



ASIC

Australian Securities & Investments Commission

## REGULATORY GUIDE 168

# Disclosure: Product Disclosure Statements (and other disclosure obligations)

## Chapter 7 — Financial services and markets

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Previous versions: *Superseded Policy Statement 168B [SPS 168B] (issued 13/5/2005), Superseded Policy Statement 168A [SPS 168A] (issued 28/11/2001)*

*From 5 July 2007, this document may be referred to as Regulatory Guide 168 (RG 168) or Policy Statement 168 (PS 168). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 168.1) or their policy statement number (e.g. PS 168.1).*

## What this guide is about

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RG 168.1 This guide contains:

**A** broad policy guidance on preparing a Product Disclosure Statement (PDS) in compliance with the PDS requirements of the *Corporations Act 2001* (Corporations Act)

*see RG 168.6–RG 168.40*

**B** Good Disclosure Principles

*see RG 168.41–RG 168.76*

**C** our approach to monitoring the use of PDSs and enforcing the PDS requirements

*see RG 168.77–RG 168.102*

The guidance contained in Sections A and B may also be relevant to other disclosures that consumers may receive (e.g. for Financial Services Guides (FSGs) and Statements of Advice (SOAs)).

RG 168.2 The guidance in this guide needs to be read in the context of the overall disclosure framework outlined in the Schedules: see RG 168.103 and RG 168.103A.

RG 168.3 Deleted.

RG 168.4 For other guidance on PDSs, FSGs and SOAs, see:

(a) Regulatory Guide 169 *Disclosure: Discretionary powers* (RG 169). This guide provides guidance on:

- (i) how we generally approach the exercise of our exemption or modification powers for the hawking provisions in Div 8 of Pt 7.8 and the financial product disclosure provisions of Pt 7.9 (including details of any new class order relief we have issued under the FSR regime); and
- (ii) the status of our pre-FSR Act policies that may be relevant to compliance with the PDS requirements and hawking provisions;

(b) Regulatory Guide 170 *Prospective financial information* (RG 170). This guide provides guidance on:

- (i) when prospective financial information can or should be disclosed;
- (ii) what are reasonable grounds for stating prospective financial information;
- (iii) how prospective information should be disclosed; and
- (iv) what information should be disclosed by a product issuer in the absence of prospective information;

(c) Regulatory Guide 173 *Disclosure for on-sale of securities and other financial products* (RG 173). This guide provides guidance on:

- (i) our general policy on relief from the on-sale provisions;
- (ii) what relief is available where retail clients have the benefit of disclosure comparable to that which might otherwise have been contained in a prospectus or PDS and our power to exclude an entity from relying on this relief; and
- (iii) what relief is available to ensure that products issued to persons including retail clients under separate disclosure exemptions may be readily on-sold;

- (d) Regulatory Guide 175 *Licensing: Financial product advisers— Conduct and disclosure* (RG 175). This guide provides guidance on:
  - (i) providing financial product advice;
  - (ii) preparing and providing FSGs;
  - (iii) preparing and providing suitable personal advice;
  - (iv) preparing and providing SOAs; and
  - (v) preparing and providing Statements of Additional Advice (SOAAs);
- (e) Regulatory Guide 182 *Dollar disclosure* (RG 182). This guide provides guidance on:
  - (i) how we administer the dollar disclosure provisions;
  - (ii) the class order relief we have granted from the dollar disclosure provisions; and
  - (iii) our policy on granting relief from the dollar disclosure provisions;
- (f) Information Release [IR 04/71] *ASIC issues guidance on PDS disclosure*. This information release provides guidance for product issuers preparing and reviewing PDSs, including highlighting a number of compliance issues product issuers should take into account to ensure that their PDSs meet both the content and presentation requirements under the Corporations Act.

RG 168.5 The Corporations Act includes a provision that product issuers include in their PDSs disclosure about the extent to which labour standards and environmental, social or ethical considerations are taken into account in the selection, retention or realisation of the investment: see s1013D(1)(l). Product issuers will need to consider this obligation when preparing a PDS. For further guidance on this obligation, see Regulatory Guide 65 *Section 1013DA disclosure guidelines* (RG 65) and Media Release [MR 03/405] *ASIC releases final socially responsible investing guidelines*.

**Important note 1:** This guide was first published on 28 November 2001. It has been amended to reflect changes made to the Corporations Act by the *Financial Services Reform Amendment Act 2003*, Corporations Regulations, ASIC policy and instruments issued before 6 May 2005, and to provide some clarifications. Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements. This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act applies to you. It is your responsibility to determine your obligations under the Corporations Act.

**Important note 2:** The Corporations Amendment Regulations 2005 (No. 5) (FSR refinements regulations) made on 15 December 2005 introduced two important changes to the PDS framework under Chapter 7 of the Corporations Act. The first change is the introduction of the Short-Form Product Disclosure Statement (Short-Form PDS) for all financial products except for general insurance products: see Schedule 10BA of the Corporations Regulations 2001. In general, the guidance contained in this guide will apply to Short-Form PDSs. The second change is the introduction of a tailored PDS regime for general insurance products: see reg 7.9.15D, 7.9.15E and 7.9.15F. These changes are subject to an 18-month transition period and will commence on 21 June 2007: see Schedule 2 of this guide at RG 168.103A for more detailed information.

Except for some minor changes (including the addition of Schedule 2), we have not amended this guide to reflect these changes. We anticipate that further changes to the disclosure framework under Chapter 7 of the Corporations Act will be made as a result of the *Corporate and Financial Services Regulation Review Consultation Paper* published by the Parliamentary Secretary to the Treasurer in April 2006, the *Simpler Regulatory System Bill* announced by the PST on 14 August 2006 and the draft regulations published in March 2007. We will continue to monitor these developments to see what, if any, changes need to be made to this guide.

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## **A Guidance to issuers on preparing a PDS**

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### **Our policy**

#### ***Good Disclosure Principles***

RG 168.6 In general, under the Corporations Act, a retail client must receive a PDS before acquiring a financial product. The PDS is the point-of-sale document that sets out the significant features of a financial product, including its risks, benefits and cost.

Note: See Schedule 1 at RG 168.103 for guidance about the overall disclosure framework under the financial services reform (FSR) regime that includes the PDS. See Schedule 2 at RG 168.103A for guidance about the changes to the PDS framework made by the FSR refinements regulations.

RG 168.7 The broad objectives of a PDS are to help consumers compare and make informed choices about financial products. To achieve these objectives, the legislation requires that all information contained in a PDS must be worded and presented in a clear, concise and effective manner.

RG 168.8 The PDS requirements are drafted to apply flexibly to any financial product. This means that we cannot provide specific guidance about how the requirements apply to each and every financial product supplied to retail clients.

RG 168.9 However, to help product issuers comply with the PDS requirements, this guide contains Good Disclosure Principles that also promote good disclosure outcomes for consumers. We encourage product issuers to consider these Good Disclosure Principles when preparing a PDS.

RG 168.10 The Good Disclosure Principles are:

- 1 Disclosure should be timely
- 2 Disclosure should be relevant and complete
- 3 Disclosure should promote product understanding
- 4 Disclosure should promote product comparison
- 5 Disclosure should highlight important information
- 6 Disclosure should have regard to consumers' needs.

RG 168.11 The Good Disclosure Principles are set out in Section B of this guide. Further background to the Good Disclosure Principles is set out under 'Explanations' in Section A of this guide: see RG 168.22–RG 168.23.

RG 168.12 The Good Disclosure Principles do not replace any legal requirements about product disclosure under the legislation. However, depending on the circumstances, we believe failure to consider the Good Disclosure Principles when preparing a PDS may increase the possibility of misleading or deceptive conduct, unconscionable conduct, or indicate that the content obligations of the PDS requirements (e.g. that the PDS is clear, concise and effective) have not been met.

RG 168.13 In any of these circumstances, we may take appropriate remedial action (such as a stop order) to ensure that consumers' interests are protected: see Section C of this guide.

### ***Who is responsible for PDS compliance?***

RG 168.14 Product issuers are responsible for making sure that a PDS meets the PDS requirements. We will not vet any PDS prior to its release to consumers unless there are exceptional circumstances.

### ***Having a process***

RG 168.15 While it is not a mandatory requirement, we believe that having a systematic process for preparing PDSs will help a product issuer meet the PDS requirements.

RG 168.16 We recognise that this process may vary depending on the circumstances of the product issuer (e.g. its size) and that it may even be outsourced.

### ***Applying our policy guidance to other disclosure obligations***

RG 168.17 Where appropriate, we encourage you to consider the guidance outlined in this guide for other kinds of disclosure to consumers. For example, this might include promotional publications, FSGs and SOAs.

Note: More specific guidance on preparing and providing FSGs and SOAs is contained in RG 175.

