

Attachment 2 to CP 358: Draft instrument



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Shorter PDS and Delivery of Accessible Financial Products Disclosure by Platform Operators and Superannuation Trustees) Instrument 2022/XX

I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 2022

[DRAFT ONLY—NOT FOR SIGNATURE]

<signature>

<insert name>

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Shorter PDS and Delivery of Accessible Financial Products Disclosure by Platform Operators and Superannuation Trustees) Instrument 2022/XX*.

2 Commencement

This instrument commences at the same time that the *ASIC Corporations (Repeal) Instrument 2022/XX* commences.

3 Authority

This instrument is made under paragraph 1020F(1)(c) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

IDPS has the same meaning as in ASIC Class Order [CO 13/763].

IDPS-like scheme has the same meaning as in ASIC Class Order [CO 13/763].

operator has the same meaning as in ASIC Class Order [CO 13/763].

Regulations means the *Corporations Regulations 2001*.

simple managed investment scheme has the same meaning as in regulation 1.0.02 of the Regulations.

superannuation entity has the same meaning as in section 761A of the Act.

Part 2—Declaration

5 Relief from the Shorter PDS regime

Superannuation products: platforms

- (1) Part 7.9 of the Act applies in relation to a trustee of a superannuation entity as if regulation 7.9.11K of the Regulations were modified or varied as follows:
 - (a) in paragraph (2)(c), omit “product).”, substitute “product);”
 - (b) after paragraph (2)(c) insert:
 - “(d) subject to subregulation (3), a superannuation product that relates to a superannuation entity in which:
 - (i) two or more investment strategies are available from which a member, or a class of members, may choose; and
 - (ii) each of the investment strategies enables a regulated acquisition (within the meaning of section 1012IA of the Act) of a financial product to be made.”.
 - (c) after subregulation (2) insert:
 - “(3) Paragraph (2)(d) does not apply to a superannuation product on and from the first occasion a Product Disclosure Statement is given which:
 - (a) covers the product; and
 - (b) is prepared or purports to be prepared in accordance with Part 7.9 of the Act as affected by this Subdivision;
- and continues not to apply unless and until a Product Disclosure Statement is given which:
- (c) covers the product; and
 - (d) is prepared or purports to be prepared in accordance with Part 7.9 of the Act as it applies but for this Subdivision.”.

Simple managed investment schemes: multifunds and hedge funds

- (2) Part 7.9 of the Act applies in relation to a responsible entity of a simple managed investment scheme as if regulation 7.9.11S of the Regulations were modified or varied by, after subregulation (4), inserting:

“(5) This Subdivision does not apply to a Product Disclosure Statement to which all of the following apply:

- (a) the Statement covers a financial product which relates to a simple managed investment scheme;
 - (b) the Statement is prepared or purports to be prepared in accordance with Part 7.9 of the Act as it applies but for this Subdivision;
 - (c) the Statement is set out in a document in which there is also set out one or more other Product Disclosure Statements which:
 - (i) cover a financial product which relates to another registered scheme but not another financial product; and
 - (ii) is prepared or purports to be prepared in accordance with Part 7.9 of the Act as it applies but for this Subdivision.
- (6) Subject to subsection (7), this Subdivision does not apply to a simple managed investment scheme that is a hedge fund or fund of hedge funds.

- (7) In this regulation:

derivative includes an agreement under which:

- (a) a person agrees to deliver securities or interests in a managed investment scheme (each a ***delivery product***) to another person at a time (***maturity***) in the future;
- (b) the maturity is determined by reference to a specified time or the occurrence or non-occurrence of a specified event or circumstance;
- (c) the number and value of the delivery products to be delivered at maturity is ultimately determined or derived from the value or amount of one or more of the following:
 - (i) other financial products;
 - (ii) an asset;

- (iii) a rate (including an interest rate or exchange rate);
- (iv) an index;
- (v) a commodity.

fund of hedge funds means a registered scheme:

