

# CORPORATIONS AMENDMENT REGULATIONS COMMENTARIES

## SCHEDULE 1: AMENDMENTS RELATING TO DISCLOSURE OF FEES AND OTHER COSTS

### OVERVIEW

The amendments relating to disclosure of transactions and fees and charges contained in Schedule 1 give effect to the enhanced fee disclosure measures announced on 16 June 2004 by the former Parliamentary Secretary to the Treasurer, Mr Ross Cameron.

The regulations introduce various requirements for the disclosure of fees and charges in Product Disclosure Statements (PDSs) and periodic statements for superannuation and managed investment products.

### **Product disclosure statement requirements**

The proposed regulations will mandate the inclusion of:

- ‘Fees and costs template’  
A standardised fee template that will simplify the disclosure of fees and costs and allow for more effective comparison across products.
- ‘Additional explanation of fees and costs section’  
A separate section that includes additional important information about fees and costs.
- ‘Example of annual fees and costs table’  
Provides an illustrative worked example of fees and charges in a balanced investment option for a specified account balance and level of contributions.
- ‘Consumer advisory warning box’  
Serves to alert consumers to the importance of value for money and the compounding value of fees and charges and their impact over time on end benefits.

These regulations will also provide greater certainty and consistency through a set of definitions which define the fees and costs that are to be included in the ‘Fees and Costs template’. Further consistency is obtained through requiring these terms to be used when describing fees or charges in periodic statements.

### **Periodic statement requirements**

The proposed regulations will mandate the inclusion of a:

- ‘Other management costs’

An item showing the approximate amount of management costs that were not paid directly out of a member's or product holder's account stated in dollars.

- 'Total fees you paid'

An item showing a single dollar amount that includes the total fees a member or product holder paid during the period. This amount will not include transaction costs that may have been incurred.

The proposed regulations will also introduce the concept of an 'Indirect cost ratio' (ICR) to provide a consistent methodology for the calculation of 'management costs' which are not deducted directly from a member's or product holder's account. This methodology allows for consistent calculation and apportionment of such amounts between members or product holders. In addition, management costs calculated using the ICR will be clearly displayed in dollars in periodic statements under the label 'Other management costs'.

Finally, for products that have an investment component, transactions will need to be itemised and described consistent with proposed regulation 7.9.60B. As a result, consumers will be able to better understand the transactions that have affected their investment. This will provide greater transparency and in doing so enable better comparison between investments.

#### **PROPOSED REGULATION 7.9.60B: DISCLOSURE OF TRANSACTIONS IN PERIODIC STATEMENTS**

Under the *Financial Services Reform Amendment Act 2004*, paragraph 1017D(5)(c) was amended to insert a regulation-making power to enable the requirements in relation to the disclosure of information for transactions to be specified.

The previous disclosure requirements which required a summary of all transactions in relation to the product during the reporting period, indicating the nature and purpose of those transactions were ambiguous in its operation. That is, it was unclear whether a summary of all transactions or a summary of each transaction was required.

The proposed regulation will ensure that members and product holders are provided with information about transactions in a clear, concise and effective manner.

The proposed regulation affects financial products that have an investment component, namely those listed under paragraph 1017D(1)(b):

- managed investment products;
- superannuation products;
- RSA products;
- investment life insurance products; and
- deposit products.

The regulation will require periodic statements to include a brief description of each transaction in relation to the product during the reporting period. The description should be sufficient to allow consumers to have an understanding of the transaction which has taken place.

Importantly, the proposed regulation also allows for certain transactions to be grouped where appropriate. Specifically, transactions which are of the same kind and for the same amount can be described together. Such transactions should be grouped on a consistent basis. Generally, it will not be appropriate to group transactions less frequently than on a monthly basis.

For example: Quarterly or monthly contributions of the same amount and from the same source should not be described as a single yearly contribution.

In most cases it will be appropriate to describe the transaction in the periodic statement at the same rate as the transaction's actual occurrence.

Transactions also include any fees and costs charged or incurred in the relevant period. However, in the case of superannuation and managed investment products, fees and costs that require itemisation are only those included in the 'Fees and Costs template' for the product. This will ensure that there is consistent terminology covering fees and costs disclosed in the PDS and the periodic statement for these products.

If additional information to that provided in the description of that transaction must be included in a periodic statement by virtue of a content requirement in the law, the additional information is to be included elsewhere in the statement.

