

## ASIC CLASS ORDER [CO 12/1592]

### EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (ASIC) makes ASIC Class Order [CO 12/1592] under paragraph 1020F(1)(c) of the *Corporations Act 2001* (the Act).

Paragraph 1020F(1)(c) provides that ASIC may declare that Part 7.9 of the Act applies in relation to a person or a financial product, or a class of persons or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.

#### 1. Background

The *Corporations Amendment Regulations 2010 (No 5)* established a new shorter Product Disclosure Statement (PDS) regime under Subdivision 4.2B (for superannuation products) and Subdivision 4.2C (for simple managed investment schemes) of Division 4 of Part 7.9 of the *Corporations Regulations 2001*. The shorter PDS regime fully commenced on 22 June 2012.

On 22 December 2011, the Minister for Financial Services and Superannuation announced that the Government would be conducting further consultation with industry and consumer groups to determine whether superannuation platforms and multi-funds should be excluded from the shorter PDS regime or included in the regime but with modified content requirements. The Minister's announcement also stated that other complex products such as hedge funds will continue to remain excluded from the shorter PDS regime, in accordance with the original policy intent, until these products can be fully considered in respect of the policy intent of the shorter PDS regime.

Following this announcement, ASIC issued Class Order [CO 12/749] *Relief from the Shorter PDS regime* on 18 June 2012. Class Order [CO 12/749] provides interim relief, excluding:

- superannuation platforms from the shorter PDS regime. However, superannuation platforms may elect to be included in the shorter PDS regime;
- multi-funds from the shorter PDS regime. However, multi-funds may elect to be included in the shorter PDS regime; and
- hedge funds from the shorter PDS regime. However, hedge funds who have prepared and given a shorter PDS prior to the commencement of Class Order

[CO 12/749] may continue to use their shorter PDS until 31 January 2013, after which they must prepare a full PDS.

Class Order [CO 12/749] expires on 22 June 2013.

## **2. Purpose of the class order**

### ***Aligning Class Order [CO 12/749] with RG 240***

In September 2012, ASIC released Regulatory Guide 240 *Hedge funds: Improving disclosure* (RG 240). RG 240 contains new disclosure benchmarks and principles for issuers of hedge funds. The benchmarks and disclosure principles in this guide set out the specific features and risks of hedge funds that ASIC expects to be addressed in a PDS for these products. The obligation to disclose against the benchmarks and disclosure principles commences on 22 June 2013.

Currently, Class Order [CO 12/749] provides responsible entities of hedge funds which had prepared and given a shorter PDS prior to the commencement of the class order with a transitional period to allow them to continue using a shorter PDS until 31 January 2013.

[CO 12/1592] extends this transitional period until 22 June 2013. This will align the transitional period for hedge funds with the commencement of the disclosure obligations under RG 240.

From 22 June 2013, hedge funds will need to prepare and give a full PDS that complies with RG 240.

### ***Transitional period for hedge funds Class Order [CO 12/749]***

Paragraph 5 of Class Order [CO 12/749] inserts subregulation 7.9.11S(7), which provides that the shorter PDS regime does not apply to hedge funds or fund of hedge funds. Class Order [CO 12/749] provided a transitional period that allows issuers of hedge funds to continue using a shorter PDS until 31 January 2013. However, this transitional period only applied where the shorter PDS was prepared and given prior to the commencement of Class Order [CO 12/749] (18 June 2012).

This meant that PDSs for hedge funds issued between 18 June 2012 and 22 June 2012 were excluded from the shorter PDS regime by Class Order [CO 12/749], and did not have the benefit of the transitional period provided to those issuers of hedge funds that had prepared and given a shorter PDS prior to 18 June 2012.

This class order amends the application of paragraph 5 of Class Order [CO 12/749] to provide issuers of shorter PDSs prepared and given between 18 June 2012 and 22 June 2012 with the benefit of the transitional period (to be extended to 22 June 2013) from the commencement of this class order.

### ***Extension of operation of Class Order [CO 12/749]***

This class order extends the relief of Class Order [CO 12/749], pending further work by Government on the application of the shorter PDS regime to superannuation platforms, multi-funds and hedge funds, and provides industry with greater certainty.

### **3. Operation of the class order**

The class order:

- extends the transitional period provided to responsible entities of hedge funds that had prepared and given a shorter PDS prior to the commencement of Class Order [CO 12/749] from 31 January 2013 to 22 June 2013;
- amends the application of subregulation 7.9.11S(7) under [CO 12/749] to include issuers of hedge funds who had prepared and given a shorter PDS between 18 June 2012 to 22 June 2012, and provides these hedge funds with the benefit of the transitional period (to be extended to 22 June 2013), from the commencement of this class order; and
- extends the operation of Class Order [CO 12/749] from 22 June 2013 to 22 June 2014.

### **4. Statement of Compatibility with Human Rights**

This statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

This class order is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act because it does not engage any of the applicable rights or freedoms.

### **5. Consultation**

Prior to the publication of RG 240, ASIC publicly consulted twice on the definition of a hedge fund.

ASIC prepared a Regulation Impact Statement for those policy changes following CP 174, which was approved by the Office of Best Practice Regulation.

ASIC did not undertake a formal consultation process on extending the operation of Class Order [CO 12/749] as it is a transitional measure of a minor and machinery nature, and was requested by industry and Treasury.