

REFINEMENTS TO FINANCIAL SERVICES REGULATION

DRAFT CORPORATIONS AMENDMENT REGULATIONS

EXPLANATORY INFORMATION

OCTOBER 2005

What the draft regulations contain

These draft regulations amend or modify various provisions of the *Corporations Act 2001* ('the Act') and Corporations Regulations ('the regulations') to implement the proposals contained in the Government's Proposals Paper: *Refinements to Financial Services Regulation*, released on 2 May 2005.

The Proposals Paper set out 25 proposed refinements, 18 of which are to be implemented through the regulations. The remaining 7 refinements have been, or are to be, implemented through ASIC Class Order relief and/or policy guidance.

The draft regulations also contain some minor technical items which were not mentioned in the Proposals Paper.

The draft regulations are divided in schedules, each containing one or more related proposals. The numbering of the proposals reflects the numbering in the Proposals Paper.

What the draft regulations do not contain

A number of submissions responding to the Proposals Paper raised issues which were not mentioned in the paper and/or suggested significant variations of the proposed refinements.

A number of these issues will be referred to the Business Regulation Advisory Group for consideration. If further refinements are considered necessary, any proposed changes will be the subject of public consultation before implementation.

Schedule 1 – Proposals 1.1, 1.2 and 1.3

Proposal 1.1 – Clarify by regulation that licensees may tailor their Financial Services Guides (FSGs) to specific financial services or products.

Item [1] of Schedule 1 implements proposal 1.1 in respect of both licensees and their authorised representatives, through modifications to sections 941B, 942B and 942C of the Act.

The modifications specify that the *authorised services* referred to in sections 942B and 942C are those services that the providing entity will be, or is likely to be, providing to the client. Therefore, the FSG need not contain information on all of the services that the licensee is authorised by its licence to provide or, in the case of an authorised representative, all of the services it is authorised to provide on behalf of its authorising licensee(s).

Licensees and their authorised representatives will still be able to prepare FSGs which encompass all of the financial services they are authorised to provide if they wish, as subsections 942B(6) and 942C(6) respectively provide that the FSG of a licensee or authorised representative may contain other information.

In the situation where a person is the authorised representative of more than one licensee, the proposed regulations have the effect that the information in the FSG about authorising licensees need only refer to the licensee(s) on whose behalf the authorised representative is providing services to which the FSG relates. Thus, if the FSG relates only to services provided on behalf of one licensee, only information about that licensee needs to be included in the FSG.

A consequential modification is made to subsection 941B(2) to provide that only those authorising licensees on whose behalf the authorised representative provides services to which the FSG relates are required to authorise the distribution of the FSG (proposed regulation 7.7.10AC).

Proposal 1.2 – Where a licensee or authorised representative sells or arranges to sell a financial product, specify by regulation that the relevant Financial Services Guide (FSG) need not include information which will be provided in the Product Disclosure Statement (PDS).

Items [2] and [3] of Schedule 1 implement proposal 1.2.

Items [2] and [3] would only apply where a service provider gives the client their FSG, at the same time as passing on a product issuer's PDS, for example, in a recommendation or sale situation.

If the product issuer's PDS duplicates information the service provider is required to include in their FSG, items [2] and [3] would exempt the service provider from the need to supply a complete FSG.

The service provider could instead provide the client with a ‘statement’ that would, in effect, be an FSG minus information that was already in the product issuer’s PDS. The service provider would be responsible for ensuring that, between the ‘statement’ and the PDS, the client received the same information they would have received if given a complete FSG.

Items [2] and [3] would offer service providers an alternative to combining their FSG with a product provider’s PDS, but would not restrict a service provider from continuing to provide a complete and separate FSG.

Proposal 1.3 – Specify by regulation that where a licensee is authorised to provide personal advice, the Financial Services Guide (FSG) need only contain brief, generic information about remuneration and conflicts of interest concerning the provision of the personal advice.

Items [4] – [9] of Schedule 1 implement proposal 1.3. The amendments in some respects vary the proposal as stated above, in that they are not limited in their application to licensees or authorised representatives who are authorised to provide personal advice.

Proposed modifications to Regulations 7.7.04 and 7.7.07 remove the requirement for the FSG to contain a statement of a range of amounts or rates of remuneration, in situations where the amount of remuneration cannot be ascertained at the time the FSG is given to the client (items [5] and [8]).

Instead, where the amount of remuneration cannot be ascertained at the time the FSG is given, and the client does not receive personal advice, the FSG will be required to contain a statement notifying the client that he or she has the right to seek further particulars about remuneration arrangements (items [4] and [7]). These further particulars will include, where relevant, information about the range of amounts or rates of remuneration (items [6] and [9]).

Therefore, the more detailed information on remuneration currently required by subregulations 7.7.04(3) & (4) and 7.7.07(3) & (4) will not have to be included in the FSG, but will have to be given to the client on request.

The FSG will still be required to contain a description of the means by which remuneration, commission or other benefits are to be calculated or provided, including details of when and how the remuneration, commission or other benefits are payable (current paragraphs 7.7.04(2)(b) & (d) and 7.7.07(2)(b) & (d)).

Where a person has received, or is to receive, commission, and personal advice is given, the FSG will still be required to contain a statement informing the client that more information about the commission will be contained in the record of that personal advice (current paragraphs 7.7.04(2)(c) and 7.7.07(2)(c)).

In some situations it may not be possible to determine, at the time the FSG is given to a client, whether the client will receive personal advice. In these cases it is expected that licensees and authorised representatives will include in their FSGs the statement

that the client may request particulars of the remuneration – this statement could be encapsulated in one or two sentences and should not add substantially to the length or cost of the FSG.

Proposal 1.3 also refers to information about conflicts of interest. Subsections 942B(3) and 942C(3) of the Act specify that the level of information about a matter that is required to be included in a FSG is such as a person would reasonably require for the purpose of making a decision whether to acquire financial services from the providing entity as a retail client.

These subsections are expressed to apply subject to the regulations. As there are currently no regulations which prescribe the inclusion of more detailed information about conflicts of interest in the FSG, it is not considered that any modifications are required to implement this aspect of the proposal. That is, subsections 942B(3) and 942C(3) allow for licensees and authorised representatives respectively to provide generic information on conflicts of interest.

