



**ASIC**

Australian Securities & Investments Commission

## REGULATION IMPACT STATEMENT

# ASIC policy on platforms: Update to RG 148

June 2013

### **About this Regulation Impact Statement**

This Regulation Impact Statement (RIS) addresses ASIC's proposals for revising and updating our guidance on platforms in Regulatory Guide 148 *Investor directed portfolio services* (RG 148) and accompanying class orders.

## What this Regulation Impact Statement is about

- 1 This Regulation Impact Statement (RIS) addresses ASIC's proposals for revising and updating our guidance on platforms in Regulatory Guide 148 *Investor directed portfolio services* (RG 148) (which we propose to rename *Platforms that are managed investment schemes*) and accompanying class orders.
- 2 This follows a consultation paper published in March 2012, setting out our proposals and supporting rationale for reviewing our regulatory approach to investor directed portfolio services (IDPSs) and IDPS-like schemes (together, referred to as platforms): see Consultation Paper 176 *Review of ASIC policy on platforms: Update to RG 148* (CP 176). A summary of key submissions made in response to CP 176 and our consideration of those responses can be found in Report 351 *Response to submissions on CP 176 Review of ASIC policy on platforms: Update to RG 148* (REP 351).
- 3 A review of ASIC's policy on the regulation of platforms was initiated to address existing and emerging issues in the platforms sector. The platforms sector has changed and grown significantly since our policy was first developed, and continues to develop, expand and present new challenges. Given this, we recognised a corresponding need to review and update our guidance.
- 4 In developing our final position, we have considered the regulatory and financial impact of our proposals. We are aiming to strike an appropriate balance between:
  - (a) promoting confident and informed investors, including by ensuring that they receive adequate disclosure and advice about platforms and investments available through them, and through appropriate regulation of platform operators; and
  - (b) facilitating activity within the platforms sector taking into account existing and emerging issues and risks in that sector, and simplifying the manner in which platforms are regulated to reduce compliance costs.
- 5 This RIS sets out our assessment of the regulatory and financial impacts of our proposed policy and our achievement of this balance. It covers:
  - the likely compliance costs;
  - the likely effect on competition; and
  - other impacts, costs and benefits.

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## A Introduction

### What are IDPSs and IDPS-like schemes and how does ASIC regulate them?

- 6 Platforms are typically used to facilitate the acquisition and holding of assets by enabling investors to bundle product features such as custody of assets, execution and consolidated reporting. Investor directed portfolio services (IDPSs) and IDPS-like schemes are types of platforms.
- 7 ASIC treats platforms as financial products under the *Corporations Act 2001* (Corporations Act) and applies the financial product advice provisions of the Corporations Act where advice is given about using platforms. Our current guidance on platforms is contained in Regulatory Guide 148 *Investor directed portfolio services* (RG 148).

#### IDPSs

- 8 IDPSs are unregistered managed investment schemes for holding and dealing with one or more investments selected by investors. They are managed investment schemes because investors have the expectation of cost savings (e.g. through the netting of transactions or the pooling of funds to acquire investments) or access to investments that would not otherwise be available to them.
- 9 In broad terms, IDPSs provide custodial, transactional and reporting services where the investor makes all of the investment decisions. Specifically, IDPSs have the following features:
- (a) A custodian (which may or may not be an IDPS operator) holds assets through the IDPS.
  - (b) The investor has the sole discretion to decide what (but not necessarily when) assets will be acquired or disposed of through the IDPS, with limited exceptions (e.g. an IDPS operator may rely on standing instructions where they do not exercise any discretion, such as in the case of realising predefined assets to maintain a minimum agreed cash balance).
  - (c) An investor may direct the IDPS operator to transfer assets in specie to them. This allows a client to move in and out of the IDPS with minimum disruption to the underlying investments. Such transfers are limited to circumstances where the client is able to hold the assets in their own right. A transfer is not required where, for example, there is a minimum holding requirement that is greater than the interest the client would have after the transfer.

- (d) An investor may direct the IDPS operator to realise assets held on account for them, unless this is not possible under the law or the contractual terms under which the assets were issued. The realisation of an investor's assets may be made on the direction of another person to pay money owing by the client to:
    - (i) pay fees associated with the IDPS where necessary; and
    - (ii) cater for provisions typically found in margin lending agreements that enable the lender to sell assets provided as security where the borrower fails to meet a margin call.
  - (e) Any discretion of the holder of assets held through the IDPS may be otherwise exercised only in accordance with the directions of the investor with limited exceptions (e.g. an IDPS operator may rely on standing instructions where they do not exercise any discretion).
  - (f) Investors are led to expect, and are likely to receive, benefits from using the IDPS in the form of:
    - (i) access to investments they could not otherwise directly access; or
    - (ii) cost reductions through the pooling of investor funds (which allow the IDPS operator to make large investments that can be acquired on more favourable terms) or through the netting of transactions (where investors' directions to buy and sell assets are offset against each other and a transaction for the net amount is entered into).
- 10 ASIC conditionally exempts IDPSs with these features from being required to be registered managed investment schemes: see Class Order [CO 02/294] *Investor directed portfolio services*.
- 11 When regulating IDPS operators, we require operators to comply with RG 148 and [CO 02/294]. IDPS operators must hold an Australian financial services (AFS) licence with an IDPS condition requiring compliance with the conditions of the relief in [CO 02/294] and certain other IDPS-specific AFS licence conditions.

### **IDPS-like schemes**

- 12 IDPS-like schemes operate similarly to IDPSs, in that investment decisions are generally made in accordance with specific client instructions, but are registered managed investment schemes (registered schemes).
- 13 An IDPS-like scheme must have a constitution that has provisions allowing members to:
- (a) direct that an amount of money be invested in specific investments available through the scheme; and
  - (b) receive capital and income distributions from the scheme determined by reference to amounts received by the custodian corresponding to their

interests in the scheme and acquired in accordance with their directions (see Class Order [CO 02/296] *Investor directed portfolio-like services provided through a registered managed investment scheme*).

- 14 When regulating IDPS-like schemes, we give responsible entities relief from some of the managed investment scheme, fundraising, financial product disclosure and other investor rights requirements provided for in the Corporations Act where responsible entities comply with conditions in [CO 02/296].

## The platforms sector

- 15 Since 2000, the platforms sector has changed and grown significantly. Over the same period, the amount of non-superannuation-related investment in platforms has tripled to around \$90 billion of funds under management.
- 16 As at 30 June 2000, total funds under management in the entire wraps and platforms sector (including superannuation master trusts, IDPS-like schemes and IDPSs) was almost \$109 billion. Of this, non-superannuation-related investment in IDPS and IDPS-like schemes accounted for \$23.2 billion or 21% of the total funds under management in the entire wraps and platforms sector.
- 17 In the September 2012 quarter, total funds under management in the entire wraps and platforms sector (including superannuation master trusts, IDPS-like schemes and IDPSs) exceeded \$451 billion, an increase of around \$45 billion or 11% over the previous year. The percentage of non-superannuation-related investment in the total market peaked in the March 2007 quarter at nearly 29%, but has since decreased. As at 30 September 2012, it accounted for \$89.9 billion or 20% of total funds under management in wraps and platforms, most of which is currently concentrated in leading operators. The remainder lies with another approximately 130 IDPS operators and approximately 30 responsible entities of IDPS-like schemes.
- 18 IDPS operators and responsible entities of IDPS-like schemes vary in size and operating models. Some are part of large conglomerates with complex business structures accounting for a number of elements of the product distribution chain. Others are smaller in size and operate IDPSs or IDPS-like schemes as their sole business through a simpler operating model. The sector is also developing with the emergence of new business models.

## Regulatory reform

- 19 The Future of Financial Advice (FOFA) reforms are aimed at improving the quality of financial product advice. The reforms introduce new requirements that advice, including about using a platform, be (among other things):
- (a) in the best interests of the client; and

- (b) prioritised in the interests of the client if there is a conflict between the client's interests and the interests of the adviser or any of their associates where the adviser knows, or reasonably ought to know, about the conflict.
- 20 The reforms have also introduced a prospective ban on conflicted remuneration structures, including commissions and volume-based payments, unless it can be proven that they could not reasonably be expected to influence financial product advice to retail clients. This ban applies to both the giving and receipt of conflicted remuneration. Given volume-based payments have been a main source of income for most platform operators, the ban may incentivise the industry to restructure or reorganise their businesses to maintain revenue lines. Such restructuring has been evidenced in the trend towards vertical integration between platform operators and dealer groups, heightening the risk of inappropriate personal financial product advice about using a platform or investing through one being given, which may result in consumers and investors making poorer investment decisions.

## Identifying and assessing the problem

### Our investigation of the problem

- 21 Since publishing RG 148 in 2000 the platforms sector has experienced significant growth and change. The sector continues to develop and expand, especially with the emergence of new business models.
- 22 In particular, the FOFA reforms have had a significant impact on the platforms sector. There is a trend towards new forms of vertical integration between parties in the product distribution chain. Dealer groups are increasingly restructuring their operations to become platform operators to secure revenue streams.
- 23 This trend appears to be driven by industry responses to the FOFA reforms, particularly the ban on conflicted remuneration. Vertical integration could exacerbate conflicts of interest, placing IDPS operators (who are also dealer groups) in a position to direct many clients to in-house products. These trends are already evident in the market and management of the risks associated with the behaviour is necessary.
- 24 Existing conflicts management and disclosure regimes address how conflicts must be managed, including by related parties. For example, s912A(1)(aa) of the Corporations Act requires platform operators to have in place adequate arrangements for the management of conflicts of interest that may arise in the provision of financial services. To do so, we expect a platform operator

to have in place a comprehensive conflicts of interest policy that contains appropriate measures to manage conflicts, and following that policy in the running of its business (e.g. disclosure in the IDPS Guide or PDS (as relevant), where appropriate). However, our review has shown that IDPS operators do not generally disclose important processes such as how investments are selected for inclusion on investment menus by platform operators. This lack of clear, meaningful and specific information about how investments are put onto platforms limits the ability of investors to make informed decisions about suitability.

