

ASIC Class Order [CO 13/762]

About this compilation

Compilation No. 5

This is a compilation of ASIC Class Order [CO 13/762] as in force on 5 October 2021. It includes any commenced amendment affecting the legislative instrument to that date.

This compilation was prepared by the Australian Securities and Investments Commission.

The notes at the end of this compilation (the *endnotes*) include information about amending instruments and the amendment history of each amended provision.

Prepared by the Australian Securities and Investments Commission.

Australian Securities and Investments Commission
Corporations Act 2001— Subsections 341(1), 601QA(1), 741(1), 926A(2), 992B(1)
and 1020F(1)—Exemption, Declaration, Order and Revocation

Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under subsections 341(1), 601QA(1), 741(1), 926A(2), 992B(1) and 1020F(1) of the *Corporations Act 2001 (Act)*.

Title

2. This instrument is ASIC Class Order [CO 13/762].

Exemption

4. A responsible entity of an IDPS-like scheme and each other person involved in the preparation of a Product Disclosure Statement for an interest in the scheme does not need to comply with:
 - (a) Parts 6D.2 or 6D.3 or section 992A of the Act for an offer to issue equitable rights or interests in accessible securities arising because of an offer to hold, or arrange for the holding of, the accessible securities through the scheme; and
 - (b) sections 1013D and 1013E of the Act for a Product Disclosure Statement relating to:
 - (i) an interest in the scheme; and
 - (ii) an interest in a financial product that is held or may be held by a member because the legal title to a financial product is held for the member by a custodian as part of the IDPS-like scheme;

to the extent that those provisions may require a Product Disclosure Statement that relates to:

(iii) interests in the scheme; or

(iv) any financial product acquired by the member through the scheme because a custodian has legal title to a financial product as part of the scheme;

to contain information about the accessible financial products.

5. A responsible entity of an IDPS-like scheme and each other person involved in the preparation of a Product Disclosure Statement for an interest in the scheme cannot rely on paragraph 4 if ASIC has given a notice in writing to the responsible entity or the person stating that the responsible entity or the person may not rely on that paragraph and has not withdrawn the notice.

Declaration

6. Part 7.9 of the Act applies in relation to a responsible entity of an IDPS-like scheme and each other person involved in the preparation of a Product Disclosure Statement for an interest in the scheme as if that Part were modified or varied by:

(a) in subsection 1010A(1), after “Divisions”, inserting “and section 1013DAB in relation to accessible securities (as defined in section 1013DAB)”; and

(b) after subsection 1012IA(9) (as notionally inserted by ASIC Class Order [CO 13/763]), inserting:

“(10) A responsible entity of an IDPS-like scheme (as defined in subsection 1013DAB(19)) does not need to give a client a Product Disclosure Statement for a regulated acquisition that complies with subsection 1013DAB(8B), (8C), (8D), (8E) or (8F).”; and

(c) after section 1013DAA (as notionally inserted by ASIC Class Order [CO 13/657]), inserting:

“1013DAB Requirements for IDPS-like schemes

Product Disclosure Statement – additional content

- (1) A Product Disclosure Statement for offers of interests in an IDPS-like scheme must also include such information as a person acquiring an interest in the scheme as a retail client would reasonably require to understand the following, but does not need to include information in relation to actual or identified accessible investments:

(a) any differences between the rights of a holder of accessible investments and the rights of a member of the scheme in respect of accessible investments, including information on:

(i) cooling-off rights; and

Note: See section 1019BA (as notionally inserted by ASIC Class Order [CO 13/762]).

- (ii) voting rights; and
 - (iii) withdrawal rights under section 724 and section 1016E in relation to accessible securities and accessible financial products;
 - (b) the consequences for a member if at any time the member has not engaged a person, or a person meeting particular requirements, to provide:
 - (i) financial product advice to the member in relation to the scheme; or
 - (ii) instructions to the responsible entity in relation to accessible investments,
 including the ability of the member in such circumstances to:
 - (iii) provide instructions in relation to accessible investments; and
 - (iv) continue to be a member of the scheme;
 - (c) how and to whom a member may make a complaint in relation to:
 - (i) the operation of the scheme; and
 - (ii) accessible financial products held through the scheme; and
 - (iii) financial product advice provided to the investor in relation to the scheme that is not provided by or on behalf of the responsible entity;
 - (d) members' right to disclosure in relation to accessible investments including that a member will have the right to elect to receive copies of communications sent to holders of accessible investments, including those communications which the holder may elect to receive;
 - (e) how the responsible entity will determine what financial products, securities or other investments are or will be available as accessible investments for the scheme, including the processes applied and the factors considered for that purpose;
 - (f) whether withdrawal requests are allowed for by the scheme's constitution and, if so, how a withdrawal request will be dealt with under the constitution where the request relates to an accessible investment which is subject to a minimum holding requirement or giving effect to the request might otherwise adversely affect members other than the requesting member.
- (2) The Product Disclosure Statement must also include:
- (a) a statement that copies of the following policies are available free of charge on request:
 - (i) the responsible entity's policy on whether, and on what basis, it will exercise any voting or other rights arising from holding accessible investments; and
 - (ii) the policy on the consequences for a member in the circumstances referred to in paragraph (1)(b); and