### ***Future development of our PDS policy***

RG 168.18 We will monitor PDSs issued across all industry sectors to determine whether disclosure to consumers can be improved by the provision of further guidance. This monitoring and review process will be ongoing. Any proposed guidance may include:

- (a) more detailed guidance about desired disclosure outcomes; or
- (b) disclosure examples in areas:

- (i) that give rise to greatest concern for consumers; or
- (ii) where the importance of better disclosure becomes more apparent.

RG 168.19 When considering whether to further develop our policy, we will pay particular attention to the objectives of the *Financial Services Reform Act 2001* (FSR Act) to, among other things, provide investors with information so that they may compare a range of financial products.

## Underlying principles

RG 168.20 We will interpret and apply the PDS requirements in light of their legislative objectives. Paragraph 14.28 of the Explanatory Memorandum to the Financial Services Reform Bill 2001 states (in part):

‘... the broad objective of point of sale obligations is to provide consumers with sufficient information to make informed decisions in relation to the acquisition of financial products, including the ability to compare a range of products’.

RG 168.21 Paragraph 14.82 of the Explanatory Memorandum also notes that where ‘fleshing out’ of the PDS requirements is needed, this can be done through ASIC policy or regulations or an industry code of conduct.

## Explanations

### ***Background to the Good Disclosure Principles***

RG 168.22 We have developed the Good Disclosure Principles having in mind:

- (a) the PDS requirements and related provisions of Pt 7.9 (including the regulations made for the purposes of those provisions);
- (b) the purpose or objective underlying the FSR Act (see s15AA of the *Acts Interpretation Act 1901*);
- (c) our own regulatory experience;
- (d) past and current point-of-sale disclosure practices;
- (e) relevant overseas regulatory analogies; and
- (f) the results of relevant Australian and overseas research (including the results of relevant consumer research and user testing).

RG 168.23 The Good Disclosure Principles are outcome focused. The key outcomes that we seek to achieve are to help consumers make better decisions and to help consumers compare financial products.



## Helping consumers make better decisions

RG 168.24 We believe that applying the Good Disclosure Principles to any process for preparing a PDS will improve the quality of disclosure, which in turn should help consumers make better decisions about financial products. The issue of quality of disclosure is reflected in a number of the PDS requirements and related provisions, in particular:

- (a) the requirement that the information included in the Product Disclosure Statement must be worded and presented in a clear, concise and effective manner (see s1013C(3)); and
- (b) prohibitions on misleading or deceptive conduct or statements (e.g. see s1041E and 1041H). In some circumstances, confusing disclosure may be misleading.

Note: Similar prohibitions in the *Australian Securities and Investments Commission Act 2001* (ASIC Act) relating to misleading or deceptive conduct also indicate the importance of the quality of information provided to consumers.

RG 168.25 This means that product issuers should focus not only on the technical content requirements that apply to PDSs, but also the quality of the information being provided to consumers.

## Helping consumers to compare products

RG 168.26 An objective of the PDS requirements is that consumers can better compare financial products. Although the PDS requirements apply to all financial products, we recognise that product differences may mean that different approaches to disclosure develop for particular financial products.

RG 168.27 Because the PDS requirements do not generally prescribe the detailed content and format of a PDS, we consider that comparability goals are likely to be effectively achieved only through an industry-wide approach to product disclosure. For example, comparability of PDS disclosure could be improved by the development of, and compliance with, effective industry standards or codes that provide detailed and meaningful guidance about PDS disclosure. While product issuers are not compelled to follow any industry standards or codes that reflect 'best practice', compliance with such a standard or code may be a factor we take into account when determining whether surveillance or enforcement action should be taken in respect of a PDS: see RG 168.81.

RG 168.28 We will work with industry and consumers to promote product comparability through the use of PDSs.

*The role of industry standards and codes*

RG 168.29 Generally, we believe that industry standards or codes have a useful and important role to play in:

- (a) dealing with issues not covered under the Corporations Act;
- (b) fleshing out what needs to be done to comply with requirements under the Corporations Act;
- (c) building upon the technical requirements and protections provided under the Corporations Act; and
- (d) facilitating comparability of product information.

RG 168.30 Examples of disclosure issues that may benefit from clarification, particularly if greater comparability of products is to be achieved, are:

- (a) standardised descriptions of like fees and charges (such as commissions), including the basis for showing the future impact of fees and charges;
- (b) standardised descriptions of investment returns, including whether returns should be shown gross or net of tax or some fees (e.g. investment management fees charged to the product issuer); and
- (c) explanations showing the basis for past performance information.

RG 168.31 For guidance about how and when ASIC will approve financial services sector codes of conduct under s1101A of the Corporations Act, see Regulatory Guide 183 *Approval of financial services sector codes of conduct* (RG 183).

Note: For further information about RG 183, see Information Release [IR 05/8] *ASIC releases policy on approving codes of conduct*.

***Who is responsible for PDS compliance?***

RG 168.32 The ultimate responsibility for a PDS rests with issuers. This is consistent with the directed disclosure approach embodied in the PDS requirements.

Note: The directed disclosure approach requires disclosure in a PDS about a specific list of items in so far as those items are relevant to a particular financial product, together with any other information known to the product issuer that might reasonably influence a client's decision to acquire the product: see paragraph 14.30 of the Explanatory Memorandum.

RG 168.33 Consistent with this obligation, we will not pre-vet a PDS unless exceptional circumstances exist.

### ***Having a process***

RG 168.34 The advantages of establishing and maintaining a structured process for preparing a PDS include:

- (a) improving the likelihood of quality disclosure for consumers;
- (b) minimising the risks to an issuer of non-compliance with the PDS requirements (e.g. see s1013C) or the need to issue a supplementary PDS (e.g. because the PDS is misleading or deceptive);
- (c) helping issuers to meet any other relevant duties (e.g. the duties of a responsible entity of a registered scheme under the managed investment provisions of the Corporations Act); and
- (d) assisting licensees to ensure compliance with their obligations for the offering of financial products.

RG 168.35 While we may have regard to any processes in place when reviewing a PDS, the existence of a structured process will not prevent us taking enforcement action in respect of a PDS produced by that process that does not meet the PDS requirements.

### ***Applying our policy guidance to other disclosure obligations***

RG 168.36 We believe that the guidance in this guide can have more general application to promotions, FSGs and SOAs. Our guidance could be applied more generally to minimise the risks of non-compliance with the Corporations Act (including prohibitions on misleading or deceptive conduct and obligations to provide information in a clear, concise and effective manner).

RG 168.37 Examples of how guidance can be applied more generally include:

- (a) providing promotional material in a way that considers the needs of consumers (see RG 168.69–RG 168.70); and
- (b) consumer testing of FSGs and SOAs (see RG 168.71–RG 168.72).

RG 168.38 We have issued further guidance in RG 175 on our approach to compliance with the FSG, SOA and other licensing disclosure obligations contained in Pt 7.7.

Note: See also Regulatory Guide 53 *The use of past performance in promotional material* (RG 53).

### ***Future development of our PDS policy***

RG 168.39 We anticipate that further work will be required to achieve the objectives of the PDS requirements set out in this guide—in particular, comparability of fees and returns for investment products.

RG 168.39A Further work will include:

- (a) monitoring the quality of PDSs;

Note: See, for example, Information Release [IR 04/71] *ASIC issues guidance on PDS disclosure*. This information release provides guidance for product issuers preparing and reviewing PDSs, including highlighting a number of compliance issues product issuers should take into account to ensure that their PDSs meet both the content and presentation requirements under the Corporations Act.

- (b) monitoring the number and nature of any consumer complaints about PDSs;
- (c) undertaking further consultation with industry and consumer representatives about the best way to achieve these objectives and related outcomes (e.g. detailed policy guidance or development of effective industry standards); and
- (d) undertaking consumer research or projects with industry or consumer representatives.

RG 168.40 Depending on the results of this further work, we will review the type and degree of guidance about PDSs contained in this guide and other ASIC publications, either generally or for particular products. This may lead to more detailed guidance being provided. While we will seek to do this in consultation with industry and consumers, we will pursue the objectives and intended outcomes of the FSR Act even if consensus among industry and consumer representatives cannot be achieved.

## **B The Good Disclosure Principles**

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### **1 Disclosure should be timely**

RG 168.41 In general, the Corporations Act requires a PDS to be provided to a consumer before that consumer applies for a financial product: see s1016A.

Note: Under s1012F and reg 7.9.04, for certain superannuation products a PDS may be provided later. Section 1012G and regs 7.9.80C and 7.9.80D also allow a PDS to be provided later in certain situations.

RG 168.42 We encourage product issuers to establish distribution procedures that maximise the time that a consumer has to read a PDS before making an application. This gives consumers the information they need at a time when it may influence their purchasing decision.

RG 168.43 A PDS must also be kept up-to-date. A product issuer should regularly review its PDS to make sure the information in it is current. An application by a consumer based on an out-of-date PDS may give rise to a right of refund under s1016E.