## **TECHNICAL AND OTHER ISSUES [SCHEDULE 9A, PART 1]**

### **Consequential changes**

The proposed regulations make several consequential changes to the *Corporations Act 2001* (the Act). The changes are necessary in order to ensure that they are integrated into the Act and/or repeal now superfluous requirements which are effectively replaced by the new measures.

### **Interpretation**

The proposed regulations are underpinned by a comprehensive set of definitions that will provide greater consistency across superannuation products and managed investment products. The definitions and common terms will also provide for greater comparability between PDSs and periodic statements.

Additional guidance on certain definitions follows.

#### *Balanced investment option*

Describes the investment option that is to be used for the 'Example of annual fees and costs' table in PDSs. This option is considered the most appropriate for comparison purposes across funds. Recognising that not every fund offers a precise 70:30 ('defensive asset' to 'growth asset') asset mix, the investment option offered which is as close as practicable is also able to be used.

#### *Management costs*

The definition of 'management costs' has been drafted on a principles basis in order to capture all the relevant costs involved in managing the fund and deriving an investment return for members or product holders. However, due to the broad definition of management costs it is necessary to specifically exclude certain discreet fees or costs which do not comprise management costs. These include contribution fees, transaction costs, additional service fees, establishment fees, switching

fees, termination fees and withdrawal fees. Each of these is defined in the regulations and is required to be disclosed separately.

Importantly, management costs includes amounts deducted from a common fund by way of fees, costs, expenses or charges. Therefore, complying with the Indirect Cost Ratio methodology (see below) amounts to complying with the requirement to disclose common fund amounts pursuant to paragraph 1013D(D)(iii) and regulation 7.9.75.

#### *Indirect Cost Ratio (ICR)*

The ICR provides a ratio of a fund's management costs that are not deducted directly from a member's or product holder's account to its total average net assets over a given period.

The ICR enables funds to consistently apportion such management costs between members or product holders. The ICR is for use in the 'Example of annual fees and costs' table and in periodic statements in order to derive the amount to be included in the 'Other management costs' item.

For a PDS, the relevant period for the calculation is the year before the PDS is issued. However, where a current or prospective fee level is known, and it is different to that applying over the year before the PDS was issued, the most recent fee is to be used in the calculation.

For a periodic statement, the relevant period for the calculation is the latest reporting period for which the relevant information is available.

It is expected that funds will produce an ICR for each respective investment option so that consumers receive the most accurate information possible in their periodic statements.

The ICR is equivalent to the previously announced 'Total Expense Ratio' (TER) concept. The ICR is entirely consistent with the approach proposed by the International Organization of Securities Commissions in its paper of February 2004 titled 'Elements of International Regulatory Standards on Fees and Expenses of Investment Funds'. However, the label 'ICR' was adopted to avoid confusion about the composition of the ratio and any possible misrepresentation to consumers.

#### **Taxation matters**

The proposed regulations will provide certainty for the presentation of fees and costs in both PDSs and periodic statements.

In a PDS, a fees or costs must be shown gross of tax (but including GST and any applicable stamp duty) and net of any applicable reduced input tax credits. Disclosure in this manner is required as the impact of any entity level tax deductions and the extent to which they will be passed on to members or product holders is not known at the time of preparing a PDS.

For periodic statements, it is essential that the actual amount charged or incurred by the member or product holder is indicated on the statement. For this reason, fees or costs must be shown net of income tax and GST and any applicable stamp duty. That is, inclusive of any income tax deduction which may have reduced the actual amount of a fee or cost charged. This ensures that consumers are aware of exactly how much they have paid in fees and costs.

## PROPOSED REQUIREMENTS FOR PRODUCT DISCLOSURE STATEMENTS [SCHEDULE 9A, PART 2]

### Application

<i>Product</i>	<i>Commencement</i>
Superannuation	On or after 1 July 2005
Managed investment	On or after 1 July 2006

### Summary of requirements

Under the proposed regulations, PDSs for superannuation and managed investment products will be required to include:

- ‘Fees and costs template’  
A standardised fee template that will simplify the disclosure of fees and costs and allow for more effective comparison across products.
- ‘Additional explanation of fees and costs section’  
A separate section that includes additional important information about fees and costs.
- ‘Example of annual fees and Costs table’  
Provides an illustrative worked example of fees and charges in a balanced investment option for a specified account balance and level of contributions.
- ‘Consumer advisory warning box’  
Serves to alert consumers to the importance of value for money and the compounding value of fees and charges and their impact over time on end benefits.