- (b) a statement that a separate document specifying the accessible investments for the scheme will be provided on request free of charge, if the Product Disclosure Statement does not specify these investments; and
 - (c) statements to the effect that:
 - (i) the total fees and charges payable by a member will include the costs of the scheme as well as the cost of any accessible investments chosen by the member; and
 - (ii) it is important that the member understand the fees of any accessible investments chosen by the member and that those fees will be in addition to the fees charged for the scheme, together with transaction and account costs incurred on behalf of the member; and
 - (iii) the costs of the accessible investments chosen by the member will generally be set out in a disclosure document or Product Disclosure Statement for the accessible investments; and
 - (d) examples, based on estimates, of the total of fees, charges and expenses of the scheme and the accessible securities and accessible financial products that may be acquired through the scheme that satisfy the requirements of subsection (3).
- (3) The examples referred to in paragraph (2)(d):
- (a) must express the total estimate of fees, charges and expenses as a proportion of the total price paid in acquiring the accessible securities and accessible financial products through the scheme; and
 - (b) must be examples that the responsible entity has reasonable grounds for believing are based on estimates of the fees, charges and expenses that are within the range typically charged for accessible securities and accessible financial products of the relevant kind; and
 - (c) must cover a range of accessible securities and accessible financial products that may be acquired through the scheme; and
 - (d) need not refer to actual or identified accessible securities or accessible financial products.

Application form – warning

- (4) The responsible entity of an IDPS-like scheme must not issue an interest in the scheme to a person as a retail client in response to an application form unless:
- (a) the form contains a prominent warning that:
 - (i) identifies the key areas of difference between acquiring a financial product directly and through the scheme, including any differences in respect of the rights referred to in paragraph (1)(a);
 - (ii) if applicable, that a member may be adversely affected if the member has not engaged a person, or a person meeting particular

requirements, to provide financial product advice to the member or provide instructions on behalf of the member in relation to accessible investments; and

- (b) the form contains cross-references (including page or paragraph references where applicable) to where further information on the matters mentioned in subparagraph (a)(i) and if applicable (a)(ii) can be located in the Product Disclosure Statement; and
- (c) in the case of:
 - (i) a form that is submitted electronically – the part of the facility that allows the person applying for the interests to sign or submit the form contains a prominent statement; and
 - (ii) otherwise – the form requires the person applying for the interests to sign an acknowledgement;to the effect that the person applying for the interest acknowledges the matters contained in the warning.

Members requests for information

- (5) The responsible entity of an IDPS-like scheme must give to a member on request a copy of all communications that are required by law to be given to the holder of an accessible investment (including communications that are required to be given on request) where that accessible investment has been acquired under a direction of the member.
- (6) A member may make a request under subsection (5) in relation to a particular communication or make a standing request in relation to a class of communications. The responsible entity must provide the information as soon as practicable after the information is received or otherwise becomes available to be provided to the member.

Acquisition of accessible investments that are interests in unregistered scheme

- (7) The responsible entity of an IDPS-like scheme must not, and must ensure that any custodian does not, acquire accessible investments as part of the scheme that are:
 - (a) interests in a managed investment scheme that is not a registered scheme; or
 - (b) interests in a scheme that would be a managed investment scheme but for paragraph (e) of the definition of *managed investment scheme* in section 9;unless the responsible entity reasonably believes that:
 - (c) had the particular member invested directly in the scheme, the scheme would not have been required to have been registered; and
 - (d) had all interests in the scheme held in custodial arrangements been held by the clients of those arrangements, the scheme would not have been required to be registered.

Note: Under section 601ED, a managed investment scheme does not generally need to be registered if it has no more than 20 members. If interests held through custodial arrangements such as IDPSs, IDPS-like schemes and nominee and custody services had been acquired directly, the scheme may have required registration as it may have had more than 20 members.

