endorsed, verified or assessed by an endorser (whether in a publication or at a meeting), the issuer or seller must:

- (a) obtain the endorser’s written consent before the endorsed material is communicated;

- (b) state that the endorser's prior written consent has been obtained;
- (c) indicate that the endorser has provided information to the issuer or seller about the inquiries made to endorse, verify or assess the material; and
- (d) disclose the following with the endorsement, verification or assessment in certain circumstances:
 - (i) the nature and extent of any interest (including amounts paid or agreed to be paid) that existed within the two years before the relevant publication or meeting and that the endorser has in connection with the business or scheme to which the endorsed material relates; and
 - (ii) where the endorser is a partner at a firm—any interest that the firm has in connection with the business or scheme to which the endorsed material relates.

RG 129.69 Similar to operators, issuers and sellers that rely on the relief must ensure that their name, trademark or logo is not included in any publication about their scheme interest through a business introduction service.

Nature of the scheme interest

RG 129.70 As noted in RG 129.63, an issuer or seller that relies on the relief may only raise up to \$5 million for any managed investment scheme within a given year and can only issue scheme interests to a limit of 20 investors within a given year.

RG 129.71 In calculating the \$5 million, the issuer or seller can exclude:

- (a) amounts paid in relation to an issue or sale of scheme interests that result from offers which do not need a PDS (other than because of the relief or s1012E); or
- (b) amounts paid in response to an offer made in a PDS which is dated after the issuer or seller has ceased to make or publish offers, advertisements or publications under the relief.

RG 129.72 In applying the 20-investor limit, issuers and sellers can exclude the following:

- (a) offers in a publication or meeting that are exempted from the offer and disclosure requirements; and
- (b) offers of a financial product that did not need a PDS (other than because of [ASIC Instrument 2022/805](#) or s1012E).

RG 129.73 The issuer or any other person must also ensure that no application form for a scheme interest is made available to any person at a meeting or in a publication for scheme interests of the issuer.

RG 129.74 Issuers and sellers are also prohibited under the relief from entering into contracts for the issue or sale of scheme interests to prospective investors who are offered these products at a meeting on the day of the meeting.

RG 129.75 Issuers and sellers must provide a 10-day cooling off period for investors who enter into a contract for the issue or sale of a scheme interest if the contract is entered into during the period of five business days after the date of the meeting. The cooling-off period commences on the date of the meeting.

Endorsers

RG 129.76 Some business introduction services operate on the basis that a relevant professional person will endorse information in a publication about a business: see RG 129.67. Endorsements and verifications are intended to assure investors that the material in a publication has been professionally reviewed.

RG 129.77 Where a person provides such an endorsement, they may need to comply with the offer and disclosure requirements, given their involvement in the offer or recommendation of a scheme interest through a business introduction service.

RG 129.78 Relief from the offer and disclosure requirements is available for endorsers under certain circumstances as set out in sub-paragraph 7(2) of [ASIC Instrument 2022/805](#).

RG 129.79 To rely on the relief, the endorser must:

- (a) notify ASIC of their reliance on the relief (see RG 129.84–RG 129.85); and
- (b) indicate what inquiries they undertook to verify, endorse or assess information in the publication.

Publishers

RG 129.80 Relief from the offer and disclosure requirements is also available for publishers involved with a business introduction service under certain circumstances as set out in paragraph 8(2) of [ASIC Instrument 2022/805](#).

RG 129.81 A ‘publisher’ includes persons who:

- (a) conduct a business of publishing information about offers through a business introduction service;
- (b) are involved in promoting or encouraging investment in managed investment schemes on a not-for-profit basis;
- (c) allow their name to be associated with or used in the publication, but not for a particular offer or invitation; or
- (d) give the operator of a business introduction service direct financial assistance for preparing, publishing or distributing material through the service.

- RG 129.82 This relief only applies where the publisher has no pecuniary interest in the outcome of any investment decision by users of the business introduction service.
- RG 129.83 To rely on the relief:
- (a) the publisher must notify ASIC of their reliance on the relief (see RG 129.84–RG 129.85); and
 - (b) the information that is published by the publisher must have been authorised by the relevant operator, issuer or seller.

Notifying ASIC

- RG 129.84 From 1 October 2022 any person that is relying on the relief in [ASIC Instrument 2022/805](#) must provide ASIC with a notice of reliance.
- RG 129.85 The notice should be submitted through the [ASIC Regulatory Portal](#).
- RG 129.86 If you believe you cannot submit via the ASIC Regulatory Portal, please [contact us](#) for advice on how to proceed.

