

ASIC Class Order [CO 12/749]

Relief from the Shorter PDS regime

This instrument has effect under s1020F(1)(c) of the *Corporations Act 2001*.

This compilation was prepared on 5 December 2012 taking into account amendments up to [CO 12/1592]. See the table at the end of this class order.

Prepared by the Australian Securities and Investments Commission.

Australian Securities and Investments Commission Corporations Act 2001 — Paragraph 1020F(1)(c) — Declaration

Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under paragraph 1020F(1)(c) of the *Corporations Act 2001* (the *Act*).

Title

2. This instrument is ASIC Class Order [CO 12/749].

Commencement

3. This instrument commences on the day it is registered under the *Legislative Instruments Act 2003*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (*FRLI*) in electronic form: see *Legislative Instruments Act 2003*, section 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

Declaration

Superannuation products: platforms

4. Part 7.9 of the Act applies in relation to all persons as if regulation 7.9.11K of the *Corporations Regulations 2001* (the *Regulations*) were modified or varied as follows:
 - (a) in paragraph (2)(c), omit “product).”, substitute “product);”;
 - (b) after paragraph (2)(c) insert:
 - “(d) subject to subregulation (3), a superannuation product that relates to a superannuation entity in which:
 - (i) two or more investment strategies are available from which a member, or a class of members, may choose in accordance with subsection 52(4) of the *Superannuation Industry (Supervision) Act 1993*; and

(ii) each of the investment strategies enables a regulated acquisition (within the meaning of section 1012IA of the Act) of a financial product to be made.”;

(c) after subregulation (2) insert:

“(3) Paragraph (2)(d) does not apply to a superannuation product on and from the first occasion a Product Disclosure Statement is given which:

(a) covers the product; and

(b) is prepared or purports to be prepared in accordance with Part 7.9 of the Act as affected by this Subdivision;

and continues not to apply unless and until a Product Disclosure Statement is given which:

(c) covers the product; and

(d) is prepared or purports to be prepared in accordance with Part 7.9 of the Act as it applies but for this Subdivision.”.

Simple managed investment schemes: multifunds and hedge funds

5. Part 7.9 of the Act applies in relation to all persons as if regulation 7.9.11S of the Regulations were modified or varied by, after subregulation (4), inserting:

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

(a) the Statement covers a financial product which relates to a simple managed investment scheme;

(b) the Statement is prepared or purports to be prepared in accordance with Part 7.9 of the Act as it applies but for this Subdivision;

(c) the Statement is set out in a document in which there is also set out one or more other Product Disclosure Statements which:

(i) cover a financial product which relates to another registered managed investment schemes but not another financial product; and

(ii) is prepared or purports to be prepared in accordance with Part 7.9 of the Act as it applies but for this Subdivision.

(6) Subject to subsection (7), this Subdivision does not apply to a simple managed investment scheme that is a hedge fund or fund of hedge funds.

(7) Until 22 June 2013, subregulation (6) does not apply to a hedge fund or fund of hedge funds to which both of the following apply:

(a) a Product Disclosure Statement covering a financial product that relates to the fund was prepared and given on or before 22 June 2012;

(b) the Product Disclosure Statement was prepared or purported to be prepared in accordance with Part 7.9 of the Act as affected by this Subdivision.

(8) In this regulation:

fund of hedge funds means a registered managed investment scheme:

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

hedge fund means a registered managed investment scheme that:

- (a) is promoted by the responsible entity using the expression and as being a “hedge fund”; or
- (b) is covered by two or more of the following:
 - (i) the scheme:
 - (A) deals in financial products in accordance with investment strategies intended to produce a return with low correlation to published indices relating to:
 - (I) shares and/or interests in managed investment schemes that are able to be traded on a financial market; or
 - (II) debentures of a body corporate and/or debentures, stocks or bonds issued by a government; or
 - (B) acquires an economic interest in financial products through:
 - (I) three or more interposed entities; or
 - (II) two or more interposed entities if at least one of the entities is an entity that is formed or incorporated outside this jurisdiction or under laws other than Australian laws; where the responsible entity of the scheme or an associate has the capacity to control:
 - (III) the disposal of the products; or
 - (IV) two or more of the interposed entities;
 - (ii) the scheme acquires any of the following for the dominant purpose of making a financial investment:
 - (A) a credit facility;
 - (B) a margin lending facility;

- (C) a financial product (other than partly-paid securities) the acquisition of which is likely to result in a debt, whether actual, contingent or prospective, owed by the holder of the product to another person;
- (iii) the scheme deals in derivatives unless:
 - (A) the dealing is for the dominant purpose of managing foreign exchange or interest rate risk associated with the holding of some or all of the scheme property; or
 - (B) both of the following apply:
 - (I) the dealing takes place on a financial market;
 - (II) the dealing is for the dominant purpose of managing the financial risk arising from deferring a proposed dealing in another financial product that is not a derivative for a period of less than 28 days;
- (iv) the scheme sells financial products, whether in or outside this jurisdiction, in relation to which, at the time of the sale:
 - (A) the seller does not have a presently exercisable and unconditional right to vest the products in a buyer; or
 - (B) the seller has a presently exercisable and unconditional right to vest the products in a buyer only because of a securities lending arrangement;
- (v) the responsible entity of the scheme or a person who manages some or all of the scheme property has rights to be paid fees substantially based on the performance of that property whether or not the responsible entity or the person also has rights to be paid fees substantially based on the gross or net value of all of the scheme property.

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

securities lending arrangement means an arrangement under which:

- (a) one entity (the *lender*) agrees that it will:
 - (i) deliver particular financial products to another entity (the *borrower*) or to an entity nominated by the borrower; and
 - (ii) vest title in those products in the entity to which they are delivered; and
- (b) the borrower agrees that it will, after the lender does the things mentioned in paragraph (a):
 - (i) deliver the products (or equivalent products) to the lender or to an entity nominated by the lender; and
 - (ii) vest title in those products (or those equivalent products) in the entity to which they are delivered.”.

Cessation

6. This instrument ceases to apply on 22 June 2014.

Notes to ASIC Class Order [CO 12/749]

Note 1

ASIC Class Order [CO 12/749] (in force under s1020F(1)(c) 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 FRLI registration	Date of commencement	Application, saving or transitional provisions
[CO 12/749]	18/6/2012 (<i>see</i> F2012L01235)	18/6/2012	
[CO 12/1592]	30/11/2012 (<i>see</i> F2012L02299)	30/11/2012	-

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Para 5	am. [CO 12/1592]
Para 6	am. [CO 12/1592]