Acquisitions under direction from client

(8) The responsible entity of an IDPS-like scheme must not, and must ensure that any custodian acting on its behalf does not, acquire accessible securities or accessible financial products under a direction of a member as part of the scheme unless:

- (a) in relation to acquisitions of accessible securities:
 - (i) for an acquisition of shares resulting from a CSF offer—subsection (8H) is satisfied; and
 - (ii) otherwise—subsection (8A) or (8E) is satisfied; and
- (b) in relation to acquisitions of accessible financial products:
 - (i) subsection (8B), (8C), (8D), (8E) or (8F) are satisfied; and
 - (ii) for acquisitions after 31 December 2017—subsection (8G) is satisfied.

(8A) This subsection is satisfied if:

- (a) both of the following are satisfied:
 - (i) the responsible entity reasonably believes that the member has been given a copy of the disclosure document for the accessible securities that would have been required had the accessible securities been offered to the member directly at the time of the acquisition of the accessible securities;
 - (ii) the responsible entity has no reason to believe that the disclosure document is defective as if it were prepared at that time; or
- (b) the responsible entity reasonably believes that the accessible securities could lawfully have been offered and issued or sold, as the case may be, to the member directly without the member being required to be given a disclosure document other than because of subsection 708(1).

(8B) This subsection is satisfied if:

- (a) the responsible entity reasonably believes that the member has been given a copy of the Product Disclosure Statement for the accessible financial product that would have been required had the financial product been offered to the member directly at the time of the acquisition of the financial product; and
- (b) the responsible entity has no reason to believe the Product Disclosure Statement is defective as if it were prepared at the time of the acquisition.

(8C) This subsection is satisfied if:

- (a) the responsible entity reasonably believes that the accessible financial product could lawfully have been offered and issued or sold, as the case may be, to the member directly without the member being given a Product Disclosure Statement other than because of section 1012E; and
- (b) the responsible entity has no reason to believe that a Product Disclosure Statement would have been required to be given to the member if all other holdings of the financial product in custodial arrangements had been issued to the clients (as defined in section 1012IA) of those arrangements.

Note: Under section 601ED, a managed investment scheme does not generally need to be registered if it has no more than 20 members. If interests held through custodial arrangements such as IDPSs, IDPS-like schemes and nominee and custody services had been acquired directly, the scheme may have required registration as it may have had more than 20 members.

(8D) This subsection is satisfied if:

- (a) the member already holds an accessible financial product of the same kind through the scheme; and
- (b) the responsible entity has given the member a Product Disclosure Statement for a financial product of the same kind; and
- (c) the responsible entity reasonably believes that the member has access to, and knows that they have access to, a Product Disclosure Statement for the financial product; and
- (d) the Product Disclosure Statement the member has access to is the most current in use or does not differ from the most current in use in a way that is materially adverse for the member; and
- (e) the responsible entity has no reason to believe the Product Disclosure Statement the member has access to is defective as if it were prepared at the time of the acquisition.

(8E) This subsection is satisfied if the acquisition is made under a distribution reinvestment plan in relation to a member and the member already has an existing holding of an accessible financial product of the same kind or accessible securities in the same class through the scheme.

(8F) This subsection is satisfied if the acquisition is made under a regular saving acquisition in relation to a member and:

- (a) the member already has an existing holding of an accessible financial product of the same kind through the scheme; and
- (b) the responsible entity has complied with its agreement with the member in relation to the regular savings plan to give any missing documents.

(8G) This subsection is satisfied if the responsible entity reasonably believes that the issuer or seller of the accessible financial products has a dispute

resolution system that satisfies either subsection 912A(2) or 1017G(2) and which covers complaints against the issuer or seller by each member of the IDPS-like scheme who:

- (a) holds through the IDPS-like scheme an accessible financial product issued or sold by the issuer or seller; and
- (b) if the issuer or seller had issued or sold the accessible financial product the subject of the direction to the member directly—would have acquired the product as a retail client;

where the complaints are made in connection with an accessible financial product issued or sold by the issuer or seller that is held through the IDPS-like scheme.

(8H) This subsection is satisfied if the responsible entity reasonably believes that:

- (a) the member:
 - (i) has accessed the platform of a CSF intermediary containing the CSF offer document for the CSF offer and the responsible entity has no reason to believe the document is defective as at the time of the acquisition of the shares; and
 - (ii) has completed the acknowledgement that would be required under paragraph 738ZA(3)(b) if the member had applied as a retail client; and
 - (iii) was able to use the relevant communication facility for the CSF offer provided under subsection 738ZA(5); and
 - (iv) was able to withdraw the direction within 5 business days after it was made; and
 - (v) has not been provided with financial assistance in relation to the CSF offer by any of the following:
 - (A) a person referred to in subsection 738ZE(1); or
 - (B) the responsible entity; or
 - (C) an associate of the responsible entity that is not an Australian ADI; and
 - (vi) has not in total paid for, or become liable to pay for, or given directions under an IDPS, an IDPS-like scheme or a nominee and custody service for the acquisition of, shares under a CSF offer of the company making the CSF offer that together exceed the cap on investment in paragraph 738ZC(1)(b); or
- (b) the member would have acquired the shares as a wholesale client if the member had acquired the shares directly under the CSF offer.