### Specific requirements

#### *Fees and costs template*

The ‘fees and costs template’ is designed to show the major costs that may be incurred in respect of a superannuation and managed investment product. The simple table format will better allow for comparisons between like products. The template is preceded by an appropriate preamble highlighting to consumers the purpose of the document and its features.

Information that is required to be included in ‘Fees and costs template’ includes information about the amount of a fee or cost, how the fee or cost is charged, the frequency of the payment, its timing and whether it is negotiable.

The template also allows for customisation where there is an option to pay contribution fees upfront or later. In addition, the template permits product providers to disclose multiple investment options

in a single 'Fees and costs template'. However, where this is likely to confuse or mislead consumers, a cross-reference must be provided in the table to the fees and costs for each investment option with that information disclosed elsewhere in the fees and costs section of the PDS.

It is expected that the 'Fees and costs template' will always include at least the balanced investment option fee structure and the default investment option fee structure (if relevant or applicable).

The proposed regulations also contain detailed instructions on how to fill in the template to ensure consistency. As such, amounts are to be specified in a manner consistent with the dollar disclosure regulations applying to product disclosure statements (see regulations 7.9.15A, 7.9.15B and 7.9.15C). The template also allows for the use of ranges in disclosing the amount of a fee or cost so that consumers are made aware of the range of fees which may apply to their investment. This is particularly relevant where, for example, a certain fee decreases over time or where a fee is levied depending on a member's or product holder's account balance.

It is accepted that certain fees and costs, namely those dependant on a member's or product holder's account balance, will not be able to be disclosed in dollars. As a result, the template permits amounts to be disclosed as a percentage. Consistent with the dollar disclosure requirements, the 'Example of annual fees and costs table' is to be used as the relevant worked example for contribution fees, managements costs, establishment fees, withdrawal fees and termination fees to the extent these fees and costs are applicable in the example table.

In respect of fees and costs that are charged as a percentage and which are not applicable in the example table, a description of the fee or cost including a separate worked dollar example either in the 'Fees and costs template' or the 'Additional explanation of fees and costs section' must be provided.

#### *Additional explanation of fees and costs section*

The 'Fees and costs template' is also linked to an 'Additional explanation of fees and costs' section in the PDS. This section contains other important information about fees and costs which is not contained in the template. This information is kept separate in order to preserve the simplicity of the 'fees and costs table'.

Importantly, this section allows for examples to be included where appropriate (such as in relation to buy/sell spreads) as well as for information about adviser remuneration, transaction costs, how to negotiate lower fees and details about any fee changes to be disclosed.

#### *Example of annual fees and costs table*

The proposed regulations will mandate the inclusion of a standardised example to be included in all superannuation and managed investment product PDSs. In the absence of a standardised example, it would not be possible for consumers to easily compare the costs of different investments over a 12 month period.

The 'Example of annual fees and costs table' (the example table) is based on a \$50,000 account balance and an annual contribution of \$5,000 for superannuation and \$10,000 for managed investment products.

The example relates to a 'balanced investment option' or an option as close as practicable to it. If a fund does not offer an investment option akin to a 'balanced investment option', the example table is to be based on the fund's default investment option.

In the case of a managed investment product which has neither, the example table should include the fees and costs for the investment option with the most funds invested. This approach provides an appropriate balance between consistency to enable effective comparisons and flexibility in cases where a ‘balanced investment option’ is not offered.

Importantly, the example table is preceded by an appropriate preamble indicating that the purpose of the table is to provide an illustration of how much a consumer may pay in fees and costs over a 12 month period in this product. The model enables consumers to gain an appreciation of the impact of fees on their investment and to make effective comparisons with similar products.

The example table covers the main fees and costs which are applicable, and refers to others which may apply during the course of the investment. Discretionary fees and costs such as transaction costs and additional service fees are not included as these often relate to optional services that a fund member or product holder can choose whether or not to receive.

Specific instructions are also provided on how to calculate each of the various fees and costs illustrated in the example table. This will avoid different product issuers making different assumptions about how to calculate the respective fees – adding to the consistency of the model.

