



**ASIC**

Australian Securities & Investments Commission

---

---

## **ASIC Corporations (Superannuation: Investment Strategies) Instrument 2016/65**

---

I, Grant Moodie, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date            23 February 2016

Grant Moodie

---

## Contents

<b>Part 1—Preliminary</b>	<b>3</b>
1 Name of legislative instrument .....	3
2 Commencement .....	3
3 Authority .....	3
4 Definitions .....	3
<b>Part 2—Declaration</b>	<b>4</b>
5 Regulated acquisitions through certain superannuation funds .....	4

## Part 1—Preliminary

### 1 Name of legislative instrument

This instrument is *ASIC Corporations (Superannuation: Investment Strategies) Instrument 2016/65*.

### 2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Note: The register may be accessed at [www.comlaw.gov.au](http://www.comlaw.gov.au).

### 3 Authority

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

### 4 Definitions

In this instrument:

*Act* means the *Corporations Act 2001*.

*Regulations* means the *Corporations Regulations 2001*.

## Part 2—Declaration

### 5 Regulated acquisitions through certain superannuation funds

Part 7.9 of the Act applies in relation to all persons as if provisions in that Part were modified or varied as follows:

- (a) after section 1011B insert:

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

In this Division and section 1017CA:

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

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

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

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

- (b) in section 1012IA:

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

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

- (ii) after subsection (2) insert:

*“Additional acquisitions by superannuation trustees*

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

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

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

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

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

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

(ab) where the provider is a trustee of a superannuation entity who chooses to comply with subsections 1013FB(5) and (6) in relation to a Product Disclosure Statement for a superannuation product to which the entity relates—the reference in subsection 1013A(1) to the issuer of a financial product that is an accessible financial product included a reference to the provider; and

(ac) where the provider is a trustee of a superannuation entity—the reference in subsection 1013A(2) to a person making the offer to sell a financial product that is an accessible financial product included a reference to the provider; and”;

(iv) after subsection (5) insert:

*“Modification of section 1013C*

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

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

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

- (d) in section 1013E omit “sections 1013F and 1013FA,” substitute “sections 1013F, 1013FA and 1013FB,”; and
- (e) after section 1013FA insert:

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

- (1) This section applies in relation to a regulated acquisition of a financial product (the *accessible financial product*) that may be made through a superannuation entity.
- (2) The trustee of the superannuation entity, in relation to the Product Disclosure Statement (the *superannuation entity PDS*) for the superannuation product to which the superannuation entity relates, may choose to comply with:
  - (a) subsections (3) and (4) (separate Statements for the superannuation product and the accessible financial product); or
  - (b) subsections (5) and (6) (integrated Statement for the superannuation product and the accessible financial product); or
  - (c) the requirements of this Division apart from this section.

*Separate PDSs for superannuation product and accessible financial products*

- (3) The superannuation entity PDS must:
  - (a) contain the information about the superannuation product that is required by this Division; and
  - (b) in relation to the accessible financial product—contain the information that a person would reasonably require as a retail client to:
    - (i) identify the accessible financial product; and
    - (ii) understand the investment strategy under which the product may be acquired by way of a regulated acquisition; and
    - (iii) work out whether to ask for further information about the product; and
  - (c) either:
    - (i) contain a statement that informs people of their right to obtain from the trustee on request a Product Disclosure Statement

- (the **trustee's accessible product PDS**) for the accessible financial product that the trustee has prepared; or
- (ii) contain a statement that informs people of their right to obtain from the trustee on request a Product Disclosure Statement (the **issuer's accessible product PDS**) for the accessible financial product that the issuer of the product has prepared.
- (4) A trustee that complies with subsection (3) in relation to the superannuation entity PDS:
- (a) does not have to include in the superannuation entity PDS any other information about the accessible financial product that would be required by or under sections 1013C, 1013D, 1013DA, 1013E or 1013F; and
  - (b) must give the following documents to any person who asks for it:
    - (i) where subparagraph (3)(c)(i) applies—the trustee's accessible product PDS;
    - (ii) where subparagraph (3)(c)(ii) applies—the issuer's accessible product PDS.

*Integrated PDS for superannuation product and accessible financial products*

- (5) The superannuation entity PDS and the Product Disclosure Statement for the accessible financial product must be combined:
- (a) in a single document (the **integrated PDS**); or
  - (b) in 2 or more separate documents (the **integrated PDS**) that are given at the same time.