Quarterly report or electronic access on a substantially continual basis

(9) The responsible entity of an IDPS-like scheme must:

- (a) give to each member a quarterly report complying with subsection (11) within one month after each quarter day; or
 - (b) give electronic access to the information referred to in subsection (12) on a substantially continuous basis to members who:
 - (i) have agreed to obtain information concerning transactions and holdings through the scheme electronically instead of receiving a quarterly report; and
 - (ii) the responsible entity has no reason to doubt can electronically access this information on a substantially continuous basis.
- (10) If the responsible entity provides electronic access to information to members during a quarter instead of a quarterly report complying with subsection (11):
- (a) the information that was displayed at the quarter's end for the quarter that purports to be the information required under subsection (12) must remain readily accessible to members through the same facility by which electronic access was given to the members during the quarter until the end of the financial year of the IDPS-like scheme after the financial year of the IDPS-like scheme in which the quarter day falls; and
 - (b) the facility on which the information remains accessible must display to members a statement to the effect that only information displayed at the quarter's end will be considered by the auditor in preparing its annual report relating to the information provided electronically.
- (11) The quarterly report must be a written report which contains the following information:
- (a) all transactions carried out under a direction given by a member or on their behalf during the quarter; and
 - (b) the quantity and value of assets held through the IDPS-like scheme by the member and corresponding liabilities on the quarter day, the value of assets being determined as follows:
 - (i) for financial assets— net market value (being the amount which could be expected to be received from the disposal of the asset in an orderly market after deducting costs expected to be incurred in realising the proceeds of such a disposal); and
 - (ii) for all other assets – the value which would be shown in the books of the scheme; and
 - (c) the revenue and expenses of the member in relation to the scheme and assets held through the scheme by the member during the quarter.
- (12) The following information must be accessible electronically if electronic access is provided instead of quarterly reports:
- (a) all transactions which the member has conducted through the scheme for a period of at least one year (or such shorter period as they have

- been a member) up to a date no more than 48 hours (excluding hours on a day that is not a business day) before the time of access;
- (b) the quantity and value of assets held through the IDPS-like scheme by the member and corresponding liabilities at a time no more than 48 hours (excluding hours on a day that is not a business day) before the time of access, the values of the assets being determined in accordance with paragraph (11)(b) and being as current as is reasonably practicable;
 - (c) the revenue and expenses of the member in relation to the scheme and assets held through the scheme by the member during a period of at least one year (or such shorter period as they have been a member) up to a date no more than 48 hours (excluding hours on a day that is not a business day) before the time of access;
 - (d) the time at which the information is current.

Annual investor statement

- (13) The responsible entity of an IDPS-like scheme must give to each member within three months of the end of each financial year of the scheme:
- (a) an annual report (***annual investor statement***) containing:
 - (i) a summary of the transactions by or on behalf of the member through the scheme during the financial year containing the particulars that a member may reasonably require in relation to the transactions; and
 - (ii) for each member who has been provided with quarterly reports under paragraph (9)(a) a statement that the member may request a copy of any quarterly report relating to the financial year for the member; and
 - (b) a copy of the annual report or reports for the relevant financial year of the scheme prepared by a registered company auditor under subsection (14).

Audit report

- (14) The responsible entity of an IDPS-like scheme must after the end of each financial year of the scheme cause a registered company auditor to provide one or more annual reports that set out each of the following opinions or statements:
- (a) the auditor's opinion as to whether the internal controls and other procedures of the responsible entity, each custodian and any other relevant person acting on behalf of the responsible entity were suitably designed and operated effectively in all material respects to ensure that:
 - (i) the annual investor statement for the relevant financial year of the scheme is or has been given to members without material misstatements; and

- (ii) where the annual investor statement does not purport to include particulars of each transaction that would be required in quarterly reports for each quarter during the financial year of the scheme:
 - (A) any quarterly reports, are or have been given to members without material misstatements; and
 - (B) any information that is made accessible electronically under paragraph (9)(b) in respect of the financial year is not materially misstated at each quarter's end in the financial year; and
- (b) the auditor's opinion as to whether the aggregates of assets (other than assets held by a member), liabilities, revenue and expenses shown in the annual investor statement for the financial year of the scheme have been properly reconciled in all material respects to the corresponding amounts shown in the reports prepared by the custodian and which have been independently audited; and
- (c) the auditor's statement as to whether or not the auditor has any reason to believe that:
 - (i) any annual investor statement for the relevant financial year of the scheme given to any member is materially misstated; and
 - (ii) if the annual investor statement does not generally purport to include particulars of each transaction that would be required in quarterly reports for each quarter during the financial year:
 - (A) any quarterly reports given for the financial year are materially misstated; and
 - (B) any information accessible electronically by members under paragraph (9)(b) that relates to transactions during the financial year, assets held during the financial year and any corresponding liabilities or revenue and expenses for the financial year was materially misstated at each quarter's end during the financial year;

and no such report may contain any statement that has or purports to have the effect of excluding or disclaiming liability to members of the scheme as users of the report.