- (a) that is promoted by the responsible entity using the expression and as being a “fund of hedge funds”; or
- (b) in relation to which at least 35% of scheme property is invested in a way that gives rise to economic interests in one or more of the following:
 - (i) a hedge fund; or
 - (ii) a managed investment scheme or body, whether operating or carrying on business in or outside this jurisdiction, that would be a hedge fund if the scheme or body were a registered scheme; or
- (c) that is promoted by the responsible entity on the basis that scheme property will be invested in a way so that paragraph (b) will apply to it.

hedge fund means a registered scheme that:

- (a) is promoted by the responsible entity using the expression and as being a “hedge fund”; or
- (b) is covered by two or more of the following:
 - (i) the scheme:
 - (A) deals in financial products in accordance with investment strategies intended to produce a return with low correlation (including no correlation) to each of the prescribed published indexes or any combination of them; or
 - (B) acquires an economic interest in financial products through:
 - (I) three or more interposed entities; or
 - (II) two or more interposed entities if at least one of the entities is an entity that is formed or incorporated outside this jurisdiction or under laws other than Australian laws;

where the responsible entity of the scheme
or an associate has the capacity to control:

- (III) the disposal of the products; or
- (IV) two or more of the interposed entities;

(For the purposes of sub-subparagraph (B), the calculation of the number of interposed entities through which the scheme acquires an economic interest in a financial product is to be performed by reference to each separate vertical stream of interposed entities.

Note: For example, where a head scheme directly invests in schemes A and B, and both schemes A and B directly invest in scheme C, there are 2 vertical streams, with each stream comprising 2 interposed entities. The first vertical stream comprises schemes A and C. The second vertical stream comprises schemes B and C. There is no single vertical stream comprising schemes A, B and C.)”;

- (ii) the scheme acquires any of the following for the dominant purpose of making a financial investment:
 - (A) a credit facility;
 - (B) a margin lending facility;
 - (C) a financial product (other than partly-paid securities) the acquisition of which is likely to result in a debt, whether actual, contingent or prospective, owed by the holder of the product to another person;
- (iii) the scheme deals in derivatives excluding dealings covered by one or more of the following sub-subparagraphs:
 - (A) the dealing is for the dominant purpose of managing foreign exchange or interest rate risk associated with the holding of some or all of the scheme property; or
 - (B) both of the following apply:
 - (I) the dealing takes place on a financial market;
 - (II) the dealing is for the dominant purpose of managing the financial risk arising from deferring a proposed dealing in another financial product that is not a derivative for a period of less than 28 days; or

- (C) both of the following apply:
 - (I) the dealing takes place on a financial market;
 - (II) the notional derivatives exposure of the scheme (excluding derivatives covered by sub-subparagraph (A) or (B)) at any point in time does not exceed 10% of the net asset value of the scheme at that time unless the exposure is attributable to circumstances that were not reasonably foreseeable by the responsible entity and the exposure is for a period of no more than 3 consecutive business days;

(For the purposes of sub-subparagraph (B):

- (a) a dealing in a derivative for the dominant purpose of managing the financial risk arising from deferring a proposed dealing in another financial product that is not a derivative is taken to be for a period of deferral of 28 days or more if the dealing, and any previous dealing in derivatives that takes place on a financial market, together are for the dominant purpose of managing the financial risk arising from deferring the same proposed dealing in the other financial product for a period of 28 days or more; and
 - (b) a dealing in a derivative for the dominant purpose of managing the financial risk arising from deferring a proposed dealing in another financial product is not taken to satisfy the sub-subparagraph merely because the derivative has a term of 28 days or more.)
- (iv) the scheme sells financial products, whether in or outside this jurisdiction, in relation to which, at the time of the sale:
 - (A) the seller does not have a presently exercisable and unconditional right to vest the products in a buyer; or
 - (B) the seller has a presently exercisable and unconditional right to vest the products in a buyer only because of a securities lending arrangement;

- (v) both of the following are satisfied:
 - (A) the responsible entity of the scheme or a person who manages some or all of the scheme property has rights to be paid fees (**performance fees**) substantially based on the performance of that property whether or not the responsible entity or the person also has rights to be paid fees substantially based on the gross or net value of all of the scheme property;
 - (B) the responsible entity has made a statement in writing (whether in a Product Disclosure Statement or otherwise) to the effect that performance fees will be payable in the event the responsible entity or the person satisfies certain criteria related to the performance of the scheme property and has not withdrawn that statement.