Schedule 2 – Proposals 2.1 and 2.2

Proposal 2.1 – Amend regulations to exempt advice providers from the requirement to provide a Statement of Advice (SoA) for information subsequent to the initial Statement of Advice, where:

- **there is an ongoing relationship between a retail client and a provider; and**
- **there are no significant changes in the client’s personal circumstances or the basis of the advice since the last Statement of Advice was given.**

The provider would instead be required to keep a record of the subsequent advice for seven years and provide it to the client, if requested.

Items [1] – [10] of Schedule 2 implement proposal 2.1.

The major change is the modification of subsections 946B(1) and (2) of the Act (which currently apply to *further market-related advice*), by removing a number of the existing requirements in those subsections. A new section 946B is set out in proposed regulation 7.7.10AJ in item [6]. Existing subsections 946B(3) and (3A) are also modified. However, existing subsections 946B(5) and (6) are unchanged.

The effect of the modifications to section 946B is that exemption from the need to provide a SoA for *further advice* will now potentially apply to any provider of personal advice, and in respect of any financial product or service. There are no limitations on the means by which the further advice is provided, nor will it be a precondition that the further advice is required promptly.

The existing requirements of section 946B that will continue to apply are that the client has previously been given a SoA which sets out the client’s relevant personal circumstances, and that those circumstances are not significantly different at the time

further advice is provided from the circumstances that existed at the time the advice in the previous SoA was given (see new paragraphs 946B(2)(a) and (b)).

To the extent that the further advice is based on matters other than the client's relevant personal circumstances, that basis must also not have changed significantly between the giving of the previous advice and the further advice (new paragraph 946B(2)(c)).

Therefore, as with existing section 946B, if there has been a significant change in either the relevant personal circumstances of the client or the basis of the further advice (to the extent the advice is based on other matters) then the section cannot be relied upon, and a SoA for the further advice will be required.

It will no longer be a requirement that the adviser has, either immediately before the further advice is given, or within the preceding 12 months, checked whether the client's objectives, financial situation or needs have changed (as is currently required by subparagraph 946B(1)(d)(ia)). However, advisers are still subject to the overarching obligation imposed by section 945A requiring them to have a reasonable basis for any personal advice given, which carries with it an obligation to determine the relevant personal circumstances of the client before giving advice.

Proposed new subsection 946B(2A) is a transitional provision, replacing existing regulation 10.2.214, which is repealed by item [10]. It essentially provides that certain earlier advice given to a client since the commencement of the FSR Act will be accepted as a substitute for the provision of a previous SoA, such that a new SoA is not required for further advice, provided that the other requirements of subsection 946B(2A) are met. These other requirements mirror the requirements of new subsection 946B(2).

Where the requirements of proposed new subsections 946B(2) or (2A) are met, the adviser will not have to give the client a SoA for further advice, but will instead be required to make more limited disclosure at the time the further advice is given (subsection 946B(3)) and will be required to keep a record of the advice (RoA) which must be made available to the client on request (see subsection 946B(3A) and paragraphs 942B(2)(g) and 942C(2)(h), which are modified by proposed regulations 7.7.10AF and 7.7.10AH in item [6]).

The content requirements for the RoA will be the same as those that currently apply in respect of further market-related advice in subregulation 7.7.09(1) – namely, the RoA must set out the advice given to the client, or brief particulars of the recommendations made to the client, including the basis on which the recommendations were made.

Regulation 7.7.09(3) will provide that the RoA must be retained by the adviser for 7 years (see item [5]).

A number of submissions queried whether it was intended to define an “ongoing relationship” between the client and the adviser, which was referred to in the Proposals Paper. The provision of advice in an earlier SoA referred to in new subsection 946B(2) (or advice which meets the requirements of proposed subsection 946B(2A)) will be the main prerequisite for the operation of the section. It

will not be necessary to satisfy any other criteria to demonstrate that a relationship exists between the adviser and client.

Similarly, there is no intention to define in the legislation what constitutes a “significant” change in relevant personal circumstances or in the basis for the advice (so far as it relates to other matters). Given that advice contained in a SoA is particular to an individual client, what constitutes a significant change in circumstances may vary from one client to another. This makes it difficult to develop a definition that would be appropriate in all cases.

By way of example, a change in annual income of \$20,000 may represent a significant change in the financial situation of a person with an annual income of \$50,000, but may not be a significant change for a person with an annual income of \$200,000.

It will therefore be up to advisers to determine whether or not their clients’ relevant personal circumstances (or the basis of the advice, so far as it relates to other matters) have changed significantly between the time the advice contained in the previous SoA, or the earlier advice to which proposed new subsection 946B(2A) applies, is given, and the time the further advice is provided.

Items [1] – [5], and those parts of item [6] other than the new section 946B set out in proposed regulation 7.7.10AJ, are consequential amendments reflecting the change in terminology in section 946B from *further market-related advice* to *further advice*, and the change in the current period within which the RoA must be retained from 90 days to 7 years.

Item [7] is a provision which saves the operation of existing regulation 7.7.10. This is required because the provision under which that regulation was made (paragraph 946B(5)(c)) is being remade.

Item [8] applies the liability provisions in Division 7 of Part 7.7 of the Act relating to disclosure documents to the RoA required under subsection 946B(3A).

Item [9] contains proposed regulations which omit the current definition of *further market related advice* in section 761A of the Act and replace it with a definition of *further advice* (proposed regulations 7.7.10B and 7.7.10C).

The item also contains proposed regulations 7.7.10D and 7.7.10E to apply section 947D (which requires the provision of certain information where advice recommends the replacement of one financial product with another) in respect of further advice referred to in section 946B.

Therefore, if further advice is advice of a kind referred to in section 947D, then the RoA needs to include the information required by section 947D. Also, the disclosure required under subsection 946B(3) (which currently refers to information about remuneration and associations which would otherwise be included in a SoA) must also include information required by section 947D, if applicable.

Proposal 2.2 – Amend the regulations to clarify that advisers are not obliged to include in a Statement of Advice (SoA) information on alternative products or strategies that are considered but that do not form part of the final recommendation given by the adviser.

Item [11] of Schedule 2 implements proposal 2.2.

Advice providers will not be obliged to include information on financial products or services considered but not recommended to the client (referred to as *alternate product information*) in the SoA. However, the SoA will need to contain a statement notifying the client that alternate products or services have been considered, where appropriate, along with a general explanation of the information. The statement will also state that the client may request the alternate product information.