Applying for individual relief

- RG 129.87 The relief in [ASIC Instrument 2022/805](#) incorporates the protections that we consider are appropriate where information is being circulated by a business introduction service. A person relying on this relief does not need to apply for relief, but only notify ASIC of reliance on the relief.
- RG 129.88 However, we recognise that business introduction services operate in a number of different ways. We may consider granting relief in relation to a service that is not covered by the exemptions in ASIC Instrument 2022/805—that is, where the circumstances for these exemptions do not exist.
- RG 129.89 ASIC assesses all relief applications on a case-by-case basis and in accordance with our policies on the exercise of discretionary powers.

Note: For more information about applying to ASIC for relief, see [Regulatory Guide 51 Applications for relief](#) (RG 51).

D Application of the design and distribution obligations

Key points

The design and distribution obligations require issuers and distributors to have a consumer-centric approach to the design and distribution of products.

We have clarified that from 1 October 2022, the design and distribution obligations apply to persons involved in a business introduction service who rely on our relief where they are otherwise required to comply with the obligations under Pt 7.8A of the Corporations Act.

How the obligations may apply to business introduction services

- RG 129.90 Financial product firms must comply with the design and distribution obligations in Pt 7.8A of the Corporations Act from 5 October 2021.
- RG 129.91 The obligations are intended to help consumers obtain appropriate financial products by requiring issuers and distributors to have a consumer-centric approach to the design and distribution of products.
- RG 129.92 Persons involved in a business introduction service should consider whether the obligations relating to issuers and distributors apply to them, bearing in mind that relief under [ASIC Instrument 2022/805](#) for the offer, issue or recommendation of scheme interests does not effect a person's obligations under Pt 7.8A.

Note: See [Regulatory Guide 274](#) *Product design and distribution obligations* (RG 274) for details of the obligations relating to issuers and distributors of financial products.

Issuers

- RG 129.93 For the purposes of the design and distribution obligations, an issuer is a person that:
- (a) is required to prepare a product disclosure document under the Corporations Act (e.g. a responsible entity of a managed investment scheme) (see s994B(1)(a) and (b));
 - (b) if they are not covered by RG 129.93(a)—issues or sells under a regulated sale a financial product within the meaning of Div 2 of Pt 2 of the *Australian Securities and Investments Act* (see s994B(1)(ba)); or
 - (c) is required by the *Corporations Regulations 2001* (Corporations Regulations) to make a target market determination (see s994B(1)(c)).

- RG 129.94 Issuers of financial products are required to make a target market determination which describes the class of consumers that comprises the target market for the product, as well as other distribution controls such as conditions of distribution: see s994B(5). The target market determination must be appropriate: see s994B(8).
- RG 129.95 Issuers are also required to take reasonable steps that will, or are reasonably likely to, result in distribution being consistent with the target market determination. Issuers must review the target market determination periodically and as necessary to ensure it remains appropriate.

Distributors

- RG 129.96 Where an issuer has made a target market determination for a financial product that is on offer for acquisition by issue or regulated sale in Australia, the design and distribution obligations apply to regulated persons who engage in retail product distribution conduct (distributors).
- RG 129.97 ‘Regulated persons’ as defined in s994A(1) includes AFS licensees and authorised representatives, as well as persons who are exempt from holding an AFS licence.
- Note: The Corporations Regulations also extend the meaning of regulated persons: see [RG 274](#) at RG 274.28 for more information.
- RG 129.98 ‘Retail product distribution conduct’ as defined in s994A(1) includes:
- (a) dealing in the financial product;
 - (b) giving a disclosure document in relation to offering a financial product;
 - (c) providing a PDS; and
 - (d) providing financial product advice.
- RG 129.99 Among other things, distributors of financial products are required to take reasonable steps that will, or are reasonably likely to, result in distribution being consistent with the target market determination.

No relief from the design and distribution obligations

- RG 129.100 The design and distribution obligations commenced on 1 October 2021 and are intended to apply broadly. Given this intention, relief provided by [ASIC Instrument 2022/805](#) for the offer, issue or recommendation of scheme interest does not affect a person’s obligations under Pt 7.8A: see [RG 274](#) at RG 274.252.
- RG 129.101 We make it clear in ASIC Instrument 2022/805, which commences 1 October 2022, that the design and distribution obligations apply to persons who rely on the relief where they would otherwise need to comply with the obligations under Pt 7.8A of the Corporations Act. This includes the obligation to prepare a target market determination as an issuer when required under s994B(1).