For the purposes of subparagraphs (b)(i) to (v), the scheme deals in, acquires or sells a financial product, an economic interest or facility if the responsible entity of the scheme does so in relation to the scheme (whether directly or through an interposed entity) or the scheme is promoted by the responsible entity on the basis that it will do so.

For the purposes of determining whether a registered scheme is covered by two or more subparagraphs of paragraph (b) of this definition, a scheme that deals in derivatives which, but for this provision, results in the scheme being covered by:

- (a) subparagraph (iii) (the derivatives limb); and
- (b) either or both of the following:
 - (i) subparagraph (ii) (the **leverage limb**);
 - (ii) subparagraph (iv) (the **short selling limb**);

is taken not to be covered by the leverage limb or the short selling limb unless the scheme is covered by the leverage limb or the short selling limb for some other reason.

A registered scheme is taken to be covered by two or more subparagraphs of paragraph (b) of this definition if all of the following apply:

- (a) the scheme and any other entity (including, for the avoidance of doubt, a registered scheme or foreign entity) through which the scheme acquires an economic interest in financial products, taken together, would be covered by two or more of those subparagraphs;
- (b) the scheme, taken alone, would not be covered by two or more of those subparagraphs;
- (c) a reasonable person would conclude that the use of one or more of those other entities as a means through which the scheme acquires an economic interest in financial products is for the sole or dominant purpose of bringing about a result that the scheme, taken alone, would not be covered by two or more of those subparagraphs.

interposed entity, in relation to a scheme, means an entity that is interposed between the scheme and a financial product in which the scheme has an economic interest but does not include:

- (a) a registered scheme; or
- (b) a notified foreign passport fund; or
- (c) an entity which:
 - (i) is incorporated, formed or registered in a foreign jurisdiction in relation to which a prescribed foreign regulatory authority regulates financial services; and
 - (ii) either:
 - (A) is, or whose operator is, specifically authorised by that regulatory authority to make offers of financial products that comprise rights or interests in the entity to the general public in that foreign jurisdiction; or
 - (B) is, or whose operator is, specifically authorised to make offers of financial products that comprise rights or interests in the entity to the general public in another foreign jurisdiction by a prescribed foreign regulatory authority that regulates financial services in that other jurisdiction.

net asset value, in relation to a scheme, means the value of the assets of the scheme less the value of the liabilities of the scheme (other than liabilities to members as members of the scheme), as they would appear on a balance sheet at the time of calculation made up for lodgment as part of a financial report under Chapter 2M of the Act if the scheme were a reporting entity.

notional derivatives exposure, in relation to a scheme, means the absolute sum of:

- (a) the face value of, or the notional amount in respect of, each derivative as at the date on which the derivative is entered into, held by the scheme that gives rise to an exposure (**long exposure**) because the scheme would benefit by an increase in the price or value of the underlying or reference asset to which the derivative relates; and
- (b) the face value of, or the notional amount in respect of, each derivative as at the date on which the derivative is entered into, held by the scheme that gives rise to an exposure (**short exposure**) because the scheme would benefit by a decrease in the price or value of the underlying or reference asset to which the derivative relates;

adjusted as follows:

- (c) if a derivative gives rise to a long exposure and another derivative gives rise to a short exposure, and both derivatives are otherwise on the same terms and relate to an underlying or reference asset of the same class, the face value of, or notional amount in respect of, each derivative is to be offset against each other.

prescribed foreign regulatory authority means a foreign regulatory authority included in Schedule 10F.

prescribed published index means a published index which is widely used for benchmarking purposes and is solely or predominantly comprised of one or more of the following asset classes:

- (a) shares that are able to be traded on a financial market;
- (b) interests in managed investment schemes that are able to be traded on a financial market;
- (c) debentures of a body corporate;