- 25 Given these changes in the platforms sector, we think that it is timely to review and revise our regulatory guidance to ensure our regulatory framework is adequate and promotes platform operators with sufficient capacity and competency to provide financial services and products to investors.
- 26 Changing investor behaviour with increased demand for new investment types on platforms and greater self-direction on platforms without the use of an adviser also makes a review of our regulatory guidance timely for promoting confident and informed investors in this sector.
- 27 We have also identified a number of other existing and emerging issues and risks, which it is timely to address through our review: see paragraphs 29–30.
- 28 These issues and risks result because of the following factors:
- (a) The growth of the platforms industry since 2000 and the further anticipated growth through new platform operators as a result of the FOFA reforms (evidenced through renewed interest in obtaining platform operator licences compared with previous years) warrants renewed interest in how they are regulated to ensure that current and new operators can meet the requirements for operating a platform, such as financial requirements, managing conflicts of interest, providing appropriate disclosure and promoting investor rights. The increasing competition and new product innovation in the industry is encouraged. However, ASIC is concerned that some of these new operators entering the market are relying on existing compliance arrangements which are suited to their current businesses, rather than developing compliance arrangements which are better suited to the platforms sector. There has been at least a 7% increase in the number of licensing applications and variations for platform operators since the announcement of the FOFA reforms, with the majority of new operators setting up proprietary structures. ASIC is concerned that entities which attempt to transfer their existing non-platform structures to the platforms sector may lack the appropriate competencies in operating a platform.
  - (b) Private corporate structures that some IDPS operators appear to be adopting more frequently are not required to meet the same financial



accountability standards and disclosure requirements about any related party transactions that public companies need to meet (the majority of existing IDPS operators are already set up as public companies). There is a risk that the private company structure, which is less transparent than its public counterpart and has reduced governance measures, does not give investors sufficient information that they need to make an informed decision about whether to use a platform and invest through it. This is because, as the size of the industry grows (with an increased number of investors being affected), it is more difficult for investors to differentiate those IDPS operators that are not affected by related party conflicts of interest from those that are.

- (c) Investor behaviour is shifting. While the platforms sector has historically been heavily adviser-driven, the growth of investor-driven access to platforms through, for example, ‘unified managed accounts’, has developed an emerging market of investors seeking direct access to platforms that offer a broad range of investment options without an adviser. This trend has encouraged other operators to branch out into providing access to their platforms without an adviser, and the trend is likely to continue with the introduction of the FOFA opt-in requirement. These raise the risk that investors may not be able to understand the differences between investing through a platform and investing directly in a financial product, or investing through different platforms. ASIC encourages innovations in financial products and services and would like to ensure that disclosure requirements are adequate and provide investors with all the relevant information that they require to make an informed decision about whether they should use the platform and invest through it, regardless of whether the investor is advised.
- (d) Consumers may not have access to the necessary information they need to make an informed decision about using platforms, or the information may be too complex or difficult to understand. This increases the risk that the investor will make a decision that is not in their best interest.
- (e) The regulation of platforms requires some simplification. While altering the fundamental premises on which the IDPS and IDPS-like scheme regulatory regime is built would raise significant practical difficulties given the length of time the regime has been in existence and adopted, the regulation of platforms is unnecessarily prescriptive and complicated in certain areas.
- (f) Our review of the platforms sector indicated an increase in the use of outsourcing for infrastructure and technology by platform operators, including offshore, creating a corresponding heightened risk that a platform operator’s current monitoring and supervision processes may not be as effective in some cases. Where any aspect of the performance of functions of a platform have been contracted to another entity, for example, transactional functions or custodial functions, the operator

must have a contract with that person that requires that person to maintain, document and comply with adequate internal control procedures to ensure compliance with the financial services laws. The platform operator is required to enter into a contract with the service provider for the services. ASIC is concerned that smaller institutions may not be in a position to adequately assess all the risks associated with the arrangement, and that the outsourced entity may lack the requisite skills to ensure that appropriate risk management control and monitoring processes are in place around the outsourcing arrangements.

- (g) After the events of the global financial crisis and the increasing volatility in the markets, it has become increasingly important that platforms have sufficient financial resources to conduct their financial services business. Since the introduction of minimum financial requirements in 2002, the current financial resource requirements have not been updated and no longer meet the appropriate minimum standards to ensure orderly wind-up in the event of the failure of an IDPS operator. This risk is exacerbated by significant developments in the sector, including:
- (i) a significant increase in the amount of funds under management by IDPS operators in Australia over the years (see paragraphs 16–17). This has partly been driven by diversification in the types of investments available on platforms; and
  - (ii) following the global financial crisis, it came to our attention that some platform operators (especially those that are also responsible entities of IDPS-like schemes) struggled to meet redemption requests. The flight to cash created significant demand for redemptions and, as a result, investors were not able to cash in their investments. This creates concern that existing financial resource requirements are not adequate for addressing current market risks.

### **Current issues and risks**

29 While there is a sound awareness, understanding and application of our current regulatory guidance on platforms, there is also general consensus that key existing and emerging issues and risks with our regulatory approach and within the sector are not currently being addressed, which can be addressed through different or improved regulatory responses.

30 These risks and issues, and their consequences, include:

- (a) There is an emergence of less mature and less experienced platform operators, particularly through ‘private labelling’ arrangements, in response to the FOFA reforms. Our review of the platforms sector and subsequent consultation indicated that retail consumers and investors may not be able to adequately assess the capacity and competency of

platform operators to provide financial services. This potentially exposes investors to loss or harm in the event of business failure or inappropriate conduct.

- (b) The current capital and liquidity requirements do not address current market risks. ASIC is concerned that the current levels may not be sufficient to operate an IDPS given the expansion of the services offered since the existing regulatory regime was introduced.
- (c) The current capital and liquidity requirements are not aligned with changes to the financial resource requirements of responsible entities (including of IDPS-like schemes), which came into effect in November 2012. Significant differences in these regulatory approaches may create an incentive for regulatory arbitrage given the highly similar nature of the operations of an IDPS and IDPS-like scheme, potentially resulting in operators favouring the IDPS model regardless of the appropriateness of using that model. The considerable similarity between IDPSs and IDPS-like schemes also suggests that there is no regulatory basis for different treatments in this regard because investors would expect the same level of protection regardless of the structure.

Note: The current requirements that an IDPS operator must meet include: (a) an NTA requirement; (b) the standard solvency and positive net assets requirement; (c) the standard cash needs requirement; and (d) the standard audit requirement.

- (d) Investor behaviour is changing, with increased demand for new investment types on platforms (e.g. structured capital protected products) and new means of interacting with platforms (e.g. self-directed investment without an adviser). Our review of the platforms sector as well as feedback received through the consultation process suggested that current business and operating structures were not well-equipped to address these new forms of investing through platforms, creating a risk that retail consumers and investors are less likely to invest through platforms confidently and in an informed manner (including understanding the differences between investing through a platform and investing directly).
- (e) The current framework for regulating platforms restricts the manner in which disclosure documents may be delivered. For example, industry is not currently able to take advantage of electronic delivery, which would be cheaper and more effective. Since 2000, the framework has not been updated to reflect corresponding regulatory developments such as ASIC's approach to facilitating online Product Disclosure Statement (PDS) disclosures generally in Regulatory Guide 221 *Facilitating online financial services disclosures* (RG 221).
- (f) Our review of platform operators, particularly those with aligned dealer groups, indicated that conflicts of interest often arise between parties in the product distribution chain. This potentially results in advisers giving advice that may not be in the best interests of the client.

- (g) Investors are often unable to transfer their investments from one platform operator to another, or from one platform to another, because of portability obstacles arising from ageing technology and industry consolidation through increased mergers and acquisitions activity. This results in platform operators being unable to take advantage of synergies as a result of mergers and acquisitions and higher prices for investors unable to transfer out of expensive legacy products and systems.
- (h) Our review of the platforms sector indicated an increase in the use of outsourcing for infrastructure and technology by platform operators, including offshore, creating a corresponding heightened need for appropriate monitoring and supervision of these operations. Our concerns are that platform operators outsource functions because they do not have sufficient financial or technological resources to provide the relevant services in-house. While there have not been any incidents or complaints that have been brought to ASIC's attention to date, ASIC is concerned with operators' ability to adequately monitor and supervise the quality of the services outsourced.
- (i) The current prescriptive requirements for disclosure documents results in complex information that consumers and investors are unable to effectively use in their decision making about the use of platforms and investing through them. Since 2000, the framework has not been updated to reflect corresponding regulatory developments such as 'clear, concise and effective' disclosure requirements in the Corporations Act. For example, the specific information required under paragraph 2(f) of [CO 02/294] is prescriptive, and the inability to allow a single Financial Services Guide (FSG) to be used when many providing entities provide financial services as part of a platform is duplicative.
- (j) The automatic inability for operators to rely on [CO 02/294] and [CO 02/296] if a condition of the relief is breached, which does not reflect equivalent regulatory developments on breach reporting that have been developed since the requirements were introduced in 2000, remains a significant concern in the platforms sector. This is a significant concern because a breach of a condition of the class order results in automatic loss of the ability to rely on the class order relief.
- (k) The requirements for disclosure of fees and costs has not been aligned with equivalent regulatory developments since the requirements were introduced in 2000—specifically, the enhanced fee disclosure regime. This is a problem because IDPS operators have to comply with different rules on the disclosure of fees, which can result in higher compliance costs. It also makes it harder for investors to compare fees and costs information across platforms and other financial products.

- (l) The current regulatory framework requires the product issuer to give documents directly to the investor, rather than through an investor's agent (e.g. advisers). This results in high compliance costs for product issuers.
- (m) The Corporations Act provisions, which allow withdrawal if an investor acquires investments where disclosure for the investments becomes defective before issue, do not apply to investments made through a platform, resulting in potentially adverse consequences for retail consumers and investors concerning their investment where such situations arise.
- (n) Our review of the platforms sector revealed that practices for selecting financial products for inclusion on investment menus or in model portfolios vary significantly among platform operators. Without disclosure of investment selection processes, this variance may adversely affect the decision of a client to use a platform or invest through it.
- (o) Our review indicates that as investor behaviour in the platforms sector is shifting and greater self-direction through platforms results, it is increasingly important that investors are aware of the differences between investing through a platform and investing directly. For example, cooling-off rights, withdrawal rights, voting rights and access to internal and external dispute resolution are generally not available when investing through a platform.
- (p) Our review revealed that in many cases, if platform investors choose not to continue to receive the service of a permitted adviser (i.e. an adviser endorsed by the platform), they cease to be eligible to use the platform and may not be able to access or manage their investments. This is problematic considering it is likely with the FOFA opt-in requirement that some investors will choose not to continue to receive the services of a permitted adviser.