The proposed regulations are not intended to impose a new obligation on an adviser to consider alternate products or services. Whether alternate products or services need to be considered will depend on the circumstances. Similarly, there is no intention to prescribe the number of alternate products or services that should be considered – this will depend largely on the client’s wishes (for example, how much cost the client is willing to incur in having the adviser consider a range of products or services). It will also be governed by the adviser’s obligations under section 945A of the Act, which require (in part) that the adviser must give such consideration to, and conduct such investigation of, the subject matter of the advice *as is reasonable in all of the circumstances* (emphasis added), having regard to information obtained from the client in relation to the client’s personal circumstances.

In relation to advice to switch from one superannuation fund to another, the ‘from’ fund does not constitute an alternate financial product considered but not recommended. Hence, in a super switching scenario, information about the ‘from’ fund would still need to be included in the SoA.

The proposed regulations do not prescribe the form in which the adviser should keep alternate product information. An adviser could, for example, keep the information on computer disc. However, where the client requests the information, the adviser will have to provide the information in writing to the client.

Schedule 3 – Proposal 3

Proposal 3 – Product Disclosure Statement – Amend the regulations to allow issuers of financial products to provide a ‘short form’ Product Disclosure Statement that contains core information, with full product information available on request or through an easily accessible forum, such as the internet.

Overview

The aim of this proposal is to provide product issuers with the option of giving retail clients a Short-Form PDS that contains at least a summary of the information required to be included in the PDS. This approach differs from the notion of ‘core information’ as outlined in the Proposals Paper. It has been adopted because

preliminary consultation with the financial services industry and ASIC indicated a preference for this method as better suited to delivering the outcomes targeted in the Proposals Paper.

Generally speaking, product providers will be able to satisfy their obligation to provide a PDS to a retail client by instead giving the client a Short-Form PDS. However, the proposed Short-Form PDS does not completely replace the PDS. The proposed Short-Form PDS will be an optional disclosure document. Product providers will still be required to prepare a PDS (either in hard copy or electronic form as allowed under section 1015C of the Act) and make it available where a retail client requests one.

The main difference between a Short-Form PDS and a PDS lies in their content. Other than that, all provisions that apply to a PDS are generally mirrored in their application to the Short-Form PDS. Exceptions to this general approach occur where the extension of a particular section or subsection to a Short-Form PDS would provide an inappropriate outcome or where it is not necessary.

Drafting approach

The proposed method of introducing the Short-Form PDS measure into the Act is by way of regulations that modify the operation of Parts 7.7, 7.8 and 7.9 of the Act. In addition, this approach seeks to rely, as much as possible, on the existing PDS infrastructure in the Act and regulations. To achieve this, a high-level deeming method has been used, to the extent possible, to ensure that relevant PDS sections and/or regulations apply to a Short-Form PDS as if a reference to a PDS in those sections and/or regulations included a reference to a Short-Form PDS.

It is, however, important to note that use of this high-level method was not possible in all circumstances, and that a variety of methods have been applied to ensure that other PDS provisions are extended in their application to a Short-Form PDS. For example, in relation to enforcement and offence provisions, specific amendments have been drafted to unambiguously extend their application to the Short-Form PDS in an appropriate manner. Other methods (including amending definitions) are used elsewhere to achieve the desired outcomes.

In addition, certain provisions that do refer or apply to a PDS do not need to be extended to a Short-Form PDS because they continue to apply appropriately, irrespective of whether a product issuer has prepared a Short-Form PDS. For example, it is unnecessary to modify section 601ED to refer to a Short-Form PDS as the requirement for a PDS (which still has to be prepared) serves as a trigger for other requirements under the Act and remains unaffected by the existence of any Short-Form PDS.

Detailed draft regulations

Proposed new Division 5AB – Short-Form Product Disclosure Statements

Item [1] proposes the insertion of a new regulation to amend section 761A of the Act by inserting new definitions for Short-Form PDS and Supplementary Short-Form

PDS. Further modifications to Parts 7.7, 7.8 and 7.9 are included in proposed new Schedule 10BA.

Proposed new Schedule 10BA – Modifications to the Act Relating to Short-Form Product Disclosure Statements

Item [2] contains three parts, of which the first two modify the relevant sections in Parts 7.7 and 7.8. Part 3, sub-items 3.1 – 3.27 contains the necessary modifications to Part 7.9 of the Act.

Proposed Division 3A – Short-Form Product Disclosure Statements

Sub-item 3.1 establishes a new proposed Division 3A, which contains a number of proposed regulations relating to Short-Form PDSs providing that where a regulated person is required to give a PDS for a financial product to another person, they may instead give a Short-Form PDS. They also provide that if a person instead requests a PDS, the regulated person must provide the PDS. Therefore, in all situations where a regulated person is required or obliged to give a PDS for a financial product, they will have the option of instead providing a Short-Form PDS. However, this does not affect the requirement to prepare a PDS. Irrespective of whether a Short-Form PDS has been prepared, the existing obligation to prepare a PDS at a certain time and in a certain form continues to apply. The proposed regulations do not apply to general insurance products, which are the subject of a separate proposal in the Proposals Paper.

With respect to the contents of a Short-Form PDS, it must contain a summary of the statements and information required to be included in a PDS for the product, as mandated by paragraph 1013C(1)(a) of the Act. In addition, the Short-Form PDS must also contain a summary of any other information that is included in the PDS for the product, as allowed under paragraph 1013C(1)(b) of the Act. The Short-Form PDS is also required to include a statement that notifies the retail client of their right to ask for the PDS for the product and the means by which the client may ask for the PDS. The outcome of these requirements is that a Short-Form PDS for a financial product is a complete summary of the PDS for that financial product as it will include a summary of all the mandated and optional information in the PDS.

For superannuation and managed investment products, a summary of information about fees and costs (for example as required by paragraphs 1013D(1)(d) and 1013(1)(e)) is not sufficient. Instead, the Short-Form PDS must include, in full, the information required by regulations 7.9.16L and 7.9.16N (also known as the enhanced fee disclosure requirements).

The Short-Form PDS may also include other information to that specified above and may also refer to other information that is set out in the PDS or Financial Services Guide (FSG) for the product. Where other information is referred to in the Short-Form PDS, the reference must identify the document (that is, the relevant PDS or FSG) or the part of the document that contains the information. This document or part is then taken to be included in the Short-Form PDS. This is relevant for enforcement/liability purposes so that where a retail client has received a Short-Form PDS, they are taken to also have read the information incorporated by reference.