Note: We have granted limited relief from the requirement to update a PDS where the new information does not include any materially adverse information and where the new information is made available to consumers free of charge by some other means (e.g. through a website or a toll-free telephone service): see Class Order [CO 03/237] *Updated information in product disclosure statements*. See also Information Release [IR 02/25] *Out-of-date PDS applications: reducing risks for issuers*, which deals with the risks of non-compliance associated with issuing a financial product to an applicant who did not apply using the most up-to-date PDS available. We have modified this relief so that it also applies to Short-Form PDSs: see Information Release [IR 07/19] *ASIC releases technical updates to financial services related guides and class orders*.

### **2 Disclosure should be relevant and complete**

RG 168.44 The information in a PDS should be relevant to a consumer who is deciding whether to buy the financial product. It should also be complete.

RG 168.45 The content obligations of the PDS requirements set out broadly what categories of information will be relevant in a PDS. These include information about significant benefits and risks, the cost of the product, factors affecting returns, and what dispute resolution procedures are available if there is a problem.

Note: Information in a PDS about contact details, cooling-off rights and access to external dispute resolution schemes should be clear and accessible. This is particularly important where there are multi product issuers in one PDS and different information

applies to each product issuer, or where an investor-directed portfolio-like service (IDPS) affects the cooling-off rights applicable to an underlying product. For further information, see Information Release [IR 04/71] *ASIC issues guidance on PDS disclosure*.

RG 168.46 When considering what information will be relevant and useful to a consumer for the purposes of decision making, a product issuer should have regard to:

- (a) the information needs of reasonable consumers of the class to whom the PDS is directed;
- (b) the contractual or other arrangements under which the consumer holds a particular product;
- (c) any relevant regulatory or other obligations applicable to the product (e.g. taxation);
- (d) the most important information that consumers need, including, but not limited to, risk disclosure (this information should be highlighted: see also Good Disclosure Principle 5);

Note 1: A consumer will want to easily find and understand information on the cost of a financial product and the risks and benefits associated with the financial product including, for example, if a product is described as 'guaranteed', the nature and extent of the guarantee, who provides the guarantee and the probability of the guarantee not being met.

Note 2: The level of risk disclosure in a PDS will vary from product to product. In general, complex products that are not well understood need sufficient explanation of their risks to ensure consumers understand how the products work. For further guidance on the issue of risk disclosure, see [IR 04/71].

- (e) making sure that all relevant information is presented together or is effectively cross-referenced; and
- (f) if disclosure is contained in more than one document (i.e. where the PDS consists of two parts or where there is a supplementary PDS that must be read together with the PDS), making sure that the information that makes up the PDS is clearly identified and linked.

RG 168.47 Disclosure that is not complete may constitute misleading or deceptive conduct or breach the content requirements of Pt 7.9.

### **3 Disclosure should promote product understanding**

RG 168.48 Section 1013C(3) states that the information included in a PDS 'must be worded and presented in a clear, concise and effective manner'. We believe preparing PDSs that attempt to promote financial product understanding by consumers will assist issuers to comply with their obligation to present a PDS in a clear, concise and effective manner.

Note 1: Under s1020E(1)(a)(ia), a stop order may be issued for a PDS that is not clear, concise and effective.

Note 2: For further guidance on clear, concise and effective disclosure, including some useful tips product issuers should consider when preparing PDSs, see [IR 04/71].

### Using a range of communication tools

RG 168.49 We encourage product issuers when preparing a PDS to consider using communication tools (e.g. text, tables, diagrams and graphs) that promote product understanding and comparability. Product issuers should not use communication tools in such a way that they are likely to confuse consumers: see also RG 168.55.

### Industry and legal jargon

RG 168.50 Where possible, product issuers should try to avoid using industry and legal jargon in a PDS. If this cannot be avoided, then they should explain its meaning. Product issuers should use plain language and, if necessary, illustrate explanations by providing simple examples.

### Complexity of the product

RG 168.51 Even where product issuers present information in plain language, the complexity of what is being described may create a barrier to consumers' understanding.

RG 168.52 For example, if a product issuer is offering multiple or 'bundled' financial products in a single PDS, it may need to pay particular attention to this principle so that consumers are not misled or confused by any material in the PDS.

RG 168.53 A product issuer may also need to provide a greater level of disclosure if the product is *not* generally understood by consumers (e.g. if it is new or complex): see s1013F(2).

RG 168.54 In some extreme instances, a product issuer may need to consider simplifying the item or system being described, as well as how information about it is disclosed. For example, some fee arrangements may be so complex that they are difficult to describe in a manner that is clear, concise and effective.

Note: For further information on clear, concise and effective disclosure for complex financial products, see [IR 04/71].

### Extraneous information

RG 168.55 If product issuers want to include extraneous material in a PDS, they should consider the overriding requirement that the information in the PDS must be worded and presented in a clear, concise

and effective manner. Extraneous material includes advertising or promotional material by the product issuer or by a third party (e.g. advertising about other products, including financial products) or immaterial benefits associated with acquisition of the product that is the subject of the PDS.

RG 168.56 If a product issuer includes extraneous material in a PDS, there are risks that:

- (a) a consumer may not read, or may disregard or not understand the importance of, other information in the PDS; and
- (b) a consumer might otherwise be misled or deceived.

RG 168.57 To diminish these risks, we expect product issuers will consider methods to ensure that extraneous material in a PDS is:

- (a) clearly distinguishable from other information; and
- (b) no more prominent than other information.

#### Disclosing fees, charges and returns

RG 168.58 We believe that the need for clear, concise and effective disclosure is most relevant for the disclosure of fees and charges and, in the case of investment-based products, the disclosure of returns. Information about fees, charges and investment returns is a key consideration for consumers when making decisions about financial products, and research shows that it is often the most difficult information for consumers to understand.

RG 168.58A Under the dollar disclosure provisions, various costs, fees, charges, expenses, benefits and interests must be stated as amounts in dollars in SOAs, PDSs and periodic statements (including exit statements). For further information about complying with the dollar disclosure provisions, see RG 182. See also Information Release [IR 04/67] *ASIC issues dollar disclosure policy* and Class Orders [CO 04/1430], [CO 04/1431], [CO 04/1432], [CO 04/1433], [CO 04/1434] and [CO 04/1435].

Note: The dollar disclosure provisions of the Corporations Act commenced on 1 January 2005. We have granted relief that extends the transition to the dollar disclosure provisions for general insurance products to 30 June 2008: see [IR 06/19] *ASIC extends disclosure relief for general insurance products* and [CO 05/683] *Dollar disclosure: further transitional relief*.

RG 168.58B Under the enhanced fee disclosure regulations made on 10 March 2005, PDSs for superannuation products issued after 1 July 2005 and PDSs for managed investment products issued after 1 July 2006 must include a fees and costs template. The enhanced fee disclosure



regulations introduce standard descriptions and calculation methods for fees and costs. These measures are designed to assist with clear, concise and effective disclosure of information about fees and costs and to allow for easier comparability of fees and costs information in PDSs for investment products. The enhanced fee disclosure regulations also apply to periodic statements for superannuation products and for managed investment products.

Note: The enhanced fee disclosure regulations give effect to the disclosure measures announced by the former Parliamentary Secretary to the Treasurer, Hon. Ross Cameron MP on 16 June 2004. For further information, see Corporations Amendment Regulations 2005 (No.1) and the related Explanatory Statement available at [www.treasury.gov.au](http://www.treasury.gov.au). For further background information, see *Disclosure of fees and charges for superannuation and managed investment products, Package of disclosure measures* (June 2004), also available at [www.treasury.gov.au](http://www.treasury.gov.au).

RG 168.59 The types of product information that a consumer should be able to easily understand and compare include:

- (a) what the fees and charges are, the amount of fees (expressed as an amount in dollars where this is required), who the fees are paid to, what the fees are for, how and when the fees are paid, and how fees impact on returns;
- (b) whether fees are variable and, if so, how and when they vary, including through negotiation or the impact of rebates or discounts (e.g. group life rebates);
- (c) how returns are calculated and whether they are shown on a consistent basis. For example, if historical returns are disclosed for various investment strategies over different periods of time (e.g. 1, 3, 5 and 10 years), then, for each investment strategy, consumers should be able to understand whether or not the returns are shown on a consistent basis for each period. Generally, returns for financial products (including for different investment strategies of a financial product) covered by a PDS should be calculated on a consistent basis wherever possible; and
- (d) typical and material factors that may affect returns, including risks.

RG 168.60 If information about fees, charges and returns is not clear, concise and effective, comparability of products is harder to achieve.

RG 168.61 Deleted.

#### **4 Disclosure should promote product comparison**

RG 168.62 We believe the clarity and effectiveness of PDS disclosure is also improved by being drafted in a way that makes it easier for consumers to make comparisons:

- (a) between two or more competing financial products; and
- (b) about options that may be available to them under the terms of a particular financial product. For example, where a consumer has the option to pay fees in two different ways, a comparison might be given to show the relative charges made for each option after various durations (eg 1, 3, 5 and 10 years).