31 ASIC established the regulatory framework in which platforms are regulated in 2000. The framework has not been updated or modified in the intervening period, despite the changes and developments in the platforms sector, and the risks and issues that have consequently arisen. While the platforms sector could take, and is expected to take, some measures to voluntarily improve its standards as a way of attracting increased business, particularly in light of the FOFA reforms, it is appropriate that we reconsider the minimum standards expected of platform operators to ensure the sector appropriately addresses emerging risks and issues to ensure confident and informed consumer and investor decision making.

## Our objectives

- 32 Our overriding objectives when regulating platforms are to:
- (a) promote investor confidence in the sector and help investors make informed decisions about platforms by requiring:
    - (i) appropriate and compliant personal advice about these vehicles (if given);
    - (ii) adequate disclosure about platforms and the investments held through them, including the key differences between investing through a platform and investing directly;
    - (iii) reliable investor reporting;
    - (iv) effective compliance controls; and
    - (v) custodial and transactional integrity;
  - (b) apply the minimum appropriate regulation to platform operators, consistent with the framework for the regulation of financial services and products in the Corporations Act; and
  - (c) treat IDPS operators and IDPS-like schemes similarly where there is no regulatory basis for different treatment.
- 33 We aim to strike an appropriate balance between:
- (a) promoting disclosure that assists investors to make better informed decisions about using platforms and investing through them;
  - (b) not unduly interfering with the operation and marketing of platforms; and
  - (c) promoting efficiency in the capital markets.
- 34 This balance reflects the balance between promoting confident and informed investors and allowing the markets to operate efficiently, and our proposals aim to better strike this balance in a changing environment.

## B Options

35 We think the following options are likely to meet our objectives:

**Option 1:** Current regulatory approach continues to apply (maintain the status quo).

**Option 2:** Retain key aspects of our current regulatory approach and strengthen or simplify our regulatory approach where warranted to address key existing and emerging issues and risks in the platforms sector and ensure confident and informed consumer and investor decision making about platforms (preferred option).

36 As the problems identified in Section A concern the adequacy of the existing regulatory framework in light of recent changes to the industry, we have not considered the option of enhancing monitoring, surveillance and enforcement of current requirements. This approach would not address ASIC's concerns about competency, transparency, capacity and operating requirements in the platforms sector. It also does not respond to the emerging risks and changes in the platforms industry because of the changing environment. In addition, it does not deal with some of the complexities associated with our current regulatory approach, which predated the financial services reforms introduced in 2004.

### **Option 1: Current regulatory approach continues to apply (maintain the status quo)**

37 Under this option, we would continue to apply our existing regulatory approach, relying on our guidance in RG 148 and accompanying class order relief.

38 This option would see no change in our policy in this area and, therefore, no modification to address existing and emerging issues and risks in the platforms sector, including some that arise as a result of our current regulatory approach: see paragraphs 29–30. This option also means that the platforms sector would have no additional clarification to address these issues and risks.

## Option 2: Retain key aspects of our current regulatory approach and strengthen or simplify our regulatory approach where warranted to address key existing and emerging issues and risks in the platforms sector and ensure confident and informed consumer and investor decision making about platforms (preferred option)

- 39 Under this option, we would retain key aspects of our current regulatory approach and provide additional guidance to platform operators to address the existing and emerging issues and risks facing the platforms sector. This option would strengthen and (where appropriate) simplify our regulatory guidance in RG 148 and accompanying class orders to ensure that our regulatory approach is up-to-date and sets minimum standards expected of platform operators so that the sector appropriately addresses emerging risks and issues it faces to promote confident and informed consumer and investor decision making.
- 40 Under Option 2, we propose to change our current regulatory approach to some disclosure and operating requirements to simplify and clarify our regulatory approach: see Table 1.

**Table 1: Proposed changes to guidance and class orders**

Problem(s) to be addressed	ASIC proposal
<p>Risk of insufficiently informed or uninformed investor decision making about using platforms and investing through them, particularly given changing investor behaviour (e.g. greater self-direction without an adviser), coupled with a corresponding recognition that equivalent regulatory developments have not been addressed since our guidance and class orders were developed in 2000</p>	<p>In part, we propose a disclosure-based solution for platform operators, which would also reflect current equivalent regulatory requirements. Under this approach, we propose to:</p> <ul style="list-style-type: none"> <li>• replace the current specific content requirements for IDPS Guides with a general obligation to disclose and present any information that might reasonably be expected to influence materially a retail client's decision to use a platform in a clear, concise and effective manner. These obligations mirror the language of s1013E and 1013C(3) of the Corporations Act introduced into the Act in 2004. The requirements of s1013E and 1013C are supported by Regulatory Guide 168 <i>Disclosure: Product Disclosure Statements (and other disclosure obligations)</i> (RG 168), first issued in 2001. Therefore, the language and the concept are accepted, understood and applied by industry;</li> <li>• remove the current specific disclosure requirements for IDPS-like schemes;</li> <li>• allow information in an IDPS Guide to be incorporated by reference to other documents, with incorporation by reference on the same basis as allowed in reg 7.9.15DA of the Corporations Regulations 2001 (Corporations Regulations);</li> <li>• allow non-materially adverse information that would otherwise have to be included in a new IDPS Guide, or supplementary IDPS Guide, to be provided through a facility like a website. This is similar to the relief provided in Class Order [CO 03/237] <i>Updated information in product disclosure statements</i>.</li> </ul>



Problem(s) to be addressed	ASIC proposal
	<p>'Materially adverse information' is defined by reference to s1021B of the Corporations Act introduced into the Act in 2003. It is a well understood concept and refers to information of a kind the inclusion of which in, or the omission of which from, a statement would render the statement defective within the meaning of s1021B as defined in the Corporations Act. The concept of materially adverse information is also referred to in RG 168.</p> <ul style="list-style-type: none"> <li>• provide guidance that: <ul style="list-style-type: none"> <li>– fees and costs associated with an IDPS be disclosed in a manner consistent with Sch 10 of the Corporations Regulations (enhanced fee disclosure regulations);</li> <li>– costs incurred within investment products are not management costs of the IDPS; and</li> <li>– the IDPS Guide no longer include prescribed statements about the importance of understanding fees and costs associated with the IDPS or disclosure of fees for investments available through the IDPS; and</li> </ul> </li> <li>• allow platform operators to give documents to investors electronically, including by providing hyperlinks if the investor has agreed on an 'opt-in' basis.</li> </ul> <p>We would note that the current requirements are minimum requirements that would be expected.</p>
<p>Address the current regulatory inability to allow a single Financial Services Guide (FSG) to be used when many providing entities provide financial services as part of a platform to minimise duplicative regulatory requirements (where desired)</p>	<p>We propose to allow a single FSG to be used when many providing entities provide financial services as part of an IDPS. In these circumstances, IDPS operators would have the ability to issue:</p> <ul style="list-style-type: none"> <li>• a single FSG, for which each operator would be jointly and severally liable;</li> <li>• a single FSG, under which each operator would be liable only for specific parts of the document—that is, those parts of the FSG that relate to their activity if the FSG clearly identifies the person responsible for each disclosure made or required; or</li> <li>• separate FSGs.</li> </ul>
<p>Simplify the requirement for provision of disclosure documents for dividend or distribution reinvestment plans and regular savings plans, given the nature of these circumstances, where the investor has access to the relevant documents to inform their decision making</p>	<p>We propose to remove the requirement for a PDS or Ch 6D disclosure document to be given before financial products or securities are acquired through a platform in the case of dividend or distribution reinvestment plans and regular savings plans.</p> <p>Under the terms of a regular savings plan, the investor would be given access to disclosure that the platform operator reasonably believes is current as soon as reasonably practicable and in any event within five business days of acquisition.</p> <p>The investor would be required to be informed that they have access to these disclosures.</p>

Problem(s) to be addressed	ASIC proposal
Simplify the requirement to give a PDS or Ch 6D disclosure document where the investor already holds the financial products or securities through the platform and has access to the relevant documents to inform their decision making	<p>Where an investor already holds financial products or securities through a platform, we propose to remove the requirements for the investor to be given a PDS or Ch 6D disclosure document for those financial products or securities if the platform operator reasonably believes that:</p> <ul style="list-style-type: none"> <li>• the investor has access to and knows that they have access to the relevant PDS or Ch 6D disclosure document; and</li> <li>• the relevant PDS or Ch 6D disclosure document the investor has access to is the most current on issue or does not differ from the most current PDS or Ch 6D disclosure document on issue in a way that is materially adverse to the investor.</li> </ul> <p>This would not apply if the platform operator is aware that the PDS or Ch 6D disclosure document does not meet the requirements of the Corporations Act in a way that is materially adverse to the client.</p>
Address the regulatory inability of platform operators and trustees of superannuation master trusts to give documents to an agent of the investor	<p>We propose to:</p> <ul style="list-style-type: none"> <li>• allow platform operators and superannuation master trust trustees to give investors documents by giving the documents to another person (who can be an associate of the platform operator) acting as agent of the investor where the documents are also provided electronically to the investor;</li> <li>• allow an AFS licensee or authorised representative to act as an agent to receive documents (with the consent of the AFS licensee required). The agent and investor would be required to enter into an agreement, evidence of which would be provided to the platform operator or superannuation master trust trustee; and</li> <li>• modify the Corporations Act to provide that where the agent receiving these disclosures is an AFS licensee or authorised representative, it must give the disclosures to the investor; otherwise it contravenes the Corporations Act.</li> </ul> <p>This proposal applies to disclosure documents about investments held through platforms and superannuation master trusts, and is not intended to apply to IDPS Guides, PDSs for IDPS-like schemes, superannuation master trusts or annual investor statements and reports from auditors.</p>
Risk of inappropriate personal financial product advice about using a platform or investing through one being given, which may result in consumers and investors making poorer investment decisions	<p>We propose to set out our expectation that personal financial product advice about a platform and subsequent content in a Statement of Advice (SOA) would generally include advice about:</p> <ul style="list-style-type: none"> <li>• the service offered by the platform and how that service will benefit the investor in comparison to the investor investing directly or through other platforms;</li> <li>• the range of investments offered through the platform and whether the range of investments is appropriate for the investor;</li> <li>• investment selection processes of platform operators and whether those processes have a material influence on an investor's decision to use one platform over another, or any platform at all;</li> </ul> <ul style="list-style-type: none"> <li>• the fees and costs associated with the platform and how they relate to other fees and costs;</li> </ul>