If a PDS for a financial product may include a statement made by a person (see section 1013K), the statement may also be included in the Short-Form PDS for the product. Therefore, where consent has been obtained for inclusion of a statement in a PDS (consistent with the requirement in section 1013K), no further consent is required to include the statement or a summary thereof in a Short-Form PDS.

Proposed section 1017K extends the application of a large number of other provisions of the Act to the Short-Form PDS, most (but not all) of which are in Part 7.9 of the Act. Proposed section 1017K also covers any regulations made under the above sections or subsections as well as any regulations that modify those sections or subsections.

Proposed Division 3B – Supplementary Short-Form Product Disclosure Statements

Proposed Division 3B contains regulations relating to Supplementary Short-Form PDSs, for example defining what they are, their title and form, and other matters. The sections in this Division mirror exactly sections 1014A – 1014F of the Act relating to Supplementary PDSs. Proposed section 1017P provides that any client who has originally been given a Short-Form PDS must be given a Supplementary Short-Form PDS (and not a Supplementary PDS) if the requirement for a supplementary disclosure document arises.

Sub-items 3.2 – 3.27 Advertising, Enforcement and Other Matters

These regulations ensure that a variety of sections in Part 7.9 are applied to Short-Form PDSs and Supplementary Short-Form PDSs. The matters affected include the requirement to lodge certain statements with ASIC, advertising, the inability to contract out of Part 7.9 and enforcement. With respect to enforcement, a new subsection 1021C(6) has been inserted stating that a person who does not give a PDS because a Short-Form PDS has been given instead, will not be taken to contravene section 1021C.

Fee for lodgment

Separate draft amendments to the Corporations (Fees) Regulations will provide that where a Short-Form PDS has to be lodged with ASIC in accordance with section 1015B of the Act, a fee of \$2010 will be charged (which is the same fee as for lodging a PDS).

Schedule 4 – Proposals 4 and 6

Proposal 4 – Oral Disclosure – Specify by regulation that where a cooling-off period applies, oral disclosure can be reduced to referring to the availability of that cooling-off period and that a written Product Disclosure Statement (PDS) will be provided.

Proposal 4 is implemented by Items [1] – [3] of Schedule 4, which insert two new regulations 7.9.15H and 7.9.15I and omit regulations 7.9.80, 7.9.80C and 7.9.80D.

Regulation 7.9.15H replaces section 1012G with a new section. Section 1012G currently applies to products with a cooling-off period, as well as a financial product that is:

- (i) a basic deposit product; or
- (ii) a facility for making non-cash payments that is related to a basic deposit product; or
- (iii) a financial product of a kind that is prescribed by the regulations – the only product prescribed by the regulations for this purpose is travellers' cheques.

However, the regulations made for proposal 6 remove the requirement for a PDS to be provided for basic deposit products, non-cash payment facilities related to a basic deposit product and travellers' cheques. As such, section 1012G, which enables a PDS to be provided later, no longer applies to these financial products.

For a financial product with a cooling-off period, section 1012G provides that a PDS may sometimes be provided later than at or before the time that the product is issued or recommended. The amendments will further reduce the oral disclosure requirements for financial products with a cooling-off period, given that a written PDS is required to be provided within a relatively short time after the issue or recommendation is made.

The oral disclosure requirements listed in paragraphs 1012G(3)(a) and 1012G(3)(b) have been reduced to:

- details of the issuer of the financial product;
- information about the cooling-off regime that applies in respect of acquisitions of the product; and
- a statement explaining that the client should consider the information in a PDS, which will be provided to them.

In addition to the oral disclosure items listed in the refinement proposal, a further requirement has been added. The regulated person will also be required to ask the client if they would like further information about the product. This is not an onerous requirement and provides appropriate consumer protection to enable a client to receive more information prior to a PDS being provided.

It is anticipated that this reduction in the oral disclosure requirements will minimise frustration for consumers who do not wish to receive voluminous amounts of information from product providers. However, consumers who require additional information will be able to ask for further information at the time of issue or recommendation of a financial product. As there is a cooling-off period, consumers will be able to read further information about the product in the PDS that they subsequently receive and still be able to return the product if they choose.

In December 2003, the oral disclosure requirements were streamlined to reduce the amount of information provided where a PDS was later supplied. The requirements in section 1012G were amended by regulations 7.9.80C and 7.9.80D, which exempt providers of certain financial products from the requirement to orally communicate information about the essential features of the product and information about the significant risks and dispute resolution system that is required to be included in a PDS by paragraphs 1013D(1)(c) and (g) (and paragraphs 1013D(1)(d) and (i) for a recommendation situation). This exemption is subject to specific oral disclosure requirements and includes the ability for a client to 'opt-out' of receiving some information, provided that the client is made aware of the information they may choose to receive on these products.

Given the reduction in oral disclosure requirements and the removal of some products from the PDS requirements under the proposal 6 amendments, regulations 7.9.80C and 7.9.80D are no longer required and will be omitted.

As a result of the re-ordering of the oral disclosure requirements in subsection 1012G(3), a reference to this subsection in section 1012IA will be amended. Regulation 7.9.15I amends the reference in subparagraph 1012IA(4)(b)(ii) from what used to be subparagraphs 1012G(3)(b)(i) and 1012G(3)(b)(ii) to subparagraphs 1012G(3)(c)(i) and 1012G(3)(c)(ii).

The amendments will have implications for other sections, particularly the anti-hawking provisions which require a person who has received an unsolicited phone call or other unsolicited contact relating to a financial product to be given the option to have the information in a PDS read out to them. Given the important consumer protections contained in these anti-hawking provisions, it is not intended to change their application.

Proposal 6 – Exempt Basic Deposit Products from the Product Disclosure Statement (PDS) requirements, by regulation, subject to appropriate oral disclosure and adequate and accessible disclosure of information on fees and charges on application, at point of sale, and on a website.

Item [4] – [8] of Schedule 4 implement proposal 6.

Item [8] inserts new Regulation 7.9.07FA, which modifies section 1012D of the Act to specify certain products for which a PDS is not required. By inserting subsection 1012D(9N), the regulation provides that a PDS is not required for a basic

deposit product (BDP), a facility for making non-cash payments that is related to a BDP and a travellers' cheque.

If a regulated person chooses to not provide a PDS for these products, they must provide information to the client on the cost of the product and information on any amounts that may be payable after the acquisition of the product, including when those amounts may be payable.