Giving of documents

- (15) A document is given to a person for the purposes of this section:
 - (a) when it is received in accessible form by that person or their eligible agent; or
 - (b) if there is no other way of sending the document that may reasonably be expected to result in it being received by that person or their eligible agent – when all reasonable steps are taken to send it to that person or their eligible agent; or
 - (c) one business day after an email is sent to the email address of the person or their eligible agent that the responsible entity reasonably

- believes is the email address of the person or eligible agent where the person has agreed to receive the document by email; or
- (d) one business day after an email is sent containing a hypertext link to the document to the email address of the person or their eligible agent that the responsible entity reasonably believes is the email address of the person or eligible agent where:
 - (i) the person has agreed to receive documents in that manner; and
 - (ii) the responsible entity has no reason to suspect that the person is unlikely by mere scrolling or use of direct hypertext links to be able to see all of the contents of the document by using the emailed hypertext link; and
 - (iii) the document can be downloaded free of charge (excluding any normal fees payable to the recipient's internet service provider); and
 - (iv) the hypertext link is accompanied by a prominent statement to the effect that the recipient is advised to access the document and download it; or
 - (e) when it would be delivered in the ordinary course of post, if it is posted as a letter prepaid from the responsible entity to an address of the person or their eligible agent that the responsible entity reasonably believes is the address of the person or eligible agent; or
 - (f) a copy of the document is given in accordance with any of paragraphs (a) to (e) and the giver takes reasonable steps to ensure that the document received by the person is complete and unaltered.
- (16) For the purposes of subsection (15):
- (a) an email is sent when the email would be taken to be dispatched under section 14 of the *Electronic Transactions Act 1999* if it applied to that subsection; and
 - (b) a document is taken to be a copy of another document regardless of:
 - (i) immaterial differences in the sequence in which information is presented; and
 - (ii) prompts and links if they are not likely to:
 - (A) cause a reasonable person to confuse the contents of the document with another document; or
 - (B) reduce the likelihood of a reasonable person reading any part of the document; and
 - (iii) the absence from (or simplification in) the document of graphics of a promotional or decorative nature; and
 - (iv) the inclusion in the document of codes or features to control the display of the document which do not otherwise alter the sense or content of the document.

Policies

- (17) The responsible entity of an IDPS-like scheme must ensure that it has and maintains the policies referred to in paragraph (2)(a).

Facilitating dispute resolution

- (18) If a member notifies the responsible entity of an IDPS-like scheme that it has a complaint in relation to an accessible investment, the responsible entity must take reasonable steps to facilitate resolution of the dispute between the member and the issuer of the accessible investment, including informing the member whether the issuer has an internal dispute resolution system that is available to the member.

Interpretation

- (19) In this section:

accessible financial products means financial products (other than securities) that may be held through an IDPS-like scheme.

accessible investments means assets that may be held through an IDPS-like scheme, including accessible securities and accessible financial products.

accessible securities means securities that may be held through an IDPS-like scheme.

annual investor statement has the meaning given by paragraph (13)(a).

client, in relation to a custodial arrangement, has the same meaning as in subsection 1012IA(1).

custodial arrangement has the same meaning as in subsection 1012IA(1).

custodian means a person that holds property of an IDPS-like scheme and who may also be the responsible entity of the scheme.

defective:

- (a) in relation to a Product Disclosure Statement—has the same meaning as in section 1021B; and
- (b) in relation to a disclosure document—means a disclosure document in relation to which a person offering securities under the disclosure document must not issue securities or must deal under subsection 724(2) with any applications for securities made under the disclosure document that have not resulted in an issue or transfer of the securities; and
- (c) in relation to a CSF offer document—has the same meaning as in section 738U.

distribution reinvestment plan means a written arrangement between the responsible entity of an IDPS-like scheme and a member to the effect that the member instructs the responsible entity to:

- (a) reinvest distributions from specified accessible investments held through the scheme by the member in some or all of the accessible investments held through the scheme by the member; and
- (b) carry out the reinvestment of distributions referred to in paragraph (a) according to an agreed method,

where before entering into the arrangement, the member has been given a Product Disclosure Statement for the scheme containing a statement to the effect that the member may not have:

- (c) the current Product Disclosure Statement for an accessible financial product held through the scheme; or
- (d) the current disclosure document for accessible securities held through the scheme;

at the time an additional holding of the accessible financial product or accessible securities is acquired under the distribution reinvestment plan.

eligible agent, in relation to a person who is a member of an IDPS-like scheme, means an agent of the person, other than the responsible entity of the scheme or an associate of the responsible entity, who is authorised under an eligible agreement.

eligible agreement, in relation to an eligible agent, means a written agreement between the person and the agent which authorises the agent to receive a document on the person's behalf in relation to the IDPS-like scheme.

financial assets has the same meaning as that term has in paragraph 11 of Accounting Standard AASB 132 *Financial Instruments: Presentation* as in force on 28 June 2013 and as amended from time to time by a disallowable legislative instrument within the meaning of the *Legislation Act 2003*.

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

IDPS-like scheme means a registered managed investment scheme under which or which has a constitution that has provisions to the effect that:

- (a) a member may give a direction that an amount of money corresponding to part or all of the amount invested by the member in the scheme be invested in specified accessible investments; and
- (b) the distributions of capital and income from the scheme to the member in relation to their interests in the scheme will be determined by reference to amounts received by the responsible entity or a custodian in relation to the accessible investments acquired under that direction.

internal controls and other procedures of a responsible entity include any alternative controls and procedures employed by the responsible entity to

address deficiencies in the design or operation of established internal controls or other procedures.

missing document has the same meaning as in the definition of **regular savings plan**.

nominee and custody services has the same meaning as in *ASIC Corporations (Nominee and Custody Services) Instrument 2016/1156*.

quarter means a period of three months ending on a quarter day.

quarter's end means, in relation to electronic access to information under paragraph (9)(b):

- (a) the end of the day that is a quarter day; or
- (b) where such access is not given at the time mentioned in paragraph (a), the time at which access is first given after that time.

quarterly report means a report for a quarter under subsection (11).

regular savings acquisition has the same meaning as in the definition of **regular savings plan**.

regular savings plan means a written arrangement between the responsible entity of an IDPS-like scheme and a member to the effect that:

- (a) the member instructs the responsible entity to acquire specified accessible financial products by way of periodic payments of a specified amount and at specified intervals (each such acquisition is a **regular savings acquisition**); and
- (b) the member acknowledges that under the regular savings plan a regular savings acquisition of an accessible financial product may occur without the member having been given a current Product Disclosure Statement (**missing document**) in relation to the accessible financial product; and
- (c) the responsible entity agrees to give access to the member to what it reasonably believes is the most current missing document relating to an accessible financial product (unless this would not be required if the acquisition were not under a regular savings plan) that may be acquired under the regular savings plan as soon as reasonably practicable and in any event by the fifth business day after the responsible entity receives what the responsible entity reasonably believes is the most current missing document; and
- (d) the member acknowledges that regular savings acquisitions will continue to be made under the regular savings plan until the member instructs the responsible entity otherwise or the arrangement constituting the regular savings plan is terminated; and

where the member:

(e) before entering into the arrangement has been given the Product Disclosure Statement of the IDPS-like scheme containing a statement; and

(f) has been given advice quarterly in writing;

to the effect that the member may not have the current Product Disclosure Statement for an accessible financial product at the time a regular savings acquisition of the accessible financial product is made.

(20) For the purposes of this section:

(a) the circumstances in which the responsible entity of an IDPS-like scheme or a custodian acquires an accessible investment under a direction of a member include:

(i) an allocation of entitlements relating to an accessible investment to the interest of the member; and

(ii) an increased investment in an accessible financial product in respect of which a member's interest has been allocated entitlements;

under a direction of the member; and

(b) a financial product is of the same kind as another financial product if the products would be of the same kind for the purposes of section 1012D.”.