- (d) debentures, stocks or bonds issued by a government;
- (e) bills of exchange, promissory notes, certificates of deposit or other negotiable short-term money market instruments.

securities lending arrangement means an arrangement under which:

- (a) one entity (the ***lender***) agrees that it will:
 - (i) deliver particular financial products to another entity (the ***borrower***) or to an entity nominated by the borrower; and
 - (ii) vest title in those products in the entity to which they are delivered; and
 - (b) the borrower agrees that it will, after the lender does the things mentioned in paragraph (a):
 - (i) deliver the products (or equivalent products) to the lender or to an entity nominated by the lender; and
 - (ii) vest title in those products (or those equivalent products) in the entity to which they are delivered.”.
- (3) Part 7.9 of the Act applies in relation to a responsible entity of a simple managed investment scheme as if the Regulations were modified or varied by, after Schedule 10E, inserting:

“Schedule 10F Prescribed foreign regulatory authorities
(subregulation 7.9.11S(7))

Item	Foreign regulatory authorities
1	Alberta Securities Commission
2	Finanzmarktaufsicht of Austria
3	Financial Services and Markets Authority of Belgium
4	British Columbia Securities Commission
5	Financial Supervision Commission of Bulgaria
6	Cyprus Securities and Exchange Commission
7	Czech National Bank
8	Finanstilsynet of Denmark
9	Dubai Financial Services Authority
10	Estonian Financial Supervision Authority
11	Finanssivalvonta of Finland
12	Autorité des Marchés Financiers of France
13	Bundesanstalt für Finanzdienstleistungsaufsicht of Germany
14	Hellenic Capital Market Commission of Greece
15	Guernsey Financial Services Commission
16	Hong Kong Securities and Futures Commission
17	Pénzügyi Szervezetek Állami Felügyelete of Hungary

18	Fjármálaeftirlitið of Iceland
19	Central Bank of Ireland
20	Isle of Man Financial Supervision Commission
21	Israel Securities Authority
22	Commissione Nazionale per le Società e la Borsa of Italy
23	Financial Services Agency of Japan
24	Jersey Financial Services Commission
25	Finanšu un kapitāla tirgus komisija of Latvia
26	Finanzmarktaufsicht of Liechtenstein
27	Bank of Lithuania
28	Commission de Surveillance du Secteur Financier of Luxembourg
29	Securities Commission of Malaysia
30	Malta Financial Services Authority
31	Autoriteit Financiële Markten of the Netherlands
32	New Zealand Financial Markets Authority
33	Finanstilsynet of Norway
34	Ontario Securities Commission
35	Securities and Exchange Commission of Pakistan
36	Polish Financial Supervision Authority
37	Comissão do Mercado de Valores Mobiliários of Portugal
38	Quebec Autorité des Marchés Financiers
39	Romanian National Securities Commission
40	The Monetary Authority of Singapore
41	Národná banka Slovenska
42	Financial Services Board of the Republic of South Africa
43	Comisión Nacional del Mercado de Valores of Spain
44	Finansinspektionen of Sweden
45	Securities Commodities Authority of the United Arab Emirates
46	Financial Conduct Authority of the United Kingdom
47	U.S. Securities and Exchange Commission

”.

6 Regulated acquisitions through certain superannuation funds

Part 7.9 of the Act applies in relation to a trustee of a superannuation entity as if provisions in that Part were modified or varied as follows:

(a) after section 1011B insert:

“1011BA Definitions relating to regulated acquisitions of financial products by superannuation trustees

In this Division and section 1017CA:

accessible financial product has the meaning given by section 1013FB.

additional acquisition has the meaning given by subsection 1012IA(1).

equivalent direct acquisition has the meaning given by subsection 1012IA(2).

regulated acquisition has the meaning given by subsection 1012IA(1).”;

(b) in section 1012IA:

(i) in subsection (1), after the definition of ***acquirer***, insert:

“***additional acquisition***, in relation to a regulated acquisition of a financial product by a provider who is a trustee of a superannuation entity (or another person with whom the provider has an arrangement) in relation to a client, means a regulated acquisition of the financial product at a time when the provider (or other person) is already holding a financial product of the same kind as a result of an instruction given by the client.”; and

(ii) after subsection (2) insert:

“*Additional acquisitions by superannuation trustees*

(2A) A provider who is a trustee of a superannuation entity does not have to comply with subsection (2) in relation to an additional acquisition if at any time before making the acquisition the provider tells the client in writing, and obtains the client’s written acknowledgement, that, at the time an additional acquisition of a financial product occurs, the client may not have received:

- (a) the current Product Disclosure Statement for the product; and
- (b) the disclosure that subsection 1017B(1) would require the issuer of the product to give to the client if the client had made an equivalent direct acquisition of the product.

Note: This subsection applies regardless of whether a current Product Disclosure Statement for the product has been prepared.

(2B) The provider does not have to obtain the client’s written acknowledgement if the client held a superannuation product to which the entity relates immediately before 1 July 2007 and has held the product at all times since that date.”;

(iii) after paragraph (5)(a):

“(aa) where the provider is a trustee of a superannuation entity who chooses to comply with subsections 1013FB(3) and (4) in relation to a Product Disclosure Statement for a superannuation product to which the entity relates that the trustee has prepared—the reference in subsection 1013A(1) to the issuer of a financial product that is an accessible financial product included a reference to the provider; and

- (ab) where the provider is a trustee of a superannuation entity who chooses to comply with subsections 1013FB(5) and (6) in relation to a Product Disclosure Statement for a superannuation product to which the entity relates—the reference in subsection 1013A(1) to the issuer of a financial product that is an accessible financial product included a reference to the provider; and
- (ac) where the provider is a trustee of a superannuation entity—the reference in subsection 1013A(2) to a person making the offer to sell a financial product that is an accessible financial product included a reference to the provider; and”;
- (iv) after subsection (5) insert:

“Modification of section 1013C

(5A) Section 1013C applies in relation to a regulated acquisition by a provider who is a trustee of a superannuation entity as if the reference to the responsible person in subsection 1013C(2) were:

 - (a) in the case of an issue Statement—a reference to the issuer of the financial product; or
 - (b) in the case of a sale Statement—a reference to the seller of the financial product.”;

(c) in subsection 1013D(1) omit “sections 1013F and 1013FA,”, substitute “sections 1013F, 1013FA and 1013FB,”;

(d) in section 1013E omit “sections 1013F and 1013FA,”, substitute “sections 1013F, 1013FA and 1013FB,”;

(e) after section 1013FA insert:

**“1013FB Choices available in relation to Product Disclosure
Statements for regulated acquisitions through
superannuation funds**

- (1) This section applies in relation to a regulated acquisition of a financial product (the *accessible financial product*) that may be made through a superannuation entity.
- (2) The trustee of the superannuation entity, in relation to the Product Disclosure Statement (the *superannuation entity PDS*) for the superannuation product to which the superannuation entity relates, may choose to comply with:
 - (a) subsections (3) and (4) (separate Statements for the superannuation product and the accessible financial product); or

- (b) subsections (5) and (6) (integrated Statement for the superannuation product and the accessible financial product); or
- (c) the requirements of this Division apart from this section.

Separate PDSs for superannuation product and accessible financial products

- (3) The superannuation entity PDS must:
 - (a) contain the information about the superannuation product that is required by this Division; and
 - (b) in relation to the accessible financial product—contain the information that a person would reasonably require as a retail client to:
 - (i) identify the accessible financial product; and
 - (ii) understand the investment strategy under which the product may be acquired by way of a regulated acquisition; and
 - (iii) work out whether to ask for further information about the product; and
 - (c) contain a statement that informs people of their right to obtain from the trustee on request a Product Disclosure Statement for the accessible financial product.
- (4) A trustee that complies with subsection (3) in relation to the superannuation entity PDS:
 - (a) does not have to include in the superannuation entity PDS any other information about the accessible financial product that would be required by or under sections 1013C, 1013D, 1013DA, 1013E or 1013F; and
 - (b) must give a Product Disclosure Statement for the accessible financial product to any person who asks for it.