It is not intended to mandate how information on BDPs, particularly on fees and costs, is to be provided, as guidance on this is provided by industry codes of practice. However, it is expected providers maintain disclosure of information on these products by ensuring this information is made available to clients upon request, at branch outlets and on a website.

BDPs are considered to be relatively low-risk and generally well-understood financial products. Nevertheless, it is important to include BDPs as part of the regulation of financial services to ensure that consumers are provided with sufficient information and that staff are adequately trained to issue and advise on these products.

While it is important that organisations offering BDPs (and related non-cash payment facilities such as ATM cards, telephone banking and Internet banking) are licensed and subject to oversight by the Australian Securities and Investments Commission (ASIC), the low-risk nature of these products and relative consumer familiarity with them makes sophisticated and lengthy disclosure unnecessary.

Further, issuers of BDPs are subject to industry codes, such as the Code of Banking Practice and the Credit Union Code of Practice. These codes contain requirements and standard practice for disclosure in the banking industry. In addition, ASIC's *Guide to Good Transaction Fee Disclosure for Bank, Building Society and Credit Union Deposit and Payments Products* contains principles for effective disclosure in relation to fees and costs on transaction accounts and was designed to promote improved disclosure.

In accordance with these good disclosure principles and as a result of a considerable increase in the use of Internet banking and Internet access generally, particularly over the past five years, there is an increasing amount of information available for consumers on fees charged by banks, building societies and credit unions that is displayed on websites in a well-presented and comprehensible manner.

Subject to industry's continued compliance with the good disclosure principles and requirements contained in the industry codes and guidelines, it is considered appropriate to provide relief from the requirement to provide a PDS for BDPs, non-cash payment facilities that are related to BDPs and travellers' cheques.

Items [4] – [7] implement a refinement that extends beyond the original intention outlined in proposal 6.

It has been submitted that cash management trusts (CMTs) are similar in nature to BDPs and as such, the same exemption from the PDS requirements should apply. However, CMTs are not considered to be as simple or well-understood as BDPs and consumers would therefore benefit from receiving information on these products.

Nevertheless, CMTs are relatively more straightforward than other financial products, and as such, it is considered that relief may be provided from the requirement to provide a Financial Services Guide and Statement of Advice, given that the more important information on these products is conveyed in a PDS.

As such, a cash management trust interest is included in the exemptions from the requirements to provide a Financial Services Guide and a Statement of Advice, under regulations 7.7.02 and 7.7.10 respectively.

Schedule 5 – Proposals 7.1 and 7.2

Proposal 7.1 – Through the regulations, tailor the Product Disclosure Statement (PDS) requirements for general insurance so that an insurer need only disclose certain core information, including that required to comply with Insurance Contracts Act obligations.

Item [1] of Schedule 5 implements proposal 7.1.

Item [1] would ‘turn off’ certain PDS content requirements that are not relevant for general insurance. That is, a ‘general insurance PDS’ would not need to include:

- information about significant risks associated with holding the product (paragraph 1013D(1)(c));
- if amounts paid in respect of the financial product and amounts paid in respect of other financial products are paid into a common fund – amounts that will or may be deducted from the fund by way of fees, expenses or charges (subparagraph 1013D(1)(d)(iii));
- if the product will or may generate a return to a holder of the product – information about any commissions, or other similar payments, that will or may impact on the amount of such a return (paragraph 1013D(1)(e));
- general information about any significant taxation implications of financial products of that kind (paragraph 1013D(1)(h));
- if the product issuer (in the case of an issue Statement) or the seller (in the case of a sale Statement) makes other information relating to the product available to holders or prospective holders of the product, or to people more generally – a statement of how that information may be accessed (paragraph 1013D(1)(j));
- if the product has an investment component – the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of the investment (paragraph 1013D(1)(l)); and
- other information that might influence a decision to acquire (section 1013E).

Item [1] would also specify that, for a ‘general insurance PDS’, the requirement to include information about any other significant characteristics or features of the

product or of the rights, terms, conditions and obligations attaching to the product (paragraph 1013D(1)(f)), would be satisfied where the general insurer includes the terms and conditions of the policy document and, if necessary, other information to allow the insurer to rely on subsection 35(2) and section 37 of the *Insurance Contracts Act 1984*.

We appreciate that insurers will require time to transition to the new PDS requirements. Therefore, we intend to delay the commencement of item [1]. We would welcome comments from insurers as to how much time is required to prepare for the introduction of the new requirements.

Proposal 7.2 – Specify through the regulations that a general insurance Product Disclosure Statement (PDS) does not need to be given on renewal, where no material changes to the policy have occurred (other than in relation to the amount of premium payable).

It has been decided not to progress proposal 7.2.

Following consultation and a review of submissions, we considered this proposal further and decided that it would not sufficiently expand upon current exemptions available under section 1012D of the Act.

However, consultation and submissions have brought to our attention other problems for general insurers.

New proposals relating to general insurance products

We understand that, upon renewal, if the policy terms and conditions of an insurance product have changed then a general insurer is required to provide the client with a new PDS.

However, a new PDS may not necessarily highlight to the client the changes that the insurer has made to their policy. Further, a new PDS may repeat a large amount of information that the client already received when they acquired the original insurance product.

It has been submitted that the most important information to bring to a client's attention, upon renewal of a policy of insurance, is changes made to that policy.

In response to these concerns we have developed item [2] of Schedule 5.

Item [2] would apply where an insurer issued an insurance product to a client; they provided that client with a PDS in relation to that product (the original PDS); and that product is up for renewal.

If the general insurer is required to give the client a new PDS on renewal (for example, because some significant terms and conditions of the policy have changed), item [2] would allow a general insurer the choice of instead giving the client a Supplementary PDS.

A Supplementary PDS would need to only disclose changes that have been made to the insurance product since the client received the original PDS.

Item [2] would also specify that insurers choosing to provide a Supplementary PDS on renewal must inform clients that they can request a complete PDS. Insurers would be obliged to provide a complete PDS to a client within 5 business days of such a request.

Insurers wishing to continue to provide clients with a full PDS on renewal would be able to do so.

Another issue that arose through consultation on the refinements was in relation to the compliance costs and time involved with preparing a Statement of Advice for general insurance products.

Some members of the general insurance industry suggested that all disclosure for general insurance should be similar to that required for basic deposit products.

Unlike basic deposit products, the cost of getting insurance wrong can be substantial for a consumer. Hence, product and service disclosure is necessary to highlight the limitations of policy coverage, the important differences between similar products and the nature of relationships between agents, brokers and insurers.