7. Division 5 of Part 7.9 applies in relation to the responsible entity of an IDPS-like scheme as if the provisions of that Division were modified or varied as follows:

(a) in subsection 1019A(1), after “(2),”, omit “this Division” and substitute “sections 1019A and 1019B”; and

(b) after subparagraph 1019A(1)(a)(v) omit “and”, and substitute:

“

but not including:

(vi) an interest in an IDPS-like scheme (as defined in subsection 1013DAB(19)); or

(vii) a managed investment product held by a client because the legal ownership of a financial product is held by a person for the client as part of the IDPS-like scheme.”; and

(c) after section 1019B insert:

“1019BA Cooling-off for IDPS-like schemes

(1) The responsible entity of an IDPS-like scheme must:

(a) take all reasonable steps to comply with a request made during the cooling-off period by a member of the scheme to:

- (i) realise an accessible financial product that has been acquired under a direction given by the member in relation to the IDPS interest acquired by the member; or
- (ii) return any moneys held for the member in relation to the IDPS interest acquired;

unless the responsible entity reasonably considers that it would not be fair to all members; and

- (b) pay to the member upon a realisation of an accessible financial product under subparagraph (1)(a)(i) the amount paid by the member in connection with the acquisition, including any fees payable to the responsible entity in connection with the acquisition but excluding any moneys returned under subparagraph (1)(a)(ii) (the **member's investment amount**) less:
 - (i) the amount, if any, by which the member's investment amount (net of any fees payable to the responsible entity) exceeds the amount received upon a realisation of the accessible financial product under subparagraph (1)(a)(i) (net of any fees payable to the responsible entity); and
 - (ii) any amount that would be permitted by Regulation 7.9.67(7) to be deducted if it applied to the realisation of the accessible financial product under subsection (1) as being an exercise by the member of a right to return the accessible financial product; and
- (c) inform members of the requirements imposed on the responsible entity under paragraph (a) and (b) in any confirmation of a transaction involving an interest in the scheme and in any Product Disclosure Statement of the scheme.

(2) In this section:

accessible financial product has the same meaning as in subsection 1013DAB(19); and

cooling-off period means the period of 14 days starting on the earlier of:

- (a) the time when the confirmation requirement (if applicable) for the IDPS interest is complied with; or
- (b) the end of the 5th day after the day on which the IDPS interest was issued or sold to the member; and

IDPS interest means an interest in an IDPS-like scheme; and

IDPS-like scheme has the same meaning as in subsection 1013DAB(19).”.

Declaration – withdrawals

- 9. Chapter 5C of the Act applies in relation to a responsible entity of an IDPS-like scheme as if the provisions of that Chapter were varied or modified as follows:

- (a) omit subsection 601GA(4) and substitute:

“(4) If members are to have a right to withdraw from the scheme, the scheme’s constitution must:

- (a) specify the right; and
- (b) set out how a withdrawal request will be dealt with where that request relates to an investment which is subject to a minimum holding requirement or the realisation of which might otherwise adversely affect members other than the requesting member.

The right to withdraw, and any provisions in the constitution setting out procedures for making and dealing with withdrawal requests, must be fair to all members.”; and

- (b) omit section 601KA and substitute:

“The responsible entity must not allow a member to withdraw from the scheme otherwise than in accordance with the scheme’s constitution or the conditions of an exemption under this Act.”; and

- (c) omit sections 601KB to 601KE.

Declaration – offers of securities through an IDPS-like scheme

10. Chapter 6D of the Act applies to all persons as if Part 6D.2 were modified or varied by, after section 704, inserting:

“704B Offers through an IDPS-like scheme

- (1) A person who makes an offer of accessible securities through an IDPS-like scheme that needs disclosure under this Part must promptly notify the responsible entity if:
 - (a) a supplementary or replacement document has been lodged in relation to the disclosure document; or
 - (b) the person is prohibited under Division 1 of Part 6D.3 from making offers of securities under the disclosure document; or
 - (c) the disclosure document is withdrawn before the expiry date specified in the disclosure document.
- (2) Nothing in this Part or Part 6D.3 requires a disclosure document for offers of accessible securities through an IDPS-like scheme to include information about the scheme or the rights attached to the accessible securities where they differ from the rights that a person would have if they acquired the accessible securities directly.
- (3) A person cannot rely on subsection (2) if ASIC has given a notice in writing to the person stating that it cannot rely on that subsection and has not withdrawn that notice.

(4) In this section:

accessible securities and *IDPS-like scheme* have the same meanings as in subsection 1013DAB(19).”.

Declaration – Simple managed investment schemes

10A. Part 7.9 of the Act applies in relation to a responsible entity of a simple managed investment scheme as if regulation 7.9.11S of the *Corporations Regulations 2001* were modified or varied by, in subregulation (4), omitting “managed investment scheme that has a constitution” and substituting “managed investment scheme where, or has a constitution”.

Order

11. An IDPS-like scheme does not have to comply with subparagraphs 314(1)(a)(i) and 314(1)(a)(iii) on condition that the responsible entity must and for as long as the responsible entity:
- (a) sends to each member on request a copy of the financial report for the IDPS-like scheme and the auditor's report on that financial report as would be required to be sent in accordance with subparagraphs 314(1)(a)(i) and 314(1)(a)(iii) of the Act; and
 - (b) notifies members of their right to request the information referred to in paragraph (a) in the annual report given to members in accordance with paragraph 1013DAB(13)(a) (as notionally inserted by this instrument).