RG 168.63 Consumers (particularly less experienced consumers) will not always be able to identify what particular pieces of information (e.g. information about fees and returns) are designed to assist with comparison of product options or different financial products. Comparative information should be clearly identified so that consumers are better able to use it: see RG 168.59.

Note: The enhanced fee disclosure regulations will support comparison of fees and costs disclosure across superannuation and managed investment products: see RG 168.58B.

RG 168.64 Product issuers can also facilitate comparability by complying with relevant industry standards and practices designed to harmonise approaches to certain key items of disclosure: see RG 168.27. In some cases, if a product issuer fails to follow industry practices that consumers would expect it to follow, it may mislead or deceive consumers.

#### **5 Disclosure should highlight important information**

RG 168.65 A PDS may contain all the relevant information that a consumer needs to decide whether to buy a financial product, but consumers (particularly less experienced consumers) may still:

- (a) miss important points because of the way it is presented; or
- (b) misunderstand the purpose of the information.

RG 168.66 To minimise the risk that a PDS is misleading or deceptive because of the way that it is presented, the product issuer should consider giving prominence to:

- (a) key information about the financial product so as to reflect the relative importance of the information to consumers (e.g. information about benefits and risks should have similar prominence in the PDS);

- (b) ‘warnings’ associated with particular items of information (e.g. where past performance information is shown, a warning that this information should not be relied upon as indicative of future performance (see also RG 168.93–RG 168.94), and where prospective financial information is included it should be accompanied by prominent disclosure on underlying assumptions, limits and risks (see RG 170);

Note: For further information about the inclusion of past performance and forecasting information in PDSs, see [IR 04/71].

- (c) information about significant unusual product features (e.g. non-standard features or features not normally associated with a particular type of product in the marketplace, such as some exclusions in the case of risk insurance claims);
- (d) information about significant product features which, while they are not unusual, may lead to a significant financial impact for a consumer (e.g. the cost to a consumer of early termination or sale of an investment-based financial product, especially where the product may be sold to consumers with short-term investment objectives);
- (e) other significant details (e.g. information about who is going to provide any ongoing services for the product or particular aspects of the product, and how to contact them); and
- (f) key information about the financial product in a summary at the front of the PDS.

RG 168.67 The size of the typeface, the layout, the use of colour and graphics, the order in which information is presented, as well as location and boldness of information, are all relevant to whether a consumer’s attention is likely to be drawn to the information they most need. Product issuers should consider these issues when making sure that a PDS is clear, concise and effective.

RG 168.68 Where a PDS is made up of several documents, we expect that the product issuer will give particular attention to helping consumers find the information most relevant to their decision and how it is linked to relevant information in other documents.

## **6 Disclosure should have regard to consumers’ needs**

RG 168.69 The information and communication needs of consumers should be taken into account when preparing a PDS. This will help you to meet both:

- (a) the content obligations of the PDS requirements (see s1013D(1)); and
- (b) the ‘clear, concise and effective requirement’ (see s1013C(3)).

RG 168.70 This might include:

- (a) monitoring carefully the class of consumers to whom the PDS is directed;
- (b) producing a PDS that is based on a format that has been consumer tested;
- (c) producing a PDS that has taken into account feedback (including complaints) from consumers about past or current point-of-sale offer documents used by the product issuer;
- (d) personalising the information contained in the PDS for the consumer; or
- (e) improving the quality of the disclosure in the PDS to promote product understanding by consumers (e.g. drafting a PDS to improve the comparability of competing financial products—see also Good Disclosure Principle 4).

### Consumer testing

RG 168.71 Consumer testing may identify areas of the PDS that are potentially misleading and deceptive or confusing, or it may identify additional information that consumers need.

RG 168.72 Consumer testing can occur at an industry level as a basis for developing an industry standard for individual products or classes of product. In some cases, however, product issuers may need to consider consumer testing on the actual PDS proposed for consumers. Consumer testing may be particularly useful in the case of complex products.

### Consumer feedback and complaints

RG 168.73 Regardless of whether consumer testing is undertaken prior to the issue of a particular PDS, the ongoing review of a PDS (e.g. to determine whether supplementary information is needed) should take into account any feedback and, in particular, any complaints from consumers about the PDS (or relevant aspects of earlier kinds of point-of-sale offer documents used by the product issuer).

RG 168.74 Complaints, including those resolved internally and those referred for external resolution, are an important source of information about any consumer problems with, or misunderstandings caused by, the information in a PDS.

### Personalised information

RG 168.75 Research has generally found that personalised information is more widely read and retained by consumers because it is seen as more

important and relevant. An example of personalised information is using customer-specific information as a basis for projections associated with life insurance products.

RG 168.76 We envisage that there is greater opportunity for tailoring a PDS, or using personalised information, where:

- (a) electronic technology (including interactive technology) is used to provide the PDS to consumers; or
- (b) relevant personal details of the consumer are known by the product issuer prior to the provision of the PDS.

## C Monitoring PDSs and enforcing the PDS requirements

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### Our policy

#### ***What we will look at***

RG 168.77 We will conduct selective compliance reviews of PDSs to determine whether they comply with the PDS requirements.

Note 1: PDSs for managed investment products that state or imply that the product will be able to be traded on a financial market must be lodged with ASIC prior to their release to consumers: see s1015B(1). Other PDSs must be notified to us as soon as practicable after a copy of the PDS is first given to consumers, and in any event not less than five business days after it is first given to someone in a recommendation, issue or sale situation: see s1015D(2). Notification is not required in advance of a PDS being given to consumers.

Note 2: For information about an ASIC compliance review of PDSs in 2004, see [IR 04/71].

#### ***Our approach to enforcement***

RG 168.78 Where we detect or are made aware of valid *prima facie* disclosure concerns about a PDS, we may notify the issuer of our concerns before serving an interim stop order.

RG 168.79 However, if delay could be prejudicial to the public interest, we will impose an interim stop order without consulting the issuer, pending resolution of our concerns at a hearing.

RG 168.80 In deciding whether to take enforcement action on a particular PDS, we will consider whether the PDS appears to:

- (a) be misleading or deceptive;
- (b) contain all relevant information;
- (c) meet the other general and specific content requirements of Pt 7.9; and
- (d) be worded and presented in a clear, concise and effective manner.

RG 168.81 In making our assessment, we will also take into account:

- (a) any changes that have occurred since the date of the PDS that could make it deficient;
- (b) the circumstances surrounding the preparation of the PDS;
- (c) the extent to which the Good Disclosure Principles in Section B have been followed;

- (d) the circumstances in which the PDS was given to the consumer; and
- (e) whether any industry standards or codes have been adhered to.

RG 168.82 We believe that an approach to disclosure that involves following the guidance contained in Sections A and B will minimise the potential for non-compliance with the PDS requirements.

### ***Misleading and deceptive conduct***

RG 168.83 When assessing whether a PDS appears to be misleading or deceptive, we will pay particular attention to:

- (a) statements about future matters such as forecasts (they should have reasonable grounds);

Note: For further guidance on statements about future matters in PDSs, see RG 170.

- (b) statements about past performance;
- (c) statements of opinion (they should be formed honestly and reasonably);
- (d) the likely overall impression of a PDS;
- (e) the use of illustrations or examples to highlight an aspect of the disclosure being provided;
- (f) the use of disclaimers;
- (g) ambiguous statements;
- (h) whether statements draw inaccurate, unfair or inappropriate comparisons;
- (i) the currency of information (see RG 168.43 and Regulatory Guide 23 *Updating and correcting prospectuses and application forms* at RG 23.12A–RG 23.12J); and

Note: RG 23.12A–RG 23.12J continue to apply with necessary adaptations as set out in RG 169.

- (j) how information is set out and the prominence given to particular pieces of information (see RG 168.65–RG 168.68).

### **Underlying principles**

RG 168.84 Our approach to monitoring PDSs and enforcing the PDS requirements is underpinned by two key principles:

- (a) promoting compliance with the PDS requirements and achievement of their objectives (see RG 168.20); and
- (b) providing certainty and transparency in the processes that we will adopt in fulfilling our regulatory responsibilities.

## **Explanations**

### ***What we will look at***

RG 168.85 We may review certain PDSs:

- (a) that we categorise as open to compliance risk (e.g. products marketed to vulnerable consumer groups or products that are highly complex);
- (b) if we receive credible information from external sources (e.g. consumer complaints) about a PDS that warrants undertaking a review; or
- (c) at random.

RG 168.86 We will determine compliance risk for a product or class of products from time to time having regard to the financial services environment that prevails at a particular time, trends in consumer complaints we receive and our general regulatory experience.

RG 168.87 This approach is consistent with our overall surveillance and enforcement philosophy and seeks to strike a balance between our regulatory responsibilities and finite resources.

RG 168.88 We may conduct a review on:

- (a) an individual PDS (individual assessment);
- (b) a number of PDSs for a particular class of product or products (product-based assessment); or
- (c) PDSs of a particular product issuer or conglomerate including a number of product issuers (institutional assessment).