Nevertheless, we were concerned about claims that personal advice for general insurance is difficult and costly to provide. It was argued that advisers were choosing not to provide personal advice to clients to avoid the costs associated with, what they considered to be, relatively simple but useful advice.

Unlike investment products, an adviser would only need to consider a few of a client's personal circumstances to recommend an appropriate general insurance product. In that way, such advice may be quite similar to general advice provided about the product. Industry participants have claimed that the requirement to provide such simple advice in writing is excessive.

Item [3] of Schedule 5 would simplify the disclosure that an adviser must provide when giving personal advice about general insurance products. Item [3] would prescribe that, when giving personal advice about general insurance, an adviser need not provide a Statement of Advice.

Instead, an adviser would only have to provide their client with information about remuneration, commissions and conflicts of interest. Such information is important for the client wishing to weigh up the value of advice and determine the relative independence of the adviser.

Item [3] would not restrict advisers from continuing to provide their advice and reasons in writing. In fact, we would expect that advisers selling specialist advice about general insurance, such as insurance brokers, would continue to document their advice in writing to their clients.

Schedule 6 – Proposals 8.1, 8.2 and 8.3

Proposal 8.1 – Amend the regulations to extend wholesale treatment to companies and trusts that are controlled by wholesale investors and related bodies corporate of wholesale investors.

Item [1] of Schedule 6 implements proposal 8.1.

The proposed amendments are structured so that the assets or income of a trust or company controlled by an investor can be aggregated with the assets or income owned or received by the investor directly, for the purposes of determining whether the investor or the controlled trust or company is a wholesale investor. This is achieved by modifications to section 761G including the insertion of a new paragraph 761G(7)(ca) (see proposed regulation 7.6.02AB), and new subsections 761G(7A) and (7B) (see proposed regulation 7.6.02AC). The definition of ‘control’ in section 50AA of the Act will apply.

The Proposals Paper indicated that minority interests in the controlled trust or company may require retail client protection. On balance, it is felt that existing protections in the Act and under the common law for shareholders and beneficiaries are sufficient. However, this is an issue that will be monitored and the need for explicit protections for minority interests will be reconsidered, if appropriate, in the light of experience with the new provisions.

In respect of related bodies corporate of wholesale investors, the proposed amendments will extend wholesale treatment to all related bodies corporate (as defined in section 50 of the Act), not only those whose shareholders are all wholesale investors, as foreshadowed in the Proposals Paper. This is achieved by modification of section 761G through the insertion of a new subsection 761G(4A) (see proposed regulation 7.6.02AD)

Proposal 8.2 – Amend the regulations to simplify paragraph (e) of the definition of professional investor to be a person with a minimum of \$10 million in gross assets.

Item [2] of Schedule 6 implements proposal 8.2.

It has been decided to retain the current requirement that the person *controls* at least \$10 million, and add the new criteria of *having* \$10 million in gross assets as an alternative. Therefore, paragraph (e) of the definition of *professional investor* will be substituted by a new paragraph (see proposed regulation 7.6.02AE).

The definition of ‘control’ in section 50AA will not generally be appropriate for determining control under this paragraph (because section 50AA relates to control of an entity). However, no separate definition of ‘control’ is proposed for the purposes

of paragraph (e) of the definition of *professional investor*. Rather, ‘control’ will be given its ordinary meaning, which is “*to exercise restraint or direction over...*”.¹

It will also be specified in the Explanatory Statement that accompanies the final regulations when they are made, that the assets to which paragraph (e) of the definition of *professional investor* refers do not have to be held for the purposes of investment – to remove any doubt.

Proposal 8.3 – Amend the regulations to extend the six-month renewal period for accountant’s certificates to 24 months.

Item [4] of Schedule 6 implements proposal 8.3 in respect of Chapter 7 of the Act through a modification of paragraph 761G(7)(c) (proposed regulation 7.6.02AF). Item [3] makes a similar amendment to paragraph 708(8)(c) in Chapter 6D, relating to securities (proposed regulation 6D.5.02).

Schedule 7 – Proposals 9.1 and 9.2

Proposal 9.1 – Specify through regulations that a secondary service provider will be exempt from the Financial Services Guide (FSG) requirements where the intermediary’s licence covers the same services as the secondary service provider and the intermediary accepts responsibility for the services provided by the secondary service provider.

Item [1] of Schedule 7 implements proposal 9.1.

It varies from the proposal as set out above in that the intermediary’s licence (or authorisation, where the intermediary is an authorised representative) does not have to cover the same services which the secondary service provider is authorised to provide. Rather, it only needs to cover the particular service(s) in question (that is, the secondary service(s)).

Proposed subregulation 7.7.02(7) proceeds on the basis that, where the secondary service provider would not be taken to be providing a financial service to a client if it were not for the operation of section 52 of the Act (which states that a reference to doing an act or thing includes a reference to causing or authorising the act or thing to be done), then the secondary service provider does not have to give the client a FSG.

However, the new subregulation does not affect any liability of the secondary service provider to the client in respect of the provision of the service. It merely removes the obligation to give the FSG. The intermediary is still required to give its FSG to the client.

¹ Macquarie Dictionary, 2003. Macquarie University, Macquarie Library Pty Ltd (online edition).

Proposal 9.2 – Specify through regulations that a secondary service provider does not have to give its Financial Services Guide to a retail client where the intermediary informs the client how the secondary service provider’s Financial Services Guide is made available (including on request).

Item [2] of Schedule 7 implements proposal 9.2.

Proposed subregulation 7.7.02(8) has similar requirements to subregulation 7.7.02(7) referred to in proposal 9.1. The difference is that proposal 9.2 deals with the situation where the intermediary is not licensed or authorised to provide the secondary service to the client.

Because of this, the secondary service provider is exempted from the requirement to give a FSG to the client only where it has a written agreement with the intermediary, under which the intermediary agrees to give the secondary service provider’s FSG to the client, or to inform the client how to obtain that FSG. This could be satisfied, for example, by the intermediary directing the client to the secondary service provider’s website to obtain a copy of the FSG.

As with proposal 9.1, the exemption is only from the obligation on the secondary service provider to give the client a FSG. Other than this, liability in respect of the provision of the financial service is not affected. As with proposal 9.1, the intermediary is not exempted from the requirement to give its FSG to the client.