Interpretation

19. In this instrument:

accessible financial products means financial products (other than securities) that may be held through an IDPS-like scheme.

accessible investments means assets that may be held through an IDPS-like scheme, including accessible securities and accessible financial products.

accessible securities means securities that may be held through an IDPS-like scheme.

custodian means a person that holds property of an IDPS-like scheme and who may also be the responsible entity of the scheme.

IDPS-like scheme means a registered managed investment scheme under which or which has a constitution that has provisions to the effect that:

- (a) a member may give a direction that an amount of money corresponding to part or all of the amount invested by the member in the scheme be invested in specified accessible investments; and
- (b) the distributions of capital and income from the scheme to the member in relation to their interests in the scheme will be determined by reference to amounts received by the responsible entity or a custodian in relation to the accessible investments acquired under that direction.

securities has the meaning given by section 92(4).

simple managed investment scheme has the meaning given by subregulation 1.0.02(1) of the *Corporations Regulations 2001*.

Notes to ASIC Class Order [CO 13/762]

Note 1

ASIC Class Order [CO 13/762] (in force under s341(1), 601QA(1), 741(1), 926A(2), 992B(1) and 1020F(1) of the *Corporations Act 2001*) as shown in this compilation comprises that Class Order amended as indicated in the tables below.

Table of Instruments

Instrument number	Date of FRL registration	Date of commencement	Application, saving or transitional provisions
[CO 13/762]	29/6/2013 (<i>see</i> F2013L01282)	1/7/2013	
[CO 14/757]	7/8/2014 (<i>see</i> F2014L01082)	7/8/2014	-
2016/1158	14/12/2016 (<i>see</i> F2016L01945)	15/12/2016	-
2016/1182	15/12/2016 (<i>see</i> F2016L01957)	20/12/2016	-
2017/821	20/9/2017 (<i>see</i> F2017L01216)	28/9/2017	-
2021/799	22/9/2021 (<i>see</i> F2021L01310)	5/10/2021	-

Table of Amendments

ad. = added or inserted am. = amended LA = *Legislation Act 2003* rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Para 3	rep. s48D LA
Subpara 4(a)	rs. 2016/1158 am. 2021/799
Subpara 5	rs. 2016/1158
Subpara 6(b) (notional subsection 1012IA(10))	am. 2016/1158
Subpara 6(c) (notional subsection 1013DAB(1))	am. 2016/1158
Subpara 6(c) (notional subsection 1013DAB(4))	am.2016/1158
Subpara 6(c) (notional subsection 1013DAB(5))	am. 2016/1158
Subpara 6(c) (notional subsection 1013DAB(7))	rs. 2016/1158

Provision affected	How affected
Subpara 6(c) (notional subsection 1013DAB(8))	rs. 2016/1158
Subpara 6(c) (notional subsection 1013DAB(8A))	ad. 2016/1158 am. 2017/821
Subpara 6(c) (notional subsection 1013DAB(8B))	ad. 2016/1158
Subpara 6(c) (notional subsection 1013DAB(8C))	ad. 2016/1158
Subpara 6(c) (notional subsection 1013DAB(8D))	ad. 2016/1158
Subpara 6(c) (notional subsection 1013DAB(8E))	ad. 2016/1158
Subpara 6(c) (notional subsection 1013DAB(8F))	ad. 2016/1158
Subpara 6(c) (notional subsection 1013DAB(8G))	ad. 2016/1158
Subpara 6(c) (notional subsection 1013DAB(8H))	ad. 2017/821
Subpara 6(c) (notional subsection 1013DAB(9))	am. 2016/1158
Subpara 6(c) (notional subsection 1013DAB(13))	am. 2016/1158
Subpara 6(c) (notional subsection 1013DAB(14))	am. 2016/1158
Subpara 6(c) (notional subsection 1013DAB(15))	am. 2016/1158
Subpara 6(c) (notional subsection 1013DAB(17))	am. 2016/1158
Subpara 6(c) (notional subsection 1013DAB(18))	am. 2016/1158
Subpara 6(c) (notional subsection 1013DAB(19))	am. 2016/1158 and 2017/821
Subpara 6(c) (notional para 1013DAB(20)(aa))	ad. [CO 14/757] rep. 2016/1182

Provision affected	How affected
Para 8 (notional section 912ADB)	rep. 2016/1158
Para 9	am. 2016/1158
Para 10 (notional section 704B)	rs. 2016/1158
Para 10A	ad. 2016/1158
Para 12 to 18	rep. 2016/1158
Para 19	am. 2016/1158