Integrated PDS for superannuation product and accessible financial products

- (5) The superannuation entity PDS and the Product Disclosure Statement for the accessible financial product must be combined:
 - (a) in a single document (the *integrated PDS*); or

- (b) in 2 or more separate documents (the *integrated PDS*) that are given at the same time.

Note: Other requirements relating to Product Disclosure Statements made up of 2 or more separate documents are set out in section 1013L.

- (6) The integrated PDS must contain:
 - (a) the information about the superannuation product and the accessible financial product that is required by this Division; and
 - (b) the information that a person would reasonably require as a retail client to understand the investment strategy under which the accessible financial product may be acquired by way of a regulated acquisition.

Note 1: Paragraphs 1012IA(5)(aa), (ab) and (ac) enable a Product Disclosure Statement for the accessible financial product to be prepared by the trustee where:

- (a) the trustee chooses to comply with subsections (3) and (4) of this section; or
- (b) the trustee chooses to comply with subsections (5) and (6) of this section.

Note 2: Where the trustee chooses to comply with subsections (3) and (4) of this section, the Product Disclosure Statement for the accessible financial product may be prepared by the trustee or by issuer of the accessible financial product.”;

- (f) after section 1017C insert:

“1017CA Information for existing holders of superannuation products who have given instructions to make regulated acquisitions

- (1) This section applies to a trustee of a superannuation entity if:
 - (a) a person (the *client*) has directed the trustee to follow an investment strategy (the *affected investment strategy*) that involves making a regulated acquisition of an accessible financial product in relation to all or part of the client’s holding of the superannuation product to which the entity relates; and
 - (b) at a time when the trustee (or another person with whom the trustee has an arrangement) holds the accessible financial product as a result of the client’s direction, a material adverse change to a matter, or a significant event that adversely affects a matter occurs, being a matter that would have been required to be specified in a Product Disclosure Statement for the accessible financial product prepared on the day before the change or event occurs; and

- (c) the trustee has not decided to stop making regulated acquisitions of the product under the affected investment strategy.

Note: Paragraph (b) applies whether or not a Product Disclosure Statement was in fact prepared (or required to be prepared) on the day before the change or event occurs.

- (2) As soon as practicable after the change or event occurs, the trustee must notify the client in accordance with subsections (3) and (4):
 - (a) of the change or event; and
 - (b) that:
 - (i) the client may direct the trustee to follow an investment strategy made available by the trustee that does not involve regulated acquisitions of the accessible financial product, in relation to either or both of the following:
 - (A) the holding in the product that the trustee (or other person with whom the trustee has an arrangement) has acquired as a result of following the affected investment strategy;
 - (B) any future contribution by or on behalf of the client to the superannuation entity to the extent to which it would otherwise have been subject to the affected investment strategy; and
 - (ii) if the client does not give the trustee directions in accordance with subparagraph (i)—the trustee will continue to follow the affected investment strategy.
- (3) The trustee must notify the client in one of the ways that a notification under subsection 1017B(1) is required to be given.
- (4) The notice must give the client the information that is reasonably necessary for the client to understand the nature and effect of the change or event.
- (5) At the same time as notifying the client, the trustee must give the client:
 - (a) where the only regulated acquisitions of the accessible financial product that the trustee is making or is proposing to make are additional acquisitions—either:
 - (i) any further information that the client reasonably requires for the purposes of making a decision

about whether to give a direction of the kind referred to in paragraph (2)(b); or

- (ii) a Product Disclosure Statement for the accessible financial product that would be required to be given under section 1012IA in relation to a regulated acquisition of the product on the instruction of a person who is not a holder of the product on the day the notice is sent; or

- (b) otherwise—a Product Disclosure Statement for the accessible financial product.

Note 1: The information referred to in subparagraph (a)(i) may be given by including it in the notice referred to in subsection (2).