Schedule 8 – Proposal 10.1

Proposal 10.1 – Specify through regulations that the provision of certain general advice does not constitute the provision of a financial service.

Item [1] of Schedule 8 implements proposal 10.1 by inserting proposed regulations 7.1.33G and 7.1.33H.

Proposed regulation 7.1.33G recognises that in certain cases advice should be able to be provided (such as about a class or range of financial products, educational or other financial market information) without constituting the provision of a financial service.

Specifically, under proposed regulation 7.1.33G, a person will not be taken to provide a financial service:

- if they give advice that is not personal advice and is not about a particular financial product or an interest in a particular financial product: and
 - the advice is not intended to influence another person to make a decision in relation to a particular financial product or an interest in a particular financial product; or
 - the advice could not reasonably be regarded as being intended to have such an influence in respect of a particular financial product or an interest in a particular financial product; and

- by giving the advice, neither the adviser, nor an associate of the adviser, receives any remuneration or other benefit related to the advice (excepting remuneration or other benefits that the adviser or associate would have received, even if the advice had not been given).

The conditions outlined above are intended to ensure the objectivity and generality of the advice being provided. Advice that meets the above circumstances is less likely to have the intention of influencing a person to acquire a particular financial product – and hence poses less financial risk to consumers.

Proposed regulation 7.1.33H recognises that, in certain cases, financial product issuers should be allowed to provide advice to consumers and existing clients about their own products without that advice constituting the provision of a financial service.

Specifically, under proposed regulation 7.1.33H, a financial product issuer will not be taken to provide a financial service if they give advice about a particular financial product, an interest in a particular financial product or class of financial products issued by them where:

- the advice is not personal advice; and
- it is given to the person at the same time as the issuer:
 - advises the person that the issuer is not licensed to provide financial product advice in relation to the product, class or interest, as the case may be; and
 - recommends to the person that they obtain a Product Disclosure Statement (PDS), if appropriate, and read it before making a decision to acquire the product or a product from the class of products, as the case may be; and
 - if it is advice about the offer, issue or sale of a financial product – notifies the person about the availability or otherwise of a cooling-off regime that applies in respect of the acquisition of the product, a product from the class of products or an interest in a product, as the case may be (whether the regime is provided for by law or otherwise).

In this context it is appropriate to allow a product issuer to provide advice that is specific to products they issue as they will have the relevant expertise about such products.

However, it is still necessary for certain safeguards to be placed on the provision of that advice, including that the consumer or existing client be made aware that the advice is not being provided by a licensed adviser and that they ought to read the relevant PDS before making a decision to acquire the product that is the subject of the advice.

A further safeguard imposed under this exemption is that where the advice is about the offer, issue or sale of a financial product – the product issuer must notify the person about the availability or otherwise of a cooling-off regime that applies in respect of the acquisition of the product.

Schedule 9 – Proposal 11

Proposal 11 – Specify in regulations the jurisdictional reach of the Australian financial services law so that an Australian Financial Services Licence is not required in certain defined situations.

Items [1] and [2] of Schedule 9 implement proposal 11.

The proposed regulations vary in some respects from the scenarios set out in the Proposals Paper. Some of those scenarios have been broadened and/or combined in order to simplify, as far as possible, the proposed licensing and related exemptions.

Item [1] modifies section 911A of the Act by inserting new subsections (2A) to (2E) (proposed regulation 7.6.02AG). New subsection 911A(2A) is designed to clarify that where a financial service is provided by a financial service provider who is outside of the jurisdiction to an Australian citizen or resident, that will not, of itself, mean that the legislation applies to the service provider, so long as the service provider does not induce Australia residents or citizens to use the service, and the service is actually provided offshore.

New subsection 911A(2B) is designed to clarify that participation by a financial service provider, who is outside the jurisdiction, in a licensed market in Australia will not, of itself, attract the application of the legislation, provided the person to whom the financial service is provided is also outside Australia (or the service provider reasonably believes this is so).

The rationale for the concession in proposed new subsection 911A(2C) is that licence holders (or persons exempt from licensing under paragraph 911A(2)(h) – that is, providers of services to wholesale clients where the provider is regulated by an overseas regulatory authority and ASIC specifies the service) can be considered as ‘sophisticated’ in their financial dealings, and requiring service providers not in the jurisdiction to be licensed to deal with such people is of little benefit, and may actually deter such foreign service providers from dealing with Australian licensees.

Proposed subsection 911A(2C) also contains the requirement that the person to whom the financial service is being provided must be acting on its own behalf in relation to the service, and not, for example, in the capacity of trustee of a trust or responsible entity of a managed investment scheme.

Proposed subsection 911A(2D) covers two scenarios. The first is where a person acquires a financial product from a financial service provider who is outside the jurisdiction while the person is also outside the jurisdiction, and the person to whom the product is provided subsequently moves (or returns) to Australia and wishes to continue the relationship with the service provider in respect of the product.

The second is where a person in Australia chooses to acquire a financial product from a financial service provider who is outside the jurisdiction (an example would be an Australian resident acquiring property overseas and arranging insurance over the property with a foreign insurer). In this case, the person who acquired the product must have initiated the contact with the service provider.

Other conditions also apply in respect of both scenarios and these are set out in the proposed subsection. The most pertinent of these is that the service provider does not actively solicit persons in this jurisdiction, and would not, but for the operation of section 911D, be considered to be carrying on a financial services business in this jurisdiction in respect of the service – section 911D provides that a person will be taken to be carrying on a financial services business in this jurisdiction where they engage in conduct intended to induce people in the jurisdiction to use their financial services, or the conduct would be likely to have that effect.

The proposed subsection applies not only to the initial product acquired, but also to products which are of the same kind as the initial product, as well as products which supplement the initial product (examples of which are provided in notes to the provision).

The proposed subsection will not apply where a different kind of product is substituted for the original product. For example, it would not continue to apply if an insurance product was initially acquired while the client was overseas, but on return to Australia the client disposed of the insurance product and acquired a deposit product.

It is acknowledged that there may be ‘grey’ areas in determining whether a product substitutes for, or supplements the initial product, or whether it is of a different character. If appropriate, either the regulations or ASIC could provide further guidance on this matter.

Proposed new subsection 911A(2E) applies in respect of financial service providers who are outside the jurisdiction where the service consists only of dealing in derivatives or foreign exchange contracts with wholesale clients, and where the total number of dealings (for all clients combined) does not exceed 20 in a calendar year. Thus foreign financial service providers who engage in limited dealings in derivatives or foreign exchange contracts will not require licensing for those dealings.