- RG 129.102 For the avoidance of doubt, the relief in ASIC Instrument 2022/805 does not enliven the design and distribution obligations in circumstances where a person is not required to make a target market determination or does not engage in retail product distribution conduct: see RG 129.93.
- RG 129.103 When a person provides financial product advice, they engage in ‘retail distribution conduct’ as defined in s994A(1). This means that they need to ensure that the distributor obligations (including the obligation to take reasonable steps to ensure consistency with the target market determination) are met in relation to the distribution of a product: see RG 129.98.
- RG 129.104 Persons involved in a business introduction service should consider whether the obligations relating to distributors apply to them where an issuer must comply with the obligation to prepare a target market determination for the product.
- RG 129.105 Even though offers or recommendations of a product through a business introduction service are exempt from Pt 7.9 of the Corporations Act under the relief in ASIC Instrument 2022/805, this does not mean that a PDS is not required for the product in all circumstances. Issuers and sellers should ensure that they consider whether the PDS is required and whether the design and distribution obligations apply, regardless of whether they rely on the relief or not.

Key terms

Term	Meaning in this document
[CO 02/273]	ASIC Class Order [02/273] <i>Business introduction services</i> Note: Legislative instruments made from 2015 are referred to as ASIC instruments.
ASIC Instrument 2022/805 (for example)	An ASIC instrument (in this example, numbered 2022/805)
Ch 6D (for example)	A chapter of the Corporations Act (in this example numbered 6D), unless otherwise specified
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	<i>Corporations Regulations 2001</i>
design and distribution obligations	The obligations contained in Pt 7.8A of the Corporations Act
Div 2 (for example)	A division of the Corporations Act (in this example numbered 2), unless otherwise specified
endorser	Any person that endorses, assesses or verifies information about a scheme interest
introduction service	A business that has as one of its objectives the promotion or encouragement of investment in schemes. An introduction service achieves this objective by identifying potential investors to invest in these schemes
managed investment scheme	Has the meaning given in s9 of the Corporations Act
meeting	Any meeting between an issuer or seller and potential investors that an operator conducts and organises and that is not held at the potential investor's premises
offer	An invitation to apply for a financial product
offer and disclosure requirements	The requirements under s992A and Pt 7.9 of the Corporations Act
PDS	A Product Disclosure Statement—a document that must be given to a retail client for the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s761A for the exact definition.
Pt 7.9 (for example)	A part of the Corporations Act (in this example numbered 7.9), unless otherwise specified

Term	Meaning in this document
publication	Any document or series of documents, including any electronic publication, that is published to solicit investments through a business introduction service
relief	The relief provided by ASIC Instrument 2022/805 , unless otherwise specified
s992A (for example)	A section of the Corporations Act (in this example numbered 992A), unless otherwise specified
scheme interest	An interest in a managed investment scheme
target market	The class of consumers described in the target market determination for the product under s994B(5)(b) of the Corporations Act
target market determination	Has the meaning given in s994B of the Corporations Act

Related information

Headnotes

Business introduction services, design and distribution obligations, endorser, financial product disclosure, hawking prohibition, meeting, offer and disclosure requirements, managed investment scheme, operator, publication, publisher, relief, scheme interests

Regulatory guides

[RG 1](#) *Applying for and varying an AFS licence*

[RG 2](#) *Preparing your AFS licence or variation application*

[RG 3](#) *Preparing your additional proofs*

[RG 36](#) *Licensing: Financial product advice and dealing*

[RG 38](#) *The hawking prohibition*

[RG 51](#) *Applications for relief*

[RG 104](#) *AFS licensing: Meeting the general obligations*

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

[RG 172](#) *Financial markets: Domestic and overseas operators*

[RG 274](#) *Product design and distribution obligations*

Legislative instruments

[ASIC Corporations \(Amendment\) Instrument 2019/216](#) (repealed)

[ASIC Corporations \(Business Introduction Services\) Instrument 2022/77](#) (no longer in force)

[ASIC Corporations \(Business Introduction Services\) Instrument 2022/805](#)

[ASIC Corporations \(Repeal and Transitional\) Instrument 2017/186](#) (no longer in force)

[Class Order \[CO 02/273\]](#) *Business introduction or matching services* (repealed)

Legislation

Australian Securities and Investments Act 2001, Pt 2, Div 2

Corporations Act 2001, Ch 6D, Pt 6D.3A, Pt 7.8A, Pt 7.9, s764A, 766A, 766B, 766C, 767A, 791A, 911A, 992A, 994B, 1012B, 1012E, 1012K, 1013D, 1041E, 1041H

Corporations Regulations 2001, reg 7.8.21A

Explanatory Memorandum to the Financial Sector Reform (Hayne Royal Commission Response) Bill 2020

Cases

Attorney-General for New South Wales v Australian Fixed Trusts Limited
[1974] 1 NSWLR 110

Media releases

[19-067MR](#) *ASIC extends relief provided for business introduction services*

[22-070MR](#) *ASIC extends relief for business introduction services*