Problem(s) to be addressed	ASIC proposal
Address the contravention of a condition of relief, which results in the automatic loss of relief and is particularly onerous on platform operators (potentially exposing them to regulatory action or civil liability)	<ul style="list-style-type: none"> <li>• any significant tax implications of using the platform;</li> <li>• any significant implications if the investor later wishes to leave the platform or ceases to receive advice; and</li> <li>• conflicts of interest (if required), including: <ul style="list-style-type: none"> <li>– any benefits or remuneration that the advice provider or an associate might receive; and</li> <li>– any other interests that might be reasonably capable of influencing the advice provider in giving advice.</li> </ul> </li> </ul>
Simplify the requirement for consent from product issuers for the use of their disclosure documents in certain circumstances	We propose to remove the current requirement for issuers of Ch 6D disclosure documents to consent to their use for the investors if platform operators are precluded from netting and required to effect clients' instructions to acquire securities by application under a Ch 6D disclosure document. An investment that is made on the basis of an application under the Ch 6D disclosure document liability would be clear without the need for specific consent.

41 In addition, under Option 2, we propose to strengthen our current regulatory approach: see paragraphs 42–74.

### Financial requirements for IDPS operators

42 With the emergence of new operating models in the platforms sector, and less mature and less experienced IDPS operators in particular, concerns arise about whether IDPS operators have adequate resources (including financial capacity) and competency to conduct their financial services business.

43 The events of recent years have heightened the need for review of the capital adequacy requirements of IDPS operators. Failure of an IDPS operator could have a significant impact on many investors and flow-on effects through the broader market. We aim to provide some level of assurance that if an IDPS operator fails, there is sufficient money available for the orderly transition to a new IDPS operator or to wind up the IDPS in the interests of its clients.

44 Under Option 2, we propose to do this by improving the capacity and competency of IDPS operators to conduct their financial services business by requiring that they meet equivalent financial requirements to those that have applied to responsible entities since 1 November 2012. This means that platform operators that are not also responsible entities will need to meet:

(a) the standard solvency and positive net assets requirement;

- (b) a tailored cash needs requirement, including preparing 12-month cash flow projections approved by directors at least quarterly;
- (c) a tailored audit requirement, reflecting the financial requirements that apply; and
- (d) a revised NTA requirement to:
  - (i) hold the greater of:
    - (A) \$150,000;
    - (B) 0.5% of the average value of property held through any platform it operates (other than by investors) capped at \$5 million; or
    - (C) 10% of their average IDPS revenue (with no maximum);
  - (ii) where they perform custodial functions, hold a minimum NTA capital requirement the greater of \$10 million or the amount required under paragraph 44(d)(i); and
  - (iii) comply with new liquidity requirements so that they hold at least 50% of their NTA requirement under paragraph 44(d)(i) or 44(d)(ii) in cash or cash equivalents and an amount equal to that NTA requirement in liquid assets.

### Corporate structure requirements

- 45 While most established IDPS operators are public companies, some operators are structured as private companies. Private companies are not subject to some governance measures that apply to public companies that IDPS operators are not currently obliged to meet (e.g. disclosure about related party transactions).
- 46 Our recent review of the platforms sector highlighted the emergence of less mature and less experienced platform operators through new forms of vertical integration and the growth of ‘private labelling’ arrangements where dealer groups are restructuring to become platform operators themselves. Our consideration of recent AFS licence applications in this context indicates that some of these new platform operators are proprietary companies.
- 47 Under Option 2, we propose that IDPS operators must be a public company as responsible entities of IDPS-like schemes are required to be to strengthen their operating structures and promote greater transparency as set out under paragraph 28(b).
- 48 For those IDPS operators that would need to convert to public companies under our proposal to continue operating IDPSs, they will need to pass special resolutions dealing with the change of company type, change of name (if necessary, but ASIC will in any case remove the ‘Pty’ from the

company name on registration) and adopt any changes in the constitution or adopt replaceable rules. They must then lodge two forms with ASIC: Form 205 *Notice of resolution* and Form 206 *Application for change of company type*. ASIC then publishes a notice in the Gazette and after a period of one month has passed with no order of the Administrative Appeals Tribunal (AAT) or a court order being made preventing the alteration, registration occurs. Transition to a public company does not impose any other restrictions in terms of capital raising or participation.

- 49 We have not proposed the option of allowing the IDPS to remain a private company but with improved transparency by requiring them to meet disclosure and reporting requirements similar to those that apply to public companies. This approach would be more complicated for the entity to manage the different compliance requirements, as well as complicated for ASIC to administer.

### **Disclosure about selection of investments**

- 50 Investment selection to determine what products are available through a platform is increasingly important to inform investor decision making. Investment menus can provide clients access to a potentially wide range of financial products they could not otherwise directly access. Platforms provide an avenue to access investments that meet the specific needs and requirements of an investor in terms of risk, diversification, return and variety of investment choice. However, having a wide range of investments on the menu also increases the time and effort an investor must afford to understand the options available, consequently increasing the risk that an uninformed investor will choose an unsuitable product. Some platforms have practices for selecting financial products for inclusion on investment menus that involve a more rigorous approach such as the use of research methodologies that underpin investment committees' assessments of whether investments are suitable for inclusion. Other practices include licensed dealer groups affiliated with platform operators requesting inclusions on an investment menu. The growing trend towards new forms of vertical integration between parties in the product distribution chain heightens the risk of product suitability for investors in the latter cases.
- 51 Under Option 2, we propose to require platform operators to disclose on what basis and how they select financial products for inclusion on investment menus or in model portfolios in their IDPS Guide or PDS (as relevant).
- 52 We also propose to provide guidance on:
- (a) the disclosure of the process involved in choosing products that are issued by or associated with the platform operator or its related bodies corporate; and

- (b) whether a review of the investment policy is a material change and would require a supplementary IDPS Guide or PDS (as relevant) to be issued.

### **Cooling-off rights**

- 53 Investor behaviour is changing and more investors are becoming self-directed on platforms without the use of an adviser. With increased moves towards investors directly investing in platforms there is a concern that they do not necessarily understand the differences between investing through a platform and investing directly. In particular, in some circumstances investors may not understand that they have no statutory cooling-off rights if they invest through a platform rather than if they had invested directly through the financial product.
- 54 Under Option 2, we propose that platform operators disclose to investors that statutory cooling-off rights are not available when they invest in a financial product through a platform rather than acquiring the financial product directly.
- 55 We propose that the IDPS Guide or PDS (as relevant) clearly and prominently disclose the key differences between investing through a platform and direct investment in financial products through a consumer warning that includes a statement that statutory cooling-off rights are not available.
- 56 We also propose to require that the application form for investment through a platform include an acknowledgement by the investor located close to where the platform investor signs (or agreed to if submitted electronically) that they have been informed, and understand, that they do not have statutory cooling-off rights for financial products acquired through the platform.

### **Withdrawal rights**

- 57 Similarly to statutory cooling-off rights, in certain circumstances some investors do not necessarily understand that withdrawal rights are often not available to them when they invest through a platform. Investors do not necessarily understand the differences between investing through a platform and investing directly.
- 58 Under Option 2, we propose that platform operators make clear and prominent disclosure that withdrawal rights for financial products acquired through platforms may not be available when disclosure for those investments (in a PDS or disclosure document) becomes defective before issue through a consumer warning: see paragraph 55. As with statutory cooling-off rights, we also propose to require that the application form for investment through a platform include an acknowledgement by the investor

that they have been informed, and understand, that they may not have withdrawal rights for financial products acquired through the platform.

- 59 IDPS operators performing transactional functions and responsible entities of IDPS-like schemes should:
- (a) where practicable, ensure that notification of any option to withdraw is communicated to investors no later than five days from when received;
  - (b) give investors access to any supplementary or replacement disclosure and inform them of how it may be accessed; and
  - (c) act on investors' instructions as to how to exercise the option (if desired) and allocate any withdrawal pro rata if necessary.

### **Voting rights**

- 60 As with statutory cooling-off rights and withdrawal rights, investors do not necessarily understand the differences between investing through a platform and investing directly. This is particularly the case with voting rights that investors may or may not be entitled to when investing through a platform.
- 61 Our recent engagement with the platforms sector drew to our attention the varied voting practices among platform operators. While many platform operators already provide information about corporate actions generally to investors, some platform operators have no formal policy for exercising voting rights for platform holdings. Some platform operators receive information about votes on resolutions but choose not to forward this information to investors. Other platform operators decide on behalf of the investor that they will abstain from voting altogether, while some platform operators seek to obtain investor instructions.
- 62 Our review indicated that disclosure about the voting policy of the platform operator and whether the investor had a right to vote or receive corporate action information was not always included in the relevant disclosure documents.
- 63 Under Option 2, we propose to require a platform operator to have in place a voting policy that includes information about its voting practices on company and scheme resolutions and other corporate actions. The platform operator must disclose that voting policy to investors in the IDPS Guide or PDS (as relevant).
- 64 We propose that the voting policy should provide key information about the platform operator's voting policy for company or scheme resolutions, dealings with corporate actions generally and what rights, if any, the investor has in relation to voting. The voting policy should also provide information about how the investor will be communicated to about company and scheme resolutions and other corporate actions (if applicable).