Note 2: Sections 1014D and 1014E will enable subparagraph (a)(ii) or paragraph (b) to be satisfied in some circumstances by giving a Product Disclosure Statement together with a Supplementary Product Disclosure Statement or just giving a Supplementary Product Disclosure Statement.

- (6) The trustee does not have to give the client information or a Product Disclosure Statement under subsection (5) if:
 - (a) the client has already received a Product Disclosure Statement that contains all of the information that the first-mentioned Product Disclosure Statement would be required to contain; or
 - (b) the trustee believes on reasonable grounds that paragraph (a) applies.
- (7) The trustee does not have to give the client information or a Product Disclosure Statement under subsection (5) if the trustee believes on reasonable grounds that the client has received, or has, and knows that they have, access to, all of the information that the first-mentioned Product Disclosure Statement would be required to contain through:
 - (a) a Product Disclosure Statement; and
 - (b) information provided to the client under section 1017B in relation to the superannuation product or through continuous disclosure under Chapter 6CA in relation to the accessible financial product.

- (8) In this section:

investment strategy, in relation to a superannuation entity, means an investment strategy formulated by the trustee of the entity under the covenant referred to in subsection 52(6) of the *Superannuation Industry (Supervision) Act 1993*.

Note 1: This section only applies in relation to a client where the trustee (or other person with whom the trustee has an arrangement) is holding the relevant

financial product as a result of a direction given by the client at the time the change or event occurs. In a case where the trustee (or other person) is not holding the product at that time, the trustee nonetheless may need to give the client an appropriate Supplementary or new Product Disclosure Statement before acquiring the product on their instructions. This is because the Product Disclosure Statement required to be given by subsection 1012IA(2) must be a Statement that meets the requirements set out in Division 2 of this Part.

Note 2: If the trustee decides to stop making regulated acquisitions of a financial product, the trustee must notify holders of interests in the superannuation entity in accordance with section 1017B.”;

(g) in paragraph 1017K(a) of the Act:

- (i) after “1013A,” insert “1013FB,”;
- (ii) omit “1016E and 1017A”, substitute “1016E, 1017A and 1017CA.”.

Note: Section 1017K of the Act is inserted by Part 3 of Schedule 10BA to the Regulations.

7 Platform operators and trustees of superannuation entities using an agent to deliver a Product Disclosure Statement

Part 7.9 of the Act applies in relation to a trustee of a superannuation entity, an operator of an IDPS and a responsible entity of an IDPS-like scheme as if that Part were modified or varied by, after subsection 1015C(3), inserting:

“(3A) Despite subsection (3), a Statement for accessible financial products may be given or sent to a person’s agent who is acting in the capacity of a financial services licensee or an authorised representative of a financial services licensee if:

- (a) the Statement is given or sent by:
 - (i) the trustee of a superannuation entity for the purpose of complying with section 1012IA, paragraph 1013FB(4)(b) or section 1017CA; or
 - (ii) an operator of an IDPS for the purpose of complying with subsection 912AD(26); or
 - (iii) the responsible entity of an IDPS-like scheme for the purpose of complying with subsection 1013DAB(8); and

Note: Sections 1013FB and 1017CA are notionally inserted by *ASIC Corporations (Shorter PDS and Delivery of Accessible Financial Products Disclosure by Platform Operators and Superannuation Trustees) Instrument 2022/XX*. Subsection 912AD(26) is notionally inserted by ASIC Class Order [CO 13/763]. Subsection 1013DAB(8) is notionally inserted by ASIC Class Order [CO 13/762].

- (b) the trustee, operator or responsible entity has received evidence of a written agreement between the agent and the person that appoints the agent as the person’s agent.
- (3B) A financial services licensee or authorised representative who receives a Statement as a person’s agent must promptly give or send the Statement to the person.
- (3C) In this section:

accessible financial product means a financial product that may be held through an IDPS, an IDPS-like scheme or a superannuation entity.

IDPS has the same meaning as in ASIC Class Order [CO 13/763].

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

operator has the same meaning as in ASIC Class Order [CO 13/763].”.

Part 3—Repeal

8 Repeal

This instrument is repealed on 1 October 2027.