Item [1] of Schedule 9 also inserts proposed regulation 7.6.02AH, which makes a consequential modification to paragraph 911B(1)(e) of the Act to include references to new subsections 911A(2A) to (2E). Item [2] makes a similar consequential amendment to Regulation 7.5.07.

Item [3] of Schedule 9 inserts proposed regulation 7.9.98, which provides that persons who provide financial services in the circumstances to which proposed subsections 911A(2A) to (2E) apply – and are thereby exempt from the licensing requirements in respect of the provision of those financial services – are also exempt from the disclosure and other requirements of Parts 7.7, 7.8 and 7.9 of the Act.

Schedule 10 – Proposal 12.1

Proposal 12.1 – Specify in the regulations that an individual may be sub-authorised by an authorised representative structured as a partnership, trust or sole trader.

Items [1] – [8] of Schedule 10 implement proposal 12.1.

The proposed regulations differ slightly from the proposal as stated above, in that any authorised representative (however structured) appointed by a licensee will be permitted to ‘sub-authorise’ an individual to provide financial services on behalf of the licensee. However, the sub-authorised individuals will not be able to further sub-authorise.

The proposal is implemented by modifications to section 916B set out in proposed regulation 7.6.08. The authorised representative that sub-authorises an individual will be referred to as the *authoriser*.

The expanded range of authorised representatives that are able to sub-authorise individuals will also be able to make use of subsection 916F(1AA) of the Act, which provides that notification to ASIC of the sub-authorised individuals is not required if the conditions set out in that subsection are met. These conditions include that the sub-authorised individuals are:

- included in a specified class of individuals and the licensee has consented to the appointment of that specified class of individuals under subsection 916B(5);
- employees of the authorised representative; and
- limited in the financial services they are authorised to provide.

In order to come within subsection 916F(1AA) a sub-authorised individual may only provide general advice on and/or deal in financial products listed in the regulations. Regulation 7.6.04A currently prescribes these products as basic deposit products and related non-cash payment facilities, and general insurance products.

Current regulation 7.6.04B modifies subsection 916F(1AA) by inserting an additional subparagraph (iii) into paragraph 916F(1AA)(d) to include personal advice about a basic deposit product or a related non-cash payment facility in the category of financial services that a sub-authorised individual may provide under the subsection.

The modifications made by regulation 7.6.04B will be incorporated into the new modified subsection 916F(1AA).

Concern was expressed in some submissions that proposal 12.1 would result in a larger number of sub-authorised individuals whose appointments would not be individually notified to ASIC, and therefore their details would not be readily ascertainable, as they would not be included on ASIC’s register of authorised representatives.

It has been decided, in respect of those sub-authorised individuals whose appointment is not notified to ASIC, that a register will be required to be kept by the *authoriser*

who appoints them. This register will contain basic information about the sub-authorised individuals and must be made available for inspection by members of the public. ASIC will also be able to access the register (using its existing powers to obtain access to books and to conduct surveillance).

The obligation to keep the register will rest with the *authoriser* who appoints the sub-authorised individuals, rather than with the licensee, because the members of the class of individuals may change from time to time (subsection 916B(5) contemplates this), and the *authoriser* will possess information about the individuals – given that they must be employees of the *authoriser*.

However, it should be noted that subsection 916B(6) provides that an individual who is sub-authorised becomes an authorised representative of the licensee, and the provisions relating to the liability of licensees for their representatives in Division 6 of Part 7.6 of the Act apply in respect of those individuals.

The new register requirements, including the details the register must contain, and the period for which the information must be retained, are set out in new subsections 916F(1AA)(5) to (8) (see proposed subregulation 7.6.08(4)).

The proposed register requirements are not as prescriptive as those which apply to other books (including registers) which the Act requires – these more general requirements in Part 9.3 of the Act are expressly dis-applied (see new subsection 916F(1AA)(9)).

There will be no specific offences created relating to keeping the register. However, failure to comply with the register requirements will mean that the requirements of subsection 916F(1AA) will not have been met, which in turn will mean that subsection 916F(1) will apply, such that the appointment of the sub-authorised individuals would have to be notified to ASIC. Failure to meet this requirement is an offence.

No transitional period for the establishment of the register is proposed. For those authorised representatives that have already sub-authorised individuals to whom subsection 916F(1AA) applies (that is, authorised representatives that are bodies corporate), it is felt that the time between the release of this exposure draft and the making of the regulations in their final form should be sufficient for them to prepare for the establishment of the register.

Items [2] to [8] of Schedule 10 make consequential amendments to:

- omit current regulation 7.6.04B, which will now be incorporated into the modified subsection 916F(1AA);
- regulation 7.7.05B, which deals with the information requirements of FSGs for authorised representatives; and
- save the operation of current regulation 7.6.04A – this is necessary as the regulation-making power under which 7.6.04A was made is itself being remade.

Schedule 11 – Miscellaneous amendments

Miscellaneous items not contained in the proposals paper

Items [1] and [2] of Schedule 11 amend regulation 7.6.04A to include consumer credit insurance. The effect of this is that ‘sub-authorised’ individuals may provide general advice that relates to and/or deal in consumer credit insurance products, without their appointment having to be notified to ASIC, provided that the other requirements of subsection 916F(1AA) of the Act are met. It should be noted that subsection 916F(1AA) will be remade as part of proposal 12.1 (see Schedule 10).

Item [3] of Schedule 11 inserts proposed regulation 7.9.07K which modifies section 1022A of the Act. The effect of the modification is to add a new criterion to the definition of *defective* in relation to a Product Disclosure Statement (PDS), such that a PDS will be defective under section 1022A if it is not prepared in accordance with section 1013A – which specifies who must prepare the PDS.

Items [4] and [5] of Schedule 11 insert proposed regulations 7.9.15G and 7.7.10AM. The new regulations will modify paragraphs 1019B(3)(b), subsection 941D(4) and paragraph 946C(3)(c) of the Act to change references in those provisions from “5th day” and “5 days” to “fifth business day” and “5 business days” respectively.

The effect of the modifications is that the time within which Financial Services Guides and Statements of Advice must be given in ‘time critical’ situations will be made more generous, as will the time before which the cooling-off period starts.

A similar change to the time within which a PDS may be given under subsection 1012G(3) is made by modifications to that provision as part of proposal 4 (see item [1] of Schedule 4).