- 65 For IDPS operators, if investors have the right to vote under the voting policy, we propose to require operators to take all reasonable steps to ensure votes attaching to financial products held for the investor are cast in accordance with any directions received from the investor within a reasonable period before the vote is required to be cast and not otherwise. Casting votes for investors may be subject to any fee applied not exceeding a reasonable estimate of the cost of exercising the particular vote.
- 66 If the IDPS operator does not allow voting by investors in certain circumstances, or altogether, we expect that its voting policy will state this and that this restriction will be disclosed prominently in the IDPS Guide. In these circumstances, we propose that the IDPS operator would be required to:
- (a) disclose in the IDPS Guide that voting rights are not available when investing through the platform through a consumer warning: see paragraph 55; and
  - (b) as with statutory cooling-off rights and withdrawal rights, obtain an acknowledgement from the investor in the application form that the investor is aware that they do not have any voting rights when investing indirectly in the financial product(s) through the platform. The application form will be required to include this acknowledgement, which could take the form of a 'tick-box' style warning in the application form. We do not expect that meeting this requirement would incur significant costs to implement and did not receive objections through submissions and further consultation either.

### **Dispute resolution and compensation**

- 67 Although investors acquiring products through a platform hold a beneficial interest in them, given the nature of the custodial holding, they are not entitled to access dispute resolution processes and schemes about those products when circumstances may require them. This is particularly problematic as more investors become self-directed on platforms without the use of an adviser.
- 68 For example, if an investor has a complaint against the issuer of an underlying product, they may incur the high costs of initiating proceedings in a court (whereas if they had invested directly they could make a complaint through the product issuer's internal dispute resolution processes or external dispute resolution scheme). Platform investors do not necessarily understand that they do not have this right.
- 69 Under Option 2, we propose that investors have access to the internal dispute resolution mechanisms of financial product issuers for financial products accessible by retail investors through platforms where the product issuer



consents to doing so, unless the financial products are on the investment menu before 1 July 2014 and the platform was in operation before 1 July 2013.

- 70 We propose that platform operators need to make clear and prominent disclosure in the IDPS Guide or PDS (as relevant) about who investors may complain to about different types of complaints. We also expect that, if required, the platform operator will provide assistance to investors and facilitate the process of dispute resolution as between platform investors and product issuers including, for example, by providing evidence of entitlements of the platform investor as necessary for the purpose.

### **Investors who cease to use an adviser and wish to assume control of their own platform account**

- 71 As investors become more self-directed on platforms without the use of an adviser, particularly with the ability to cease to use an adviser in light of the opt-in requirements of the FOFA reforms, informing their decision making to ensure appropriate and confident choice about platforms and ensuring the longevity of their investments through platforms becomes more important.
- 72 Currently, in many cases, if platform investors choose not to continue to receive the service of a permitted adviser (i.e. an adviser endorsed by the platform), they cease to be eligible to use the platform and may not be able to manage their investments. The platform investors may suffer loss as a result of their investments being liquidated immediately or being moved into a cash management account regardless of the prevailing market conditions.
- 73 Under Option 2, we propose that platform operators have in place a policy on how to deal with investors who do not opt in to continue to receive financial product advice, including how investor access to their investment is addressed. We propose that the IDPS Guide or PDS (as relevant) should disclose the implications of not choosing to use a permitted adviser and whether this will affect the investor's ability to continue to use the platform and invest through the platform, as well as how their investment will be affected as a result.
- 74 We also propose to provide good practice guidance that investors be allowed to use any adviser (not only permitted advisers) and, where they do not opt in to continue to receive financial product advice, be allowed to have direct access to manage their investments. Our good practice guidance would indicate to industry what we perceive to be the better way to deal with this issue. It would not constitute a legal requirement imposed on platform operators. However, we propose to indicate our intention to review the industry landscape in three to five years to assess industry's adoption of this practice and whether further regulatory intervention is warranted.

## C Impact analysis

### Affected parties

- 75 Parties affected by the proposed policy would include:
- (a) platform operators, including IDPS operators, responsible entities of IDPS-like schemes and trustees of superannuation master trusts;
  - (b) advice providers, including independent advisers, and licensed dealer groups and their associated adviser networks, who provide financial advice about using, or arrange for investors to use, platforms and invest through them;
  - (c) product issuers, including fund managers;
  - (d) custodians; and
  - (e) platform investors.

### Costs and benefits of each option

#### Option 1: Current regulatory approach continues to apply (maintain the status quo)

##### Impact on industry

- 76 The option to maintain the status quo means that the industry will not be faced with any new direct costs, as this option would mean that there are no changes to how platform operators will be regulated (other than through other regulatory changes, such as the implementation of the FOFA reforms).
- 77 However, there are no incremental benefits of maintaining the status quo.
- 78 If the status quo is maintained, the issues and risks that we have identified with industry and investor representatives are likely to continue and potentially be exacerbated, resulting in increased regulatory risk. Without clear regulatory guidance and accompanying class orders (as required) on how we expect platform operators to address these issues, there is likely to be uncertainty in the platforms sector, and potential adverse impacts on investors.
- 79 For example, maintaining the status quo will fail to address the emergence of less mature and less experienced platform operators, particularly through ‘private labelling’ arrangements as a response to the FOFA reforms. While the emergence of such operators will increase competition in the platforms sector, maintaining the status quo will not necessarily ensure that such

operators have adequate capacity and competency to provide the financial services they are authorised to provide for the benefit of investors and consumers.

80 In submissions received in response to CP 176, industry and investor representatives also generally supported the review of the current regulatory approach to platforms, rather than maintaining the status quo.

#### **Impact on investors**

81 We believe that there will be a long-term cost on investors because maintaining the status quo will not adequately address the problems identified in Section A.

82 Specifically, investors may be at greater risk of misunderstanding the features of a platform and the different rights that they have or do not have when investing through a platform.

83 Changing investor attitudes to investing and the shift towards independent, self-directed online investing, as opposed to adviser-driven investing, creates a greater need to strengthen the operating and disclosure requirements of platform operators to assist investors to make better informed decisions about using platforms and investing through them.

#### **Impact on government**

84 If the status quo were maintained, we would continue to regulate the platforms sector by applying the existing regulatory approach as set out in RG 148, and accompanying class order relief, as part of our business as usual, allocating resources to addressing issues on a case-by-case basis and undertaking surveillance activities and enforcement action.

85 However, we are concerned that maintaining the status quo may adversely affect our ability to regulate the platforms sector over time as it continues to develop, especially as new, less experienced platform operators enter the market. Without review and update, risks arising from the changing industry and regulatory environment exacerbate our concern that the existing regulation will be unlikely to maintain currency and relevance in this environment.

**Option 2: Retain key aspects of our current regulatory approach and strengthen or simplify our regulatory approach where warranted to address key existing and emerging issues and risks in the platforms sector and ensure confident and informed consumer and investor decision making about platforms (preferred option)**

**Impact on industry**

- 86 Our strengthened regulatory guidance would effectively address the objectives of promoting confident and informed platform investors and applying an appropriate level of regulation to platform operators (and product issuers in the case of the proposed extension of dispute resolution): see paragraphs 32–34. This will also improve the reputation of the platforms sector through greater transparency in platform operation and potentially lower the risk of possible failure of a platform operator. We also expect to promote greater competition because consumers and investors are better equipped to compare and contrast the costs and benefits of investing through platforms versus investing directly with product issuers.
- 87 As has been described at paragraph 17, total funds under management in the entire wraps and platforms sector (including superannuation master trusts, IDPS-like schemes and IDPSs) exceeds \$451 billion of which non-superannuation-related investment in IDPSs operated by approximately 130 IDPS operators and IDPS-like schemes operated by approximately 30 responsible entities make up 20% or \$89.9 billion, with the majority of investment concentrated in leading operators. In light of the significant size of the sector, we consider it appropriate to be proactive in our regulatory approach.
- 88 As part of our consultation process, we sought feedback on the quantifiable impact of our consultation proposals and have subsequently sought additional feedback on cost implications of our final proposed positions. Most submissions drew attention to additional compliance costs, although most did not quantify the amount or provide a cost estimate. In our Regulation Impact Statement (RIS) on financial requirements for responsible entities (November 2011), we estimated the compliance costs for those proposals. The impact of the proposals in the current RIS on platforms are likely to be similar to the compliance costs for responsible entities outlined in November 2011. Where we estimate costs below, these figures are based on those stated in the November 2011 RIS.
- Note: This RIS is available at [www.asic.gov.au/co](http://www.asic.gov.au/co) under Class Order [11/1140] *Financial requirements for responsible entities*.
- 89 Generally, while the direct cost impact of our final proposed positions would vary from entity to entity having regard to the diversity of IDPS operators

and responsible entities of IDPS-like schemes, we expect that compliance costs to meet the new requirements are likely to include:

- (a) changes to IT systems and existing compliance processes to comply with the regulatory framework provided by our guidance and accompanying class orders;
- (b) changes to existing point-of-sale disclosures (including rationalising FSGs, and updating IDPS Guides or PDSs (as relevant) and application forms) to ensure that they meet the proposed 'clear, concise and effective' and other requirements (e.g. enhanced fee disclosure; disclosure about selection of investments), while also complying with some specific content requirements to help promote more informed investor decision making, given the differences between investing through a platform and investing directly;
- (c) training for additional or different requirements of our guidance and accompanying class orders—this is estimated as a one-off cost of \$15,500 per entity. Ongoing training is already a requirement under the Corporations Act and so our proposals will not result in increased ongoing costs;
- (d) for IDPS operators, the cost of recapitalising (as required) to meet revised financial requirements—this is estimated to involve:
  - (i) for large entities (funds under management of more than \$30 million):
    - (A) \$5,000 internal administration costs to source additional capital, plus
    - (B) \$79,800 per every additional \$1 million capital required;
  - (ii) for smaller entities (funds under management of less than \$30 million):
    - (A) \$18,000 for external costs to source additional capital, plus
    - (B) \$79,800 per every additional \$1 million capital required; and
  - (iii) \$12,375 for preparing and auditing cash flow statements (for those entities that do not already meet this requirement); and
- (e) restructuring (if required) for the approximately 30 IDPS operators that are currently proprietary companies to meet revised corporate structure requirements—this is estimated to involve one-off costs of:
  - (i) \$2,000 to establish a new company;
  - (ii) \$20,000 if a new AFS licence is required;
  - (iii) \$30,000 for an audit of the new company and AFS licence;
  - (iv) \$10,000 for tax return and other statutory obligations; and
  - (v) internal administrative costs will depend on the size of the entity, but could range from \$5,000 to \$100,000 per entity.