### ***Our approach to enforcement***

RG 168.89 Our approach to issuing stop orders during the exposure period under Ch 6D of the Corporations Act is set out in Regulatory Guide 152 *Lodgment of disclosure documents* at RG 152.49. Under the PDS requirements, there is generally no 'exposure period' during which applications from the public may not be processed (although see s1015B). We may therefore need to act more quickly in issuing an interim stop order to protect consumers.

RG 168.90 When determining the scope or terms of a stop order we will have regard to the nature of the financial product and the potential impact of the order on the interests of consumers (e.g. the impact on renewals for general insurance).



RG 168.91 While a PDS has no expiry date, issuers must keep a PDS up-to-date. We may take enforcement action if changes in circumstances mean that the PDS becomes misleading or incomplete.

Note: For further information about up-to-date PDSs, see s1016E, reg 7.9.13A and [CO 03/237].

### ***Misleading or deceptive conduct***

#### **Statements about future matters**

RG 168.92 A statement about any future matter is misleading or deceptive if the maker does not have reasonable grounds for making it. For example, a statement about prospective financial information based on a number of hypothetical assumptions is unlikely to be based on reasonable grounds. For further guidance on disclosure of prospective financial information, see RG 170.

Note: For further information about the inclusion of forecast information in PDSs based on a compliance review in 2004, see [IR 04/71].

#### **Statements about past performance**

RG 168.93 Care should be taken when showing past performance information including, in particular, giving consideration to any misleading or deceptive representation that may arise from:

- (a) the currency of past performance information (e.g. does the information need to be updated, including by means of a supplementary PDS?);

Note: For more guidance, see also [PN 60.12A–[PN 60.12J. These paragraphs continue to apply with necessary adaptations as set out in RG 169.

- (b) the length of time a product or investment strategy has been in existence or the investment period selected;
- (c) the periods for which past performance information is shown (e.g. different sub-periods in the life of any past performance information may produce entirely different past performance figures);
- (d) whether the past performance information is shown in accordance with any industry standards;
- (e) any explicit or implicit suggestion of a link between past performance and future prospects;
- (f) the use of hypothetical or reconstructed past performance figures;
- (g) changes in the state of the market such that returns in the short to medium term are likely to be significantly less than the past performance being quoted; and

- (h) changes in the method or mechanism by which the investment strategy is implemented (e.g. appointment of a new investment manager).

Note: For further information about the inclusion of past performance information and forecast information in PDSs, see [IR 04/71].

RG 168.94 A statement about past performance should be accompanied by a prominent warning that past performance is not necessarily a guide to future performance.

### Statements of opinion

RG 168.95 A statement of opinion that amounts to a representation may be misleading or deceptive in the following circumstances:

- (a) an opinion may be a statement about a future matter, in which case it must be based upon reasonable grounds. If this is not the case, the expression of opinion may be regarded as misleading or deceptive;
- (b) an opinion may convey that there is a basis for the opinion, that it is honestly held, and when expressed as the opinion of an expert that it is honestly held upon rational grounds involving the application of the relevant expertise. If this is not the case, the expression of opinion may be regarded as misleading or deceptive (see *Bateman v Slayter* (1987) ATPR 40–762); and
- (c) a statement of opinion involving a state of mind may convey the meaning (expressly or by implication) that the maker had the particular state of mind when the statement was made and, commonly, that there was a basis for having that state of mind. If this is not so, such a statement may constitute misleading or deceptive conduct (see *Stanton v ANZ Banking Group* (1987) ATPR 40–755).

RG 168.96 A statement of opinion may become misleading or deceptive if it continues to be published when the maker no longer holds the opinion or the grounds on which it was made have substantially changed.

### Overall impression of PDS

RG 168.97 In assessing the overall impression conveyed by a PDS, we will:

- (a) identify the relevant section of the public to whom the offer was made; and
- (b) consider the range of people within that section of the public.

The PDS should be intelligible to reasonable members of the class to whom it is directed: see *Fraser v NRMA Holdings Ltd* (1995) 15 ASCR 590.

RG 168.98 Consumer testing documents may help issuers identify whether people are or are not actually misled by a document (although it

is not necessary to prove that someone has been actually misled to establish misleading and deceptive conduct).

### Illustrations or examples

RG 168.99 Illustrations or examples should be provided on a consistent basis and be accompanied by a clear explanation of:

- (a) the facts and assumptions on which they are based (e.g. an illustration of the effect of fees on the actual returns of an investment should indicate what fees are included in any calculation); and
- (b) their purpose (e.g. an illustration of the effect of fees on returns is not a forecast of the end benefit payable).

### Disclaimers

RG 168.100 Disclaimers about statements may not be effective if they are not sufficiently prominent to clearly counterbalance the effect of a misrepresentation clearly made. A disclaimer should generally be able to be seen and understood by those who otherwise might be misled: see *Lezam Pty Ltd v Seabridge Australia Pty Ltd* (1992) 35 FCR 535.

### Ambiguous statements

RG 168.101 Ambiguity may constitute misleading or deceptive conduct if one or more of the reasonably possible meanings is misleading or deceptive.

### Comparisons

RG 168.102 The comparison of a product to a benchmark or a competitor should be done in a careful manner. For example, comparison of a financial product against a benchmark assuming that returns are reinvested may be misleading or deceptive if, in fact, it is not possible to reinvest returns. Also, comparison of returns for different investment strategies may be misleading or deceptive if the returns for each investment strategy are not calculated and shown on a consistent basis, or there is no explanation of the basis on which returns information is being provided.

## Schedule 1: The disclosure framework under the FSR regime

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RG 168.103

**Note:** The information in this Schedule does not constitute legal advice. It provides general guidance about the disclosure framework under the FSR regime. You need to seek your own legal advice to ascertain the disclosure obligations that apply to you.

### ***Brief description of documentary disclosure under the FSR regime***

1 Retail clients may receive a number of different documents providing disclosure prior to the issue of a financial product. Each document has its own purpose and relates to a different stage of the investment process, which can be characterised, from the perspective of a consumer, as follows:

<p><b>WHAT SERVICE AM I GETTING?</b></p> <p>Disclosure is in a Financial Services Guide</p>	<p><b>WHAT ADVICE AM I GETTING?</b></p> <p>Disclosure is in a Statement of Advice or Statement of Additional Advice if it is personal advice</p>	<p><b>WHAT PRODUCT AM I BUYING?</b></p> <p>Disclosure is in a Product Disclosure Statement and can be in a Short-Form Product Disclosure Statement</p>
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Following is a brief overview of these documents. The flow chart at the end of the Schedule illustrates the operation of the disclosure framework.

### ***What service am I getting?***

2 A Financial Services Guide (FSG) is to be prepared by the person who will provide a financial service. It must contain information so that consumers can make an informed decision about whether to acquire a financial service.

3 An FSG includes information such as:

- (a) who will provide the service;
- (b) the kinds of financial services offered;

- (c) information about who the service provider is acting for when providing the financial service;
- (d) information about the means by which the service provider is remunerated for the services being offered to the retail client;
- (e) details of commissions; and
- (f) details of any associations or relationships that might be expected to influence a service provider in providing the service.

See s942B and 942C.

4 Regulations may provide further detail about what information an FSG is required to contain: see s942B(4), 942B(7), 942C(4), 942C(7) and 949B.

5 The information included in an FSG must be worded and presented in a clear, concise and effective manner: see s942B(6A) and 942C(6A).

6 Generally, an FSG must be given before providing the financial service: see s941D(1). If 'time critical' criteria are met, then the service provider may give certain information verbally before providing the service without giving the full FSG: see s941D(2) and (3). However, a full FSG must be provided within five days after the verbal statement is given, or sooner if practicable: see s941D(4).

7 Certain offers of financial services do not require an FSG: see s941C. For example, an FSG need not be given:

- (a) if the client has already received an FSG that contains all information relevant to the client: see s941C(1); and
- (b) if the client has already received a PDS and a 'statement' that together contain all of the information a new FSG would have had to contain: see reg 7.7.02A. For further information, see the FSR refinements regulations and related material.

7A Regulation 7.7.08A allows an FSG to be combined with a Product Disclosure Statement (PDS) or Short-Form PDS in certain circumstances, provided conditions are met.

Note: Section 1017K (Schedule 10BA of the Corporations Regulations) applies s942DA, 1013M and reg 7.7.08A to the Short-Form PDS.

### ***What advice am I getting?***

8 A Statement of Advice (SOA) is to be prepared by the financial adviser who provides personal advice. It must contain information about the personal advice so that a retail client can make an informed decision about whether to act upon that advice.

Note: We have granted relief allowing a Statement of Additional Advice (SOAA) to be given instead of an SOA in certain circumstances: see Class Order [CO 04/1556] *Statements of Additional Advice* and Information Release [IR 04/75] *ASIC refines relief allowing Statements of Additional Advice*. An SOAA is a document that incorporates by reference information from another document that has previously been provided to the client.