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

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

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

- (a) the trustee chooses to comply with subsections (3) and (4) of this section and the Product Disclosure Statement for the superannuation product informs people of their right to obtain the trustee’s accessible product PDS; or
  - (b) the trustee chooses to comply with subsections (5) and (6) of this section.”;
- (f) after section 1017C insert:

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

- (1) This section applies to a trustee of a superannuation entity if:
- (a) a person (the *client*) has directed the trustee to follow an investment strategy (the *affected investment strategy*) that involves making a regulated acquisition of an accessible financial product in relation to all or part of the client’s holding of the superannuation product to which the entity relates; and
  - (b) at a time when the trustee (or another person with whom the trustee has an arrangement) holds the accessible financial product as a result of the client’s direction, a material adverse change to a matter, or a significant event that adversely affects a matter occurs, being a matter that would have been required to be specified in a Product Disclosure Statement for the accessible financial product prepared on the day before the change or event occurs; and
  - (c) the trustee has not decided to stop making regulated acquisitions of the product under the affected investment strategy.

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

- (2) As soon as practicable after the change or event occurs, the trustee must notify the client in accordance with subsections (3) and (4):
- (a) of the change or event; and
  - (b) that:
    - (i) the client may direct the trustee to follow an investment strategy made available by the trustee that does not involve regulated acquisitions of the accessible financial product, in relation to either or both of the following:
      - (A) the holding in the product that the trustee (or other person with whom the trustee has an arrangement) has acquired as a result of following the affected investment strategy;
      - (B) any future contribution by or on behalf of the client to the superannuation entity to the extent to which it would



otherwise have been subject to the affected investment strategy; and

- (ii) if the client does not give the trustee directions in accordance with subparagraph (i)—the trustee will continue to follow the affected investment strategy.
- (3) The trustee must notify the client in one of the following ways:
- (a) in writing; or
  - (b) electronically; or
  - (c) in a way specified in the regulations.
- (4) The notice must give the client the information that is reasonably necessary for the client to understand the nature and effect of the change or event.
- (5) At the same time as notifying the client, the trustee must give the client:
- (a) where the only regulated acquisitions of the accessible financial product that the trustee is making or is proposing to make are additional acquisitions—either:
    - (i) any further information that the client reasonably requires for the purposes of making a decision about whether to give a direction of the kind referred to in paragraph (2)(b); or
    - (ii) a Product Disclosure Statement for the accessible financial product that would be required to be given under section 1012IA in relation to a regulated acquisition of the product on the instruction of a person who is not a holder of the product on the day the notice is sent; or
  - (b) otherwise—a Product Disclosure Statement for the accessible financial product.
- Note: Sections 1014D and 1014E will enable subparagraph (a)(ii) or paragraph (b) of this subsection (5) to be satisfied in some circumstances by giving a Product Disclosure Statement together with a Supplementary Product Disclosure Statement or just giving a Supplementary Product Disclosure Statement.
- (6) The trustee does not have to give the client information or a Product Disclosure Statement under subsection (5) if:
- (a) the client has already received a Product Disclosure Statement that contains all of the information that the first-mentioned Product Disclosure Statement would be required to contain; or
  - (b) the trustee believes on reasonable grounds that paragraph (a) applies.

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

Note 1: A material adverse change or a significant adverse event relating to the accessible financial product may need to be notified to the client under section 1017B because the client holds the superannuation product. If the client is notified of the change or event under that section by the time notification is required under subsection (2) of that section, the trustee may not need to also give the client information or a Product Disclosure Statement under subsection (5) of this section.

Note 2: The continuous disclosure provisions in Chapter 6CA apply to accessible financial products that are both managed investment products and ED securities.

- (8) The information referred to in subparagraph (5)(a)(i) may be given by including it in the notice referred to in subsection (2).

- (9) In this section:

***investment strategy***, in relation to a superannuation entity, means an investment strategy formulated by the trustee of the entity under the covenant referred to in paragraph 52(2)(f) of the *Superannuation Industry (Supervision) Act 1993*.

Note 1: This section only applies in relation to a client where the trustee (or other person with whom the trustee has an arrangement) is holding the relevant financial product as a result of a direction given by the client at the time the change or event occurs. In a case where the trustee (or other person) is not holding the product at that time, the trustee nonetheless may need to give the client an appropriate Supplementary or new Product Disclosure Statement before acquiring the product on their instructions. This is because the Product Disclosure Statement required to be given by subsection 1012IA(2) must be a Statement that meets the requirements set out in Division 2 of this Part.

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

- (g) in subregulation 7.9.75A(1) of the Regulations omit “paragraph 1017B(3)(c)” and substituting “paragraphs 1017B(3)(c) and 1017CA(3)(c)”;

- (h) after paragraph 7.9.75B(1)(a) of the Regulations insert:

“(aa) paragraph 1017CA(3)(c) of the Act; and”;

- (i) in paragraph 1017K(a) of the Act:
  - (i) after “1013A,” insert “1013FB,”;
  - (ii) omit “1016E and 1017A”, substitute “1016E, 1017A and 1017CA.”.

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