- 90 Although we did not receive any feedback specifically on costs, these compliance costs are likely to include the costs of legal and/or taxation advice and other costs to make the relevant changes—either by in-house or external advisers. For example:
- (a) the requirement for an IDPS operator to be a public company will mean that approximately 30 IDPS operators will need to change their corporate structure—there are likely to be one-off costs associated with the legal and taxation advice costs that are likely to be required to establish a new corporate form and ongoing costs to comply with specific public company requirements;
  - (b) the requirements associated with updated disclosures in IDPS Guides or PDSs (as relevant) (e.g. disclosure of investment selection; disclosures about investor rights such as cooling-off rights; the ‘tick-box’ style acknowledgement in the application form) are likely to be associated with one-off legal advice costs; and
  - (c) the requirement to facilitate dispute resolution as between platform investors and product issuers is likely to be associated with ongoing process costs.
- 91 These costs will be offset by cost savings in certain cases. For example:
- (a) where many providing entities provide financial services as part of a platform, cost savings will arise where the platform operator chooses to issue a single FSG; and
  - (b) where voting rights are provided to IDPS investors, IDPS operators are able to accept fees that would not exceed the reasonable estimate of the cost of exercising a voting right.
- 92 For completeness, we received specific feedback from platform operators and representatives of custodial service providers who expressly indicated in submissions in response to CP 176 that compliance with our proposal on voting rights—to mandate the provision of voting rights to platform investors in accordance with their instructions (where this right has been provided to the client by the operator)—would impose significant costs (i.e. receiving information, passing information on to clients or their agents, obtaining instructions and exercising instructions as required). Platform operators will not be required to provide this right under Option 2, but where they do they must carry through investors’ instructions. ASIC expects that a platform operator will have in place a voting policy about its voting practices and disclose this information to investors.
- 93 Overall, while some of the new requirements may be more burdensome on smaller platform operators than medium to large operators, we do not anticipate that our revised regulatory approach will result in significant costs for industry. ASIC has no information to indicate that the proposals are likely to result in significant costs to the industry, nor information on the

exact costs that will be incurred to implement the new requirements. From our review of the industry, and the feedback that we received from the consultation process, we believe that—while there is a shortage of certainty that a net balance will arise from our revised approach—on balance and after taking into account all the relevant issues and risks raised, Option 2 will achieve a net benefit in the long term because:

- (a) our proposals simplify certain elements of our current regulatory approach and are warranted to align the regulatory framework with the current equivalent legislative requirements (e.g. in relation to enhanced fee disclosure and electronic and online disclosures), while retaining the fundamental cornerstones of our regulatory approach;
- (b) it will provide greater certainty to the platforms sector on how to address the existing and emerging risks and issues we have together identified (e.g. by applying the significant breach reporting obligations to IDPS operators instead of a contravention of a condition of relief automatically resulting in the loss of relief);
- (c) it removes prescriptive requirements in the current regulatory framework, which may not be appropriate for all platform operators, and will provide sufficient flexibility to platform operators by mandating requirements to maintain policies and disclose them, while allowing them flexibility in the content of those policies as it affects their business and business model; and
- (d) while there has not been a failure in the platforms sector, in light of the size of the industry (paragraph 17), the recent increased number of platform operators compared to previous years (paragraph 28(a)) and the potential effect of the FOFA reforms on the trend of vertical integration in the industry, we consider that, without changes in our regulatory approach, it is more likely that a platform operator may fail. The new financial and corporate structure requirements will provide greater transparency to improve the information available to investors and enhance confidence in the platforms sector by ensuring platform operators have adequate capacity and competency to conduct their financial services businesses. The financial resource requirements in existing licence conditions are not adequate to enable an existing licensee that becomes an IDPS operator to meet their obligations under their AFS licence.

### **Impact on investors**

- 94 A number of our proposals are designed on the premise that platform investors should be entitled to the same rights for investments through those vehicles as for investing directly and, where they are not entitled to the same rights, platform operators are required to draw that to their attention with adequate disclosures and warnings. This view is consistent with our current

approach that platform investors ought to be entitled to the same disclosure standards when investing through a platform.

- 95 Our proposals become increasingly important as investor behaviour in the platforms sector is shifting, with increasing demand for new investment types and greater self-direction. Greater focus on assisting investors to make better informed decisions about using platforms and investing through them is desirable, and our proposals for disclosure of investor rights (or lack of investor rights) promote such decision making.
- 96 While some of our proposals may impose additional costs on investors (e.g. the provision of voting rights—if made available by the platform—may be accompanied by a reasonable fee), we think that some investor rights are particularly important for maintaining informed investor decision making and confidence in the platforms sector generally. The new requirements provide that the platform operator must have in place a voting policy that includes information about its voting practices on company and scheme resolutions and other corporate actions and must be disclosed in the IDPS Guide or PDS. In addition, our proposal to mandate the extension of access to internal dispute resolution mechanisms of consenting product issuers for platform investors seeks to provide this benefit.
- 97 Some of the feedback that we received in the submissions indicated that the treatment of the 0.5% NTA amount on funds under management will add another level of costs on wholesale platforms that are also responsible entities of IDPS-like schemes. This is because the 0.5% will be charged on the responsible entity of the product in the managed investment scheme (for example), from which the platform will need to apply another 0.5% NTA for the IDPS, thereby increasing the funding costs of the service. While there is some degree of competition in this market, and ASIC considers it necessary that each AFS licensee accounts for its operational risk through meeting capital requirements, part of these costs is likely to be passed on to investors.
- 98 In addition, ensuring platform operators have appropriate capacity and competency to provide the financial services they are authorised to provide aims to reduce the risk of failure in the sector (notwithstanding that there have been no significant failures to date) and, in turn, minimises adverse impacts on platform investors, such as costly tax implications arising from portability obstacles. It also benefits investors because they should be receiving a higher quality service through greater market competition.

### **Impact on government**

- 99 We do not anticipate that our revised regulatory guidance for the platforms sector will result in a significant impact on ASIC, or government more generally.



100 Proactive assistance to industry promoting implementation, ongoing review and surveillance in the platforms sector and investor education will form part of our business as usual. As such, no additional staff or funding will be required to promote implementation or investor understanding. Minimal training will be required to ensure that staff are informed about, and understand, our revised regulatory approach, and setting out our clear expectations of what behaviour is required of platform operators may result in less of a need for ASIC to undertake enforcement action.

## D Consultation

### Initial consultation: CP 83

- 101 In June 2006, the then Parliamentary Secretary to the Treasurer asked ASIC to consider reviewing IDPS regulation as a result of public consultation through the Corporations and Financial Services Regulation Review.
- 102 In June 2007, we issued Consultation Paper 83 *Review of ASIC policy on investor directed portfolio services* (CP 83). Its purpose was to confirm that the settings in our regulatory approach were appropriate and to simplify them to provide clarity to industry, where required. We decided not to issue revised regulatory guidance and class orders following this consultation process. This decision was taken as a result of competing priorities arising from the global financial crisis and particularly so that we could assess how these regulatory settings applied in the changed environment.

### Further consultation: CP 176

- 103 In late 2011, we engaged with the platforms sector on key existing and emerging issues and risks, including the impact of current regulatory reforms. We visited nine established or emerging platform operators representing different business models within the sector and invited these operators to voluntarily complete a questionnaire designed to explore existing and emerging issues. Following the comments received as a result of this engagement with the platforms sector, we released CP 176 in March 2012, setting out our proposals, focusing primarily on:
- (a) existing issues on which we consulted in 2007, including a review of our regulatory approach to platforms; and
  - (b) key emerging themes and issues arising from our stakeholder engagement with the platforms sector, including operating requirements for IDPSs and enhancing investor rights.
- 104 We received nine submissions, including three provided by peak industry bodies and one by an investor representative body. ASIC's response to the feedback received in submissions on CP 176 is the subject of REP 351. A summary is provided in Table 2. Generally, the investor representative body was very supportive of our proposals, while industry bodies and representatives raised (in some cases, significant) concerns with aspects of our proposals. As a result, some of our final proposals differ from our original proposals in CP 176, particularly as they affect the extension of investor rights—in these instances, we met with key representatives from the platforms sector to test our final policy proposals and their cost implications.