9 An SOA includes information such as:

- (a) a statement setting out the advice and an explanation of the basis upon which it was given, including a warning if the advice is based on incomplete or inaccurate information;
- (b) who has provided the advice;
- (c) any remuneration or other benefit that a service provider or an associate may receive in connection with the advice that could influence the service provider;
- (d) any other interests of the service provider or an associate that could influence the service provider; and
- (e) any associations or relationships between the service provider or an associate and product issuers that could influence the service provider.

See s947B and 947C.

10 Regulations may provide further detail about what information an SOA is required to contain: see s947B(4), 947C(4), 947D(4) and 949B.

11 The statements and information included in the SOA must be worded and presented in a clear, concise and effective manner: see s947B(6) and 947C(6).

12 Generally, the SOA must be provided to the client when, or as soon as practicable after, that advice is provided. In any event, the SOA should be given before the adviser provides the client with any further financial service that arises out of or is connected with the advice: see s946C(1).

13 If an SOA is not given when the advice is provided, the service provider must inform the client verbally of certain matters. These include information about potential conflicts of interest and information about significant consequences that may accrue from replacing an existing financial product if a change of product is recommended: see s946C(2).

14 If an SOA is not given and the client requires a further financial service, the SOA must be given within five days after providing that further service, or sooner if practicable. If the further service is providing a financial product and a cooling-off period will apply, the SOA must be

given before the start of the cooling-off period under s1019B(3), or sooner if practicable: see s946C(3).

15 An SOA is not required if certain conditions are met and the advice is further advice: see reg 7.7.10AE, which inserts a new s946B, and reg 7.7.09, 7.7.10AC, 7.7.10AD, 7.7.10AG, 7.7.10B, 7.7.10C and 7.7.10D for further details about relevant conditions. However, in these circumstances, the information set out in paragraph 9(c)–(e) of this Schedule is still required to be given. An SOA is not required for basic deposit products, related non-cash payment facilities, travellers' cheques, cash management trusts or general insurance products: see reg 7.7.10AE and 7.7.10.

16 An SOA need not be given if the advice provided is only general advice. If the service provided by a licensee or authorised representative to a retail client is general advice, the licensee or authorised representative must warn a retail client about the limitations of the advice in these circumstances: see s949A for further details.

### ***What product am I buying?***

17 A PDS is to be prepared by or on behalf of the issuer or seller of the financial product: see s1013A. A PDS is to contain sufficient information so that a retail client may make an informed decision about whether to purchase a financial product.

17A For all financial products except general insurance products, where a regulated person is required to give another person a PDS, the regulated person can give the other person a Short-Form PDS instead provided that certain conditions are met: see reg 7.9.61AA and Div 3A of Pt 7.9 inserted by Schedule 10BA of the Corporations. See Schedule 2 of this guide for further guidance about the Short-Form PDS.

18 For financial products other than general insurance products, a PDS includes information such as:

- (a) fees payable in respect of a financial product;
- (b) risks of a financial product;
- (c) benefits of a financial product; and
- (d) significant characteristics of a financial product.

See s1013C, 1013D and 1013E for further details.

18A The FSR refinements regulations made on 15 December 2005 introduced a tailored PDS regime for general insurance products. Under these changes, the following PDS requirements do not apply to general insurance products: s1013D(1)(c), 1013D(10)(d)(iii), 1013D(1)(e),

1013D(1)(h), 1013D(1)(j) and 1013D(1): see reg 7.9.15D. A PDS for a general insurance product must include the information required by s1013D(4)(c): see regs 7.9.15D, 7.9.15E and 7.9.15F for further details. See Schedule 2 at RG 168.103A for further guidance about the tailored PDS regime for general insurance products.

19 Regulations provide further detail about what information is required in a PDS: see s1013D(4) and Div 4 of Pt 7.9 of the regulations.

20 The information included in a PDS must be worded and presented in a clear, concise and effective manner: see s1013C(3).

21 Generally, a PDS should be given to a retail client at or before the time:

- (a) a recommendation is made to buy a financial product;
- (b) an offer is made to issue or arrange the issue of a financial product; or
- (c) a seller makes an offer to sell the product if that sale requires disclosure.

See s1012A, 1012B and 1012C.

22 For some superannuation and RSA products, the PDS may be given later if certain conditions are met: see s1012F and reg 7.9.04.

23 For products specified by s1012G(1) where ‘time critical’ criteria are met, the person responsible at the point of sale may give certain information verbally before providing the product without giving the full PDS: see s1012G. However, a full PDS must be provided as soon as reasonably practicable and in any event not later than five days after the product is issued or sold or when the confirmation requirement under s1012G is complied with.

Note: See reg 7.9.80C and 7.9.80D for more detail about what conditions must be met.

24 Certain offers of financial products do not require a PDS: see s1012D, 1012E and the regulations.

Note: A PDS is no longer required for basic deposit products: see reg 7.9.07FA.

25 The operation of the disclosure framework under the Corporations Act is illustrated by the following flow chart.



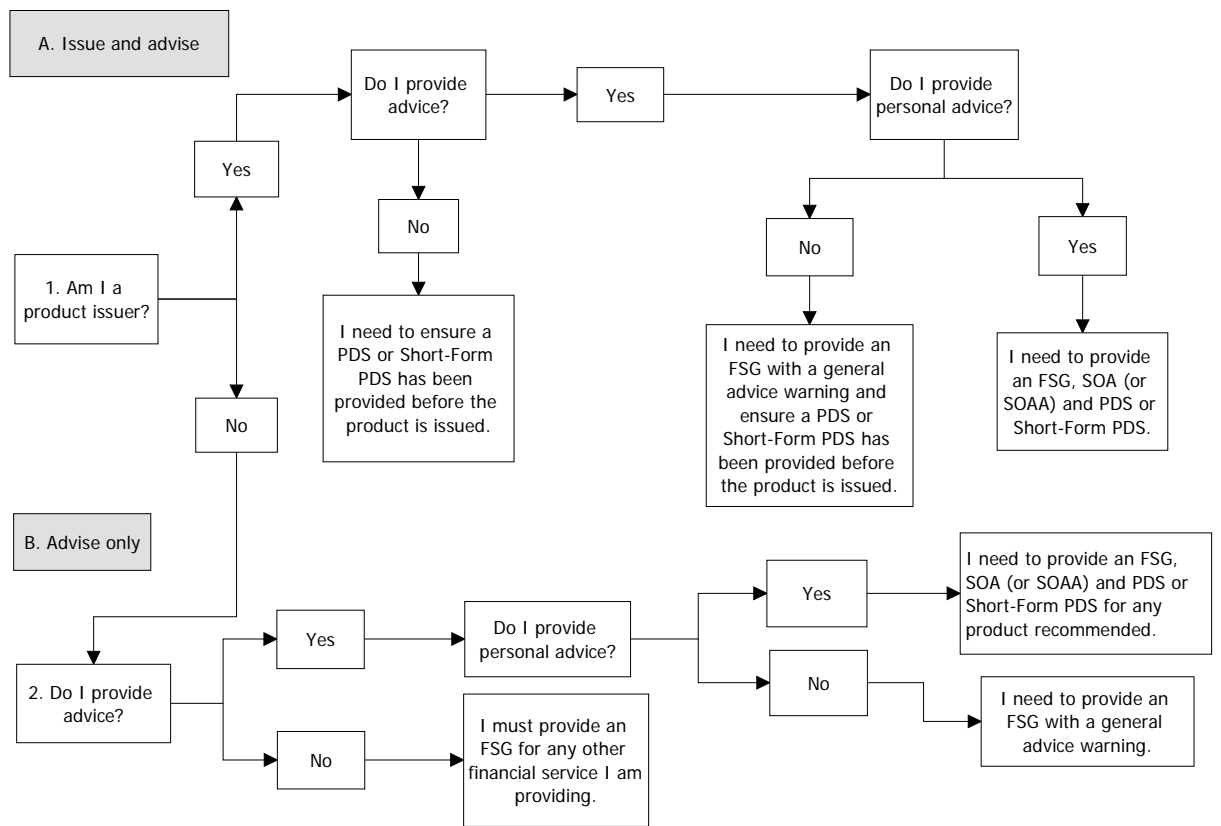
## Flow chart

### Notes:

An FSG and SOA (or SOAA) are to be provided by a licensee or an authorised representative: see s941A, 941B, 944A and 946A.

The information in an FSG, SOA (or SOAA) and PDS must be up-to-date.

Further details on what constitutes ‘advice’, ‘general advice’ and ‘personal advice’ is contained in *Licensing: The scope of the licensing regime: Financial product advice and dealing—An ASIC guide* (May 2007). See also RG 175.



## Schedule 2: The Short-Form PDS and tailored general insurance PDS

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RG 168.103A

**Note:** The information in this Schedule does not constitute legal advice. It provides general guidance about the PDS framework under the FSR regime. You need to seek your own legal advice.

