

# ASIC CLASS ORDER [CO 13-797]

## 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 13-797] under paragraph 1020F(1)(c) of the *Corporations Act 2001* (the Act).

Paragraph 1020F(1)(c) of the Act provides that ASIC may declare that Part 7.9 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**

A review of ASIC's policy on the regulation of platforms was initiated by ASIC to address existing and emerging issues in the platforms sector. The review of our regulation of platforms 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 (IDPS) and IDPS provided through a registered managed investment scheme (IDPS-like schemes) (together, referred to as platforms): see Consultation Paper 176 *Review of ASIC policy on platforms: Update to RG 148* (CP 176).

As part of this review, ASIC proposed to allow platform operators and trustees of superannuation entities to give clients Product Disclosure Statements (PDS) about financial products available through platforms or the superannuation entity by giving the documents to another person who is acting as agent of the client.

On 28 June 2013, ASIC released RG 148 *Platforms that are managed investment schemes* (RG 148) to explain our objectives when regulating platforms, set out the requirements for operating a platform and the disclosure obligations of operators of IDPS and responsible entities of IDPS-like schemes, and to provide guidance to people who provide financial product advice on platforms.

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

This class order modifies section 1015C of the Act to allow platform operators and trustees of superannuation entities to deliver a PDS using an agent who is an Australian financial services licensee (AFS licensee) or an authorised representative of a licensee.

Under section 1012IA of the Act, ASIC Class Order 06-636 *Superannuation: Delivery of product disclosure for investment strategies* ([CO 06-636]), ASIC Class Order 13-762 *Investor directed portfolio services provided through a registered managed investment scheme* ([CO 13-762]) and ASIC Class Order 13-763 *Investor directed portfolio services* ([CO 13-763]), the relevant person must be reasonably satisfied that certain disclosures have been made to a client who invests in accessible financial products through the platform or the superannuation entity. Those responsible for giving disclosures currently use a range of practices to satisfy themselves that disclosures have been passed on by agents to clients.

Under paragraphs 1015C(3)(a) and (b), a PDS cannot be given to a person by giving it to an AFS licensee or its authorised representative acting as the person's agent to receive a PDS.

[CO 13-797] grants relief from this prohibition and gives responsibility for passing on disclosures to those who accept responsibility to act as an agent.

The relief applies to PDSs for financial products available through a platform or superannuation entity required to be given under section 1012IA of the Act, [CO 06-636], [CO 13-762] and [CO 13-763].

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

A trustee of a superannuation entity, an operator of an IDPS or the responsible entity of an IDPS-like scheme that is required to give PDSs about financial products available through a platform to an investor may do so through an agent so long as they have received evidence of a written agreement between the agent and the client of the platform operator or the superannuation trustee.

Where an AFS licensee or authorised representative receives a PDS as an investor's agent, it must give the PDS to the investor promptly; otherwise it contravenes the Act.

This class order applies to PDSs for accessible financial products that can be acquired through platforms and superannuation entities. It is not intended to apply to IDPS Guides, PDS for IDPS-like schemes or superannuation entities, or annual client statements and reports from auditors.

The revised requirements in [CO 13-797] apply from 1 July 2013.

### **4. Documents incorporated by reference**

The class order incorporates by reference the following documents:

- (a) [CO 06-636] – modifies the Act as it applies to trustees of superannuation entities to provide additional disclosure obligations for accessible financial products through a superannuation entity. This document is registered on the Federal Register of Legislative Instruments (FRLI);
- (b) [CO13-763] – modifies the Act as it applies to a person operating or involved in the operation or promotion of an IDPS, and to a person offering or issuing

accessible securities through an IDPS. This document is registered on the FRLI; and

- (c) [CO 13-762] – modifies the Act as it applies to a responsible entity of an IDPS-like scheme and to a person offering or issuing accessible securities through an IDPS-like scheme. This document is registered on the FRLI.

## **5. Consultation**

In March 2012, a consultation paper was published setting out our proposals and supporting rationale for reviewing our regulatory approach to platforms: see CP 176. The consultation process closed on 20 April 2012.

A summary of key submissions made in response to CP 176 and further targeted consultation, together with 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).

The Office of Best Practice Regulation has also approved the attached Regulation Impact Statement for this class order.

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

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **ASIC Class Order [CO 13-797]**

This class order is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the class order**

ASIC Class Order [CO 13-797] updates our current regulation of platforms to address complexities existing in current regulatory settings. The objective of [CO 13-797] is to allow platform operators and trustees of superannuation entities to deliver a PDS using an agent who is an AFS licensee or an authorised representative of a licensee.

### **Human rights implications**

This class order does not engage any of the applicable rights or freedoms.

### **Conclusion**

This class order is compatible with human rights as it does not raise any human rights issues.