**Table 2: Summary of ASIC proposals and industry feedback**

Our proposal	Feedback on proposal	Our response
<p><b>RG 148 and class orders</b></p> <p>We proposed to continue to regulate platforms through RG 148 and accompanying class orders.</p>	<p>Generally, respondents agreed with the approach of continuing to regulate platforms under class orders and RG 148 and welcomed the intention to continue regulating the platforms sector in this way and reviewing RG 148 and the class orders.</p>	<p>We propose to continue to regulate the platforms sector through an updated RG 148 and accompanying class orders to replace [CO 02/294] and [CO 02/296] that takes into account existing and emerging issues and risks in the sector.</p>
<p><b>Conflicts of interest</b></p> <p>We proposed not to provide specific guidance, at the current time, to platform operators and licensed dealer groups and their associated advisers on how to meet their obligation to have adequate arrangements in place to manage conflicts of interest.</p> <p>We noted that we would review this position in light of the FOFA reforms, and would consult with industry when considering how these reforms may affect our final approach.</p>	<p>Generally, respondents were supportive of this approach and considered existing obligations supplemented by legislative reforms as an adequate means of addressing the management of conflicts of interest.</p> <p>In subsequent consultation with industry, it has been indicated that the nature of relationships between entities is currently disclosed in disclosure material and any additional specific disclosure may result in an unlevel playing field.</p>	<p>In light of the FOFA reforms being passed in legislation, we propose to give specific guidance on the AFS licensee obligation to manage conflicts of interest as it applies to platform operators. This guidance will complement our more general guidance in Regulatory Guide 181 <i>Licensing: Managing conflicts of interest</i> (RG 181) and set out our expectations about disclosure of relationships between entities in the product distribution chain and benefit flows between these entities.</p>
<p><b>Portability obstacles</b></p> <p>In CP 176 we did not propose to address portability obstacles in platforms as they affect platform operators, partly because of the ongoing consideration the Australian Government is giving to product rationalisation in the managed investments and life insurance market.</p>	<p>Most respondents stressed the importance of addressing this issue because it has the potential to disadvantage existing and future investors and subjects the industry to unnecessary inefficiencies due to the difficulty for platform operators to facilitate investor access to improved technology and the costs incurred by investors in the maintenance of legacy platforms.</p>	<p>We do not propose to address this issue given the ongoing consideration the Australian Government is giving to product rationalisation.</p> <p>However, we propose to write to Treasury emphasising the concerns raised and suggesting that law reform be pursued.</p>

Our proposal	Feedback on proposal	Our response
<p><b>Proposed continuing guidance and class orders</b></p> <p>We proposed to retain key aspects of our current regulatory approach to platforms, such as continuing relief from the requirement for IDPSs to be operated as registered managed investment schemes, continuing to require PDSs for IDPS-like schemes, and continuing to require that platform investors have access to the same standards of information about products available through platforms that they would have had if they were acquiring those products directly, among other elements.</p>	<p>Respondents generally agreed with the retention of these aspects.</p> <p>One respondent suggested the removal of the requirement that IDPS investors can only be given accessible securities available for issue if:</p> <ul style="list-style-type: none"> <li>• the issuer has authorised the operator to use the prospectus as disclosure to IDPS investors;</li> <li>• it is a rights issue; or</li> <li>• if a prospectus would not be required for a direct acquisition.</li> </ul> <p>Platform operators should instead be able to notify the product issuer that the securities are being acquired by a platform, which would then trigger the product issuer's existing obligation to notify the operator if the prospectus is supplemented, replaced, withdrawn or defective.</p>	<p>We propose to reaffirm our guidance on various issues, such as continuing to remove the requirements that an IDPS be operated as a registered managed investment scheme, requiring that platform investors continue to have access to the same standards of information about products available through platforms that they would have had if they were acquiring the products directly, and requiring that recommendations to use a platform will be treated as financial product advice or personal advice, among other issues.</p> <p>We do not intend to alter the primary foundations on which our regulatory approach has been established.</p>
<p><b>Proposed changes to our regulatory approach</b></p> <p>We proposed changes to our regulatory approach, primarily in relation to various disclosure and operating requirements. Some of these proposed changes included replacing specific content requirements for IDPS Guides with a general obligation to disclose and present in a clear, concise and effective manner, allowing IDPS Guides to incorporate information by reference, and allowing platform operators to give investors documents electronically: see Table 1.</p>	<p>Respondents were broadly supportive of our approach.</p> <p>One respondent noted that the disclosure of fees and costs of platforms should also extend to include arrangements between product issuers and platform operators (e.g. preferred partnership plans). The respondent noted that these arrangements have the potential to distort the product offer menu due to the commercial benefits attributable to the platform operator.</p> <p>Respondents noted that further clarity was needed around whether an investor must be given a document, or whether electronic access to a document was sufficient. They further submitted that any such measures should be applicable to superannuation platforms.</p>	<p>We propose to revise our guidance on various issues to account for existing and emerging issues in the platforms sector, including aligning our regulatory approach with current requirements in the Corporations Act—for example, allowing incorporation by reference in IDPS Guides, allowing platform operators to give documents electronically on an opt-in basis and applying significant breach reporting obligations on IDPS operators. See Table 1 for a full list of the existing and emerging issues.</p>

Our proposal	Feedback on proposal	Our response
<p><b>Financial requirements</b></p> <p>We proposed to align the financial requirements for IDPS operators with those that apply to responsible entities. Among other things this would require the IDPS operator to:</p> <ul style="list-style-type: none"> <li>• prepare 12-month cash flow projections approved by directors at least quarterly;</li> <li>• meet new NTA requirements (including where custodial functions are performed); and</li> <li>• comply with new liquidity requirements.</li> </ul>	<p>Respondents were generally supportive of the principle of requiring IDPS operators to maintain sufficient capital, and being subject to reporting requirements similar to managed investment schemes.</p> <p>One respondent noted concern that dealer groups would reap the product revenue due to the ban on conflicted remuneration. The respondent therefore submitted that the barriers to entry should be raised.</p> <p>Another respondent was concerned that imposing the 0.5% NTA on funds under management would only lead to additional costs on wholesale platforms, which would ultimately be passed on to investors.</p> <p>In our subsequent consultation, industry has not raised objection to amending the definition of 'revenue' initially proposed, nor imposing a tailored audit requirement to account for the change in financial requirements.</p>	<p>We propose to impose the same financial requirements on IDPS operators as those that apply to responsible entities.</p> <p>In imposing new financial requirements, we propose to apply a definition of 'revenue' where the revenue of the AFS licensee includes the revenue of any person involved in performing functions forming part of the IDPS for which that operator is responsible to clients for providing those services.</p> <p>In addition, to account for the change in financial requirements, we propose to impose a tailored audit requirement.</p>
<p><b>Corporate structure requirements</b></p> <p>We proposed that an IDPS operator must be a public company.</p>	<p>Respondents were generally supportive of the proposal stating that it would lead to a level playing field with increased transparency and accountability.</p>	<p>We propose to require that IDPS operators be public companies.</p>

Our proposal	Feedback on proposal	Our response
<p><b>Voting rights</b></p> <p>We proposed that IDPS operators that are responsible for transactional functions must have in place a voting policy for company and scheme resolutions and other corporate actions. Under this policy, IDPS operators would have to take reasonable steps to obtain client instructions about the exercise of voting rights for company or scheme resolutions in relation to assets held through the IDPS, and act on those instructions.</p>	<p>There was strong opposition to this proposal from most respondents. Respondents stated that there is no practical or scalable way to disaggregate pooled holdings and enable investors to make individual elections for resolutions. They submitted that changes to the law would be required because, typically, product issuers do not facilitate voting by custodians whereby custodians may split their vote. Extensive technology costs would also be required.</p> <p>However, one respondent considered that investors would have better transparency over the shares in which they have beneficial ownership where these shares are held under a custodial account.</p> <p>In our subsequent consultation with industry, comfort has been expressed with not mandating the provision of voting rights, a position which also aligns with draft industry standards in development.</p>	<p>We do not propose to pursue this proposal in its consultation form whereby IDPS operators would have to take reasonable steps to give investors the opportunity to exercise voting rights.</p> <p>Instead, we propose to require platform operators to have a voting policy in place and to disclose that policy to investors in the IDPS Guide or PDS (as relevant).</p> <p>For IDPS operators, if investors have the right to vote under the voting policy, we propose to require operators to take all reasonable steps to ensure votes attaching to financial products held for the investor are cast in accordance with any directions received from the investor and not otherwise.</p> <p>We propose to require that IDPS operators disclose in the IDPS Guide that voting rights are not available through a consumer warning, and seek an acknowledgement from the investor in the application form that they are aware they do not have voting rights in respect of investments held within the platform where that is the case.</p>

Our proposal	Feedback on proposal	Our response
<p><b>Disclosure about selection of investments</b></p> <p>We proposed that:</p> <ul style="list-style-type: none"> <li>platform operators disclose in their IDPS Guide or PDS (as relevant) how they select financial products for inclusion on investment menus or in model portfolios; and</li> <li>licensed dealer groups and their adviser representatives consider the investment selection processes of platform operators when providing personal financial product advice to clients about the use of platforms.</li> </ul>	<p>The majority of respondents were supportive of the proposal, stating that it would lead to increased transparency and certainty for consumers.</p> <p>One respondent further submitted that the proposal should extend to partnership plans and other rebates. The respondent was concerned that investors may not be aware of the commercial relationships between platform operators and product issuers, and would therefore lack visibility of the resulting influence this may have on product selection. The process for choosing affiliated products over other products should therefore be clearly disclosed.</p> <p>Some respondents submitted that the onus should remain on dealer groups and advisers to conduct due diligence on platforms and their underlying investments. They submitted that it is not the role of platform operators to make recommendations regarding the quality of financial products available through investment menus.</p>	<p>We propose to require platform operators to disclose in their IDPS Guide or PDS (as relevant) on what basis and how they select financial products for inclusion on investment menus or in model portfolios.</p> <p>We also propose to provide guidance on the disclosure of the process involved in choosing products that are issued by or associated with the platform operator or its related bodies corporate, and whether a review of the investment policy is a material change and would require a supplementary IDPS Guide or PDS to be issued.</p> <p>In addition, we expect licensed dealer groups and their adviser representatives to consider investment selection processes when recommending the use of one platform over another platform, or the use of any platform at all.</p>

Our proposal	Feedback on proposal	Our response
<p><b>Cooling-off rights</b></p> <p>We proposed that platform operators provide cooling-off rights as if the investor were acquiring the financial product directly.</p>	<p>Some respondents raised concerns about the ability of platforms to offer cooling-off rights for various practical and legal reasons, including that the platform operator would need to have a corresponding legislative right against the underlying product issuer, which would require legislative change, and also that cooling-off rights can generally only be exercised for an entire holding and the law would not currently facilitate a wholesale investor custodian exercising cooling-off rights for part of their holding.</p> <p>Respondents also felt that if the proposal were implemented, the corresponding benefit would be marginal with little meaningful exercising of these rights by platform investors.</p> <p>However, there was some expression of support for the principle that a consumer should have the means to withdraw from an investment if they believe it is unsuitable for them.</p> <p>In subsequent consultation with industry, we sought feedback on whether these rights could be provided contractually and were advised that this would be impractical and cost prohibitive to implement, with implementation and ongoing operational cost implications for both platform operators and product issuers.</p>	<p>We do not propose to pursue this proposal in its consultation form whereby investors in platforms are given access to statutory cooling-off rights.</p> <p>Accordingly, we propose to require platform operators to disclose to investors that cooling-off rights are not available when they invest in a financial product through a platform rather than acquiring the financial product directly.</p> <p>In addition, the IDPS Guide or PDS (as relevant) must contain disclosures setting out the key differences between investing through a platform and direct investment in financial products through a consumer warning, including a statement that statutory cooling-off rights are not available.</p> <p>We also propose to require that the application form for investment through a platform include an acknowledgement by the investor that they have been informed, and understand, that they do not have statutory cooling-off rights for financial products acquired through the platform.</p>