### ***What is a Short-Form PDS?***

1 In general, a Short-Form PDS is a document that summarises the key information in a PDS (e.g. information about the issuer, benefits, risks, costs, return, dispute resolution and cooling off) and complies with Div 3A of Pt 7.9. A Short-Form PDS can be given instead of a PDS for all products except for general insurance products.

2 According to the Explanatory Statement to the FSR refinements regulations, the Short-Form PDS is intended to address the problem of lengthy and complex product disclosure documents:

‘... PDSs have as a rule turned out to be complex and lengthy documents. Consumer feedback suggests that the average retail investor finds it difficult to absorb the large volume of information in some PDSs, and is therefore deterred from using the information to make investment decisions. The aim of this measure is to give product providers the option of creating a Short-Form PDS that contains a summary of defined core information relating to the product’: p. 13.

### ***When can you give a Short-Form PDS?***

3 Where a regulated person is required by the Corporations Act to give another person a PDS for a financial product, they can instead give the other person a Short-Form PDS unless (s1017H(1)):

- (a) the regulated person is requested by the other person to provide a PDS: s1017H(2); or
- (b) the financial product is a general insurance product: s1017H(4).

Note: A Short-Form PDS cannot be used for general insurance products: see s1017H(4) of Div 3A of Pt 7.9. The FSR refinements regulations introduced a tailored PDS regime for general insurance products with effect from 21 June 2007: see regs 7.9.15D, 7.9.15E and 7.9.15F. For further details about the general insurance PDS regime, see paragraphs 10 - 15 of this Schedule.

4 The Short-Form PDS is an optional document and does not replace the PDS. Providers of financial products are still required to prepare a PDS and make it available where a retail client requests one: s1017H(2).

5 Product issuers are responsible for making sure that a Short-Form PDS meets the Short-Form PDS requirements (e.g. the requirements of Div 3A of Pt 7.9).

### ***What requirements apply to the Short-Form PDS?***

6 The requirements for the Short-Form PDS are set out in Schedule 10BA of the Corporations Regulations, which inserts a new Div 3A into Pt 7.9 of the Corporations Act (s1017I–1017Q). A Short-Form PDS must comply with all of the requirements of Div 3A of Pt 7.9, and must include all of the following:

- (a) the title ‘Short-Form Product Disclosure Statement’ at or near the front of the document (s1017J);
- (b) the date of the Short-Form PDS (s1017K, which applies s1013G to the Short-Form PDS);
- (c) a summary of the statements and information required by s1013D(1)(a), (b), (c), (d), (e), (g) and (i) that are included in a PDS for the product. According to the Explanatory Statement, ‘summary’ means a condensed and straightforward account of the key items that are required to be included a PDS (s1017I(1)(c));
- (d) a statement notifying the retail client that they can ask for a copy of the PDS for the product and how they do this (s1019I(1)(b)); and

Note: A person must provide a PDS when requested to do so: s1017H(2) of Div 3A of Pt 7.9.

- (e) information in a Short-Form PDS must be up-to-date as at the time when it is given to a person (s1017K, which applies s1012J to the Short-Form PDS).

7 A Short-Form PDS for a superannuation product or a managed investment product must set out in full information required by the enhanced fee disclosure regulations: s1017I(2).

8 A Short-Form PDSs must be worded and presented in a clear, concise and effective manner: s1017K, which applies s1013(3)(c) to the Short-Form PDS. A Short-Form PDS must not include any material that makes the document misleading or deceptive. A Short-Form PDS can include other information: s1017I(3).

9 A Short-Form PDS for a financial product can be combined with an FSG if the PDS for that product can be combined with an FSG: s1017K, which applies s942DA, 1013M and reg 7.7.08A to the Short-Form PDS.

Note 1: For further guidance on preparing a combined PDS or Short-Form PDS with an FSG, see RG 175.

Note 2: A Short-Form PDS cannot be combined with an SOA: s1017K, which applies s947E to the Short-Form PDS.

### ***The PDS framework for general insurance products***

10 The FSR refinement regulations introduced a tailored PDS regime for general insurance products by:

- (a) removing certain PDS content requirements that are “irrelevant” or “not necessary” for general insurance products (Explanatory Statement to the FSR refinements regulations, p. 23);
- (b) removing certain PDS content requirements where the information is disclosed by the product issuer in another document (e.g. policy terms and conditions); and
- (c) specifying how a product issuer is to disclose significant characteristics or features of a general insurance product and the rights, terms, conditions and obligations attaching to the product.

11 According to the Explanatory Statement to the FSR refinements regulations, the tailored PDS regime:

‘... reduces the amount of information a general insurer must give to an insured to meet their PDS disclosure requirements, taking into account all of the information an insurer is required to provide under the Insurance Contracts Act and the information an insurer would provide through their policy terms and conditions’: p. 23.

12 An 18-month transition period applies to the changes to the PDS requirements for general insurance products. The new requirements will commence on 21 June 2007.

### ***What PDS content requirements apply to a PDS for a general insurance product?***

13 Under reg 7.9.15E, a PDS for a general insurance product must include the following more detailed information in the PDS to satisfy the requirement in s1013D(1)(f) to disclose information about any other significant characteristics or features of the product:

- (a) the terms and conditions of the policy document (within the meaning of the *Insurance Contracts Act 1984* (Insurance Contracts Act)); and

- (b) any information that the product issuer would have to provide to the person under s35(2) or 37 of the Insurance Contracts Act before the contract of insurance has been entered into.

14 The Insurance Contracts Act imposes a number of disclosure requirements, including disclosure to a person of the risks associated with holding a general insurance product. According to the Explanatory Statement, the purpose of removing certain PDS content requirements is to reduce the duplication of information between the PDS and the policy terms and conditions for general insurance products. For example:

‘The policy terms and conditions, read in conjunction with the PDS, provides an insured with sufficient information on which to base a decision to acquire the product’: p. 24.

### ***What PDS content requirements do not apply to a PDS for a general insurance product?***

15 Under reg 7.9.15D, a PDS for a general insurance product does not have to include information about:

- (a) amounts deducted from a common fund (s1013D(1)(d)(iii));
- (b) commissions or other similar payments that might impact on returns (s1013D(1)(e));
- (c) any significant taxation implications of financial products of that kind (s1013D(1)(h));
- (d) how the client can access any other information about the financial product that might be available (s1013D(1)(j));
- (e) the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of the investment (s1013D(1)(l));
- (f) any significant risks associated with holding the product (s1013D(1)(c)); and
- (g) other information that might materially influence a decision to acquire the product (s1013E).

## Key terms

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RG 168.104 In this guide, these terms have the following meaning:

**AFS licence** An Australian financial services licence under s913B that authorises a person who carries out a financial services business to provide financial services

Note: This is a definition contained in s761A.

**ASIC** Australian Securities and Investments Commission

**Corporations Act** The *Corporations Act 2001*, including regulations made for the purposes of the Corporations Act

**dollar disclosure provisions** Provisions of the Corporations Act and Corporations Regulations that require various costs, fees, charges, expenses, benefits and interests to be stated as amounts in dollars unless ASIC grants relief: see s947B(2)(h), 947C(2)(i), 947D(2)(d), 1013D(1)(m), 1017D(5A) and reg 7.7.10A–7.7.11, 7.7.11B–7.7.13B, 7.9.15A–7.9.15C, 7.9.19A–7.9.19B, 7.9.20A–7.9.20B, 7.9.74A–7.9.75 and 7.9.75C–7.9.75D

**enhanced fee disclosure regulations** Provisions of the Corporations Act and Corporations Regulations that require (among other things) fees and costs to be disclosed in a template

**Explanatory Memorandum** Explanatory Memorandum to the Financial Services Reform Bill 2001

**fees** Costs that a consumer will pay for a product or service. These includes commissions and, unless the context otherwise requires, all government charges

**financial product** Generally a facility through which, or through the acquisition of which, a person does one or more of the following:

- (a) makes a financial investment (see s763B);
- (b) manages financial risk (see s763C);
- (c) makes non-cash payments (see s763D)

Note: See Div 3 of Pt 7.1 for the exact definition.

**Financial Services Guide (FSG)** A document that must be given to a retail client in relation to the provision of a financial service in accordance with Div 2 of Pt 7.7

Note: See s761A for the exact definition.

**FSG** Financial Services Guide

**FSR Act** *Financial Services Reform Act 2001* or the Corporations Act (as amended by the FSR Act)

Note: The provisions contained in Schedule 1 of the FSR Act formed part of the Corporations Act from 11 March 2002. Schedule 1 contains the financial services licensing provisions under Pts 7.6 to 7.8 of the Corporations Act and the financial product disclosure provisions under Pt 7.9.