Our proposal	Feedback on proposal	Our response
<p><b>Withdrawal rights</b></p> <p>We proposed that platform investors should have withdrawal rights for investments acquired through platforms where disclosure becomes defective before issue and where a product issuer provides notification of an option to withdraw under the Corporations Act.</p>	<p>Respondents were generally supportive of this proposal, provided that the obligation is put onto the underlying product issuer.</p> <p>In subsequent consultation with industry, we sought feedback on whether these rights could be provided contractually and were advised that this would be impractical and cost prohibitive to implement, with implementation and ongoing operational cost implications for both platform operators and product issuers.</p>	<p>We do not propose to pursue this proposal in its consultation form whereby investors in platforms are given access to withdrawal rights because imposing the obligation on the underlying product issuer may effectively prevent netting of transactions by the custodian and alter the operating business model of most custodians.</p> <p>Instead, we propose that platform operators make clear and prominent disclosure—through a consumer warning—that withdrawal rights for financial products acquired through platforms may not be available when disclosure for those investments (in a PDS or disclosure document) becomes defective before issue. We also propose to require that the application form for investment through a platform include an acknowledgement by the investor that they have been informed, and understand, that they do not have withdrawal rights for financial products acquired through the platform.</p> <p>We propose to set out our expectation that platform operators performing transactional functions and responsible entities of IDPS-like schemes should, where practicable, ensure that notification of any option to withdraw is communicated to investors no later than five days from when received, give investors access to any supplementary or replacement disclosure and inform them of how it may be accessed, and act on investors' instructions as to how to exercise the option (if desired) and allocate any withdrawal pro rata if necessary.</p>

Our proposal	Feedback on proposal	Our response
<p><b>Dispute resolution and compensation</b></p> <p>We proposed that platform investors should have access to a product issuer’s internal and external dispute resolution system and that platform operators must include a statement in their disclosure documents about who investors can contact about different types of complaints.</p> <p>We sought feedback on whether the requirement on licensed product issuers (providing financial services to retail clients) to have adequate compensation arrangements for liabilities be extended to the liabilities of platform operators (or their appointed custodians) as if they were retail clients.</p>	<p>Respondents were generally supportive of the proposed approach to dispute resolution, although noted the limitations of product issuers that have determined their commercial offering in dealing with platforms as wholesale clients.</p> <p>There was a suggestion that ASIC provide more clarity around whether the expectation is that only a product issuer’s contact details need to be provided or whether the platform operator must establish a system linking the product issuer customer service units and systems.</p> <p>Another respondent was supportive provided that legislation imposes a suitable corresponding obligation on the issuer of the investment.</p> <p>Two submissions provided feedback on the extension of compensation arrangements. One provided support and the other did not consider such requirements warranted.</p> <p>In subsequent consultation with industry, we have been advised that costs may be incurred by product issuers with wholesale client authorisations who need to obtain professional indemnity insurance cover to meet any revised policy.</p>	<p>We propose that platform investors have access to a product issuer’s internal dispute resolution processes as if they were a direct investor in the product where the product issuer consents to doing so.</p> <p>We also propose to require platform operators to make clear and prominent disclosure about who investors may complain to about different types of complaints, and to take reasonable steps to facilitate dispute resolution between platform investors and product issuers.</p> <p>At this stage, and pending further consideration, we will not require product issuers to provide access to external dispute resolution schemes, nor extend adequate compensation arrangements (including professional indemnity insurance) to platform investors as if they were a direct investor in the product.</p>

Our proposal	Feedback on proposal	Our response
<p><b>FOFA reforms</b></p> <p>We did not seek feedback at the time of release of CP 176 on areas of our regulatory approach to platforms that are directly related to the FOFA reforms.</p> <p>We noted that we would consider how these reforms may affect our final regulatory approach to platforms after legislation is passed and further consultation with industry.</p>	<p>Generally, respondents acknowledged that the FOFA reforms will have significant impacts on the platforms sector.</p> <p>One submission noted that the matters that related to FOFA reforms in CP 176 ought to be deferred for consideration when the FOFA legislative package is enacted.</p> <p>In subsequent consultation with industry, we sought feedback on allowing platform investors direct access to their investments when the investor discontinues the use of a permitted adviser. Industry noted that such a proposal would have significant challenges, given not all platforms have this functionality or could build it and, if they could build it, significant IT and other costs would be involved. Costs may be in the vicinity of \$8–\$12 million for the industry to implement such a proposal.</p>	<p>Our primary regulatory guidance on the elements of the FOFA reforms has been developed separately.</p> <p>However, in light of the FOFA reforms being passed in legislation, we propose that platform operators have in place a policy on how to deal with investors that do not opt in to continue to receive financial product advice, including how investor access to their investment is addressed. We propose that the IDPS Guide or PDS (as relevant) should disclose the implications of not choosing to use a permitted adviser and whether this will affect the investor's ability to continue to use the platform and invest through the platform, as well as how their investment will be affected as a result.</p> <p>We also propose to provide good practice guidance that investors be allowed to use any adviser (not only permitted advisers) and, where they do not opt in to continue to receive financial product advice, be allowed to have direct access to manage their investments, with key messages that we will review the industry landscape in three to five years to assess industry's adoption of this practice.</p>

## E Conclusion and recommended option

- 105 We recommend Option 2.
- 106 The requirements that we propose to set out in the updated regulatory guide and accompanying class orders under this option attempt to:
- (a) promote investor confidence in the sector and help investors make informed decisions about platforms by requiring:
    - (i) appropriate and compliant personal advice about these vehicles (if given);
    - (ii) adequate disclosure about platforms and investments held through platforms, including the key differences between investing through a platform and investing directly;
    - (iii) reliable investor reporting;
    - (iv) effective compliance controls; and
    - (v) custodial and transactional integrity;
  - (b) apply the minimum appropriate regulation to platform operators consistent with the framework for the regulation of financial services and products in the Corporations Act; and
  - (c) treat IDPS operators and IDPS-like schemes (as unregistered and registered platforms) similarly where there is no regulatory basis for different treatment.
- 107 Option 2 achieves these policy objectives without imposing an unreasonable burden on the platforms industry, while achieving a net benefit for investors in the long term. In particular, our proposals reaffirm our existing guidance and class orders in a number of material aspects, enhance existing requirements to align them with equivalent provisions in current legislation or simplify them where warranted, and address key emerging issues in the platforms sector.
- 108 Although ASIC requested feedback from industry of the costs of implementing these proposals, we received neither submissions that significant costs would be incurred to implement the new requirements, nor detailed submissions on the actual estimated costs. The feedback simply indicated that there would be some compliance costs that would need to be incurred. While the direct cost impact of our final proposed positions would vary from entity to entity, and may represent a higher percentage increase in compliance costs for smaller platform operators compared with larger operators, in light of the lack of such submissions, we cannot conclude that compliance costs to meet the new requirements will be significant. We believe that Option 2 will achieve a net benefit in the long term by encouraging greater operational efficiency. This is particularly so given the

flexibility provided by mandating requirements to maintain policies and disclose them, while allowing flexibility in the content of those policies as it affects individual businesses and their operating models.

- 109 Although the smaller platform operators may find it harder to absorb the compliance costs associated with changing their structure from proprietary to public and adopting the new financial requirements obligations compared to other larger platform operators, ASIC believes that ensuring confident and informed consumer and investor decision making is vitally important. Therefore, platform operators must be able to meet these new changes to ensure that they have sufficient financial resources and strong corporate structures to support the conduct of their financial services business. The proposal concerning corporate structure only affects a small portion of operators and is likely to be only a ‘one-off cost’, while the financial requirements obligation will be ongoing for all operators.
- 110 Our review of the platforms sector and the feedback from the consultation process assure us that—while we may be short of certainty that a net balance will arise from our revised approach initially—Option 2 will achieve a net benefit in the long term for the platform industry and investors and financial consumers because it will achieve greater operational efficiency, capacity and competency for platform operators, resulting in better informed investors and investment decision making and greater confidence in the market.
- 111 We do not recommend Option 1 because it does not propose any solutions to the challenges raised by the existing and emerging issues and risks facing the platforms sector, which is undesirable given the growth of the sector over the last decade, and its likely continued development in the future.

## F Implementation and review

- 112 Our proposed policy will be implemented by publishing the following documents:
- (a) updated regulatory guides—RG 148 (renamed *Platforms that are managed investment schemes*) and Regulatory Guide 166 *Licensing Financial requirements* (RG 166)—explaining the new proposals and how and when we expect platform operators to comply;
  - (b) revised class orders;
  - (c) revised PF 209 *Australian financial services licence conditions*;
  - (d) REP 351, summarising submissions received in response to CP 176; and
  - (e) this RIS.
- 113 We propose that new platform operators will be required to comply with our revised guidance and class orders from 1 July 2013, and that existing platform operators be given the benefit of a transition period until 1 July 2014 (or such earlier time if they choose to comply earlier) to comply to allow sufficient time for implementation.
- 114 Over the transition period for existing platform operators, we will:
- (a) work with platform operators to ensure that the new requirements are understood and appropriately implemented; and
  - (b) assess the relevance of our requirements on an ongoing basis to ensure they remain relevant.
- 115 Following the transition period, we are likely to undertake periodic reviews of the platforms sector to ensure compliance with our regulatory approach and the currency of our guidance and class orders, with the objective of ensuring it adequately addresses key existing and emerging issues and risks in the sector.