**FSR Amendment Act** *Financial Services Reform Amendment Act 2003*

**FSR commencement** 11 March 2002, the date fixed by proclamation under s2(2) of the FSR Act on which Schedule 1 of the FSR Act commenced

Note: Schedule 1 contains the financial services licensing provisions under Pts 7.6 to 7.8 of the Corporations Act and the financial product disclosure provisions under Pt 7.9.

**FSR refinements regulations** Corporations Amendment Regulations 2005 (No. 5)

**FSR regime** The financial services licensing, conduct and product disclosure regime under the Corporations Act (as amended by the FSR Act and the FSR Amendment Act)

**licensee** A person who holds an AFS licence

**managed investment provisions** Chapter 5C of the Corporations Act and related regulations

**Part 7.9** (for example) A part of the Corporations Act (in this example numbered 7.9)

**PDS** Product Disclosure Statement

**PDS requirements** The requirements set out in Div 2 of Pt 7.9 and related regulations

**Product Disclosure Statement (PDS)** A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9

Note: See s761A for the exact definition.

**RG 136** (for example) A regulatory guide (in this example numbered 136)

**reg 7.6.04** (for example) A regulation of the Corporations Regulations 2001 (in this example numbered 7.6.04)

**regulations** Corporations Regulations 2001

**retail client** A client defined as such under s761G and Chapter 7, Pt 7.1, Div 2 of the regulations

**RSA Act** *Retirement Savings Account Act 1997*

**s912A** (for example) A provision of the Corporations Act (in this example numbered 912A)

**Short-Form PDS** Short-Form Product Disclosure Statement

**Short-Form PDS requirements** The requirements set out in Div 3A of Pt 7.9 inserted into the Corporation Act by reg 7.9.61AA and Schedule 10BA of the Corporations Regulations

**Short-Form Product Disclosure Statement** Short-Form PDS that complies with the Short-Form PDS requirements

**SOA** Statement of Advice

**SOAA** Statement of Additional Advice

**Statement of Additional Advice (SOAA)** A document that can be given to a retail client instead of an SOA in certain circumstances in relation to the provision of personal advice in accordance with [CO 04/1556]. An SOAA is a document that incorporates by reference information required under Part 7.7 from another document that has previously been provided to the client

**Statement of Advice (SOA)** A document that must be given to a retail client in relation to the provision of personal advice in accordance with Subdivs C and D of Div 3 of Part 7.7

Note: See s761A for the exact definition.



## Related information

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RG 168.105

### Headnotes

Financial products, Financial Services Guide (FSG), Good Disclosure Principles, industry standards or codes, misleading or deceptive conduct, PDS requirements, Product Disclosure Statement (PDS), Short-Form Product Disclosure Statement (Short-Form PDS), promotions, Statement of Advice (SOA), Statement of Additional Advice (SOAA)

### Regulatory guides

RG 23 *Updating and correcting prospectuses and application forms*

RG 36 *Licensing: Financial product advice and dealing*

RG 49 *Employee share schemes*

RG 53 *The use of past performance in promotional material*

RG 78 *Breach reporting by AFS licensees*

RG 148 *Investor directed portfolio services*

RG 152 *Lodgment of disclosure documents*

RG 169 *Disclosure: Discretionary powers*

RG 170 *Prospective financial information*

RG 173 *Disclosure for on-sale of securities and other financial products*

RG 175 *Licensing: Financial product advisers—Conduct and disclosure*

RG 179 *Managed discretionary account services*

RG 182 *Dollar disclosure*

RG 183 *Approval of financial services sector codes of conduct*

### Legislation

*Corporations Act 2001*, Chapters 5C, 6D, Parts 7.6–7.9, Part 7.1 Div 3, Part 7.7 Div 3, Part 7.9 Div 2, s761G, 913B, 941A, 941B, 941C, 941C(1), 941D(1)–(4), 942B, 942B(4), 942B(6A), 942B(7), 942C, 942C(4), 942C(6A), 942C(7), 942DA, 944A, 946A, 946B, 946C(1)–(3), 947B, 947B(4), 947B(6), 947C, 947C(4), 947C(6), 947D(4), 947E, 949A, 949B, 1012A–1012G, 1012D(2A), 1012D(2B), 1013A, 1013C, 1013C(1), 1013C(3), 1013D, 1013D(1), 1013D(1)(1), 1013D(4), 1013DA, 1013E, 1013F(2), 1015B, 1015B(1), 1015D(2), 1016A, 1016E, 1017C, 1017B, 1019B(3), 1020E, 1041E, 1041H, 1438(3), regs Part 7.9 Div 4, reg 7.1.29, 7.6.01C, 7.7.01(2), 7.7.02, 7.7.02(5A), 7.7.07D, 7.7.08A, 7.7.09, 7.7.10, 7.7.14, 7.7.20, 7.9.07D–F, 7.9.07J, 7.9.02A, 7.9.04, 7.9.11, 7.9.11(2), 7.9.13A, 7.9.15A, 7.9.15D, 7.9.15E, 7.9.15F, 7.9.16G, 7.9.80C–D, 10.2.81, 10.2.214, Schedule 10B items 1 and 5–8;

Schedule 10BA, *Financial Services Reform Act 2001*, s2(2); *Acts Interpretation Act 1901*, s15AA

### **Class orders**

[CO 02/141] *Experts: citing in Product Disclosure Statements*

[CO 02/143] *Financial product market research*

[CO 02/191] *Product disclosure—requirements for issuers of financial products who lodge opt-in notices*

[CO 02/212] and [CO 02/213] *Product disclosure—requirements for issuers of financial products who lodge revocation notices*

[CO 02/260] *Product Disclosure Statements—application forms created by a licensee*

[CO 02/286] *Obligation to provide Product Disclosure Statement: s1012B*

[CO 02/608] *Warrants: relief from PDS requirements for secondary sales*

[CO 02/1075] *Travellers' cheques and confirmation of transactions*

[CO 02/1180] *Disclosure for on-sale of securities and other financial products*

[CO 03/185] *Disclosure for on-sale of securities and other financial products*

[CO 03/237] *Updated information in product disclosure statements*

[CO 03/606] *Financial product advice—exempt documents*

[CO 03/876] *Multi-issuer product disclosure statements*

[CO 03/1092] *Further relief for joint product disclosure statements*

[CO 04/103] *Relief from s912F requirement to cite licence numbers on prescribed documents*

[CO 04/239] *Factoring arrangements—licensing, hawking and disclosure relief*

[CO 04/576] *Statements of additional advice*

[CO 04/1055] *Information in a Financial Services Guide given in time critical situation*

[CO 04/1556] *Statements of Additional Advice*

### **Cases**

*Bateman v Slayter* (1987) ATPR 40–762

*Fraser v NRMA Holdings Ltd* (1995) 15 ASCR 590

*Lezam Pty Ltd v Seabridge Australia Pty Ltd* (1992) 35 FCR 535

*Stanton v ANZ Banking Group* (1987) ATPR 40–755

### **Other papers**

REP 23 *A model for fee disclosure in product disclosure statements* (July 2003)

*Corporations and Financial Services Regulation Review Consultation Paper* (April 2006)

### **Media and information releases**

[MR 02/228] *A guide to good disclosure of transaction banking fees*

[MR 03/52] *ASIC provides guidance on required contents of product disclosure statements*

[MR 03/243] *ASIC releases fee disclosure model*

[MR 03/405] *ASIC releases final socially responsible investing guidelines*

[MR 04/62] *FSR disclosure to be clear, concise and effective*

[MR 04/192] *ASIC releases revised fee disclosure model*

[MR 05/11] *ASIC welcomes financial services refinements proposal paper*

[MR 05/258] *ASIC Example Statement of Advice: less is more*

[IR 01/5] *ASIC provides guidance for preparers and reviewers of prospective financial information included in disclosure documents*

[IR 02/25] *Out-of-date PDS applications: reducing risks for issuers*

[IR 03/10] *ASIC grants exemption on requirement to provide up-to-date information in PDSs*

[IR 03/20] *ASIC class order exempts issuers of certain documents from requirement to hold an AFSL*

[IR 03/35] *ASIC class order provides relief to allow multi-issuer PDS*

[IR 03/37] *ASIC varies disclosure and continuous reporting requirements for issuers of managed investment warrants*

[IR 03/42] *ASIC provides further relief for joint product disclosure statements*

[IR 04/34] *ASIC facilitates shorter Statements of Advice*

[IR 04/61] *ASIC provides guidance on Statements of Advice*

[IR 04/67] *ASIC issues dollar disclosure policy*

[IR 04/71] *ASIC issues guidance on PDS disclosure*

[IR 04/75] *ASIC refines relief allowing Statements of Additional Advice*

[IR 05/22] *ASIC provides details on financial services refinements projects*

[IR 05/53] *Delivery of ASIC's financial services refinements projects on time*

*[IR 05/45] ASIC provides guidance about giving general financial product advice*

*[IR 05/62] ASIC announces simpler warnings for oral general advice*

*[IR 06/02] ASIC provides guidance on compliance with FSR refinements regulations*