In addition, the integrity of the example table is maintained by ensuring ‘honeymoon’ rates are not permitted to be used. ‘Honeymoon’ rates are rates which are more favourable in the first year or in early years and once the ‘honeymoon’ period expires, fees revert to their typical ongoing level. Therefore, as the example table assumes the person is already a member or product holder, it is appropriate that the example table be based on the typical ongoing level of fees or costs of the fund.

Finally, the example table is also able to be customised appropriately where a product has a minimum entry balance requirement in excess of \$50,000. This ensures that consumers are always presented with a realistic example of the fees and costs which may apply.

#### *Consumer advisory warning box*

The proposed advisory warning for inclusion in PDSs emphasises to consumers the importance of considering ‘value for money’. It also shows how a small difference in a fund’s investment performance or fees and costs can have a significant impact on long term investment returns.

In addition, by providing a link to superannuation and managed investment calculators on the Australian Securities and Investments Commission’s website, consumers are able to make personalised comparisons with the appropriate tools.

Importantly, the advisory warning also encourages consumers to shop around and attempt to negotiate lower fees and costs with their fund or adviser.

## PROPOSED REQUIREMENTS FOR PERIODIC STATEMENTS [SCHEDULE 9A, PART 3]

### Application

<i>Product</i>	<i>Commencement</i>
Superannuation	On or after 1 July 2005
Managed investment	On or after 1 July 2006

### Summary

Under the proposed regulations, periodic statements for superannuation and managed investment products will be required to include:

- ‘Other management costs’  
An item showing the approximate amount of management costs that were not paid directly out of a member’s or product holder’s account stated in dollars.
- ‘Total fees you paid’  
An item showing a single dollar amount that includes the total fees a member or product holder paid during the period. This amount excludes transactions costs that may have been incurred.

### Specific requirements

In addition to the requirements under proposed regulation 7.9.60B (discussed above), periodic statements for superannuation and managed investment products will be required to include information about management costs not deducted directly from a member’s or product holder’s account as well as specifying the total fees paid during the relevant period covered by the periodic statement (usually 12 months).

#### *Other management costs*

This item will show consumers the approximate amount of management costs that have affected their investment which were not deducted directly from their account. Since all management costs which are deducted directly from their account will be itemised (as per proposed regulation 7.9.60B), consumers will be able to calculate the approximate total of management costs which they have incurred in the relevant period.

‘Other management costs’ are to be calculated by using the ICR for the applicable fund investment option and multiplying it against the member’s average account balance over the reporting period.

Importantly, as this amount is only an estimate (due to it being determined on the basis of an individual’s average account balance), it is to be included below the itemised section of the periodic statement. This will preserve the integrity of the itemised section of the statement.

*Total fees you paid*

It is proposed that this item will include all the known fees and costs that affected an individual's investment over the reporting period. Transaction costs will not be included in this amount as they are typically reflected by the fund in either the price paid for an asset or in the investment return received by the consumer. However, periodic statements will still be required to contain information about the level of transaction costs and when they may have applied.

'Total fees you paid' are to be shown at the end of the part of the periodic statement that itemises transactions or in any summary part which provides a summary of the events that affected their investment during the reporting period.

## **SCHEDULE 2: PROPOSED AMENDMENTS COMMENCING ON GAZETTAL**

### **Item 1 Proposed Amendment of Regulation 1.0.02 – definition of legally incapacitated person**

This item would insert a definition of *legally incapacitated person*, which is relevant to the amendments contained in items 7 and 12 (see below).

### **Item 2, 3 and 4 Proposed new paragraph 7.1.04(4)(c) and proposed new subregulations 7.1.04(4A) and 7.1.04(9)**

Section 761D of the *Corporations Act 2001* (the Act) defines a derivative for the purposes of Chapter 7 of the Act. Subregulation 7.1.04(4) prescribes an arrangement that would be an exception from the derivative definition. This exception recognises that contracts relating to the sale of assets are not derivatives for the purposes of Chapter 7 of the Act.

Due to ‘wash out’ clauses, some agricultural sale contracts are caught by the definition of derivative.

Some members of the agricultural community enter into arrangements to sell commodities, such as grain, at a set price and on a set date in the future. In that regard, these arrangements amount to the sale of an asset and would be an exception to the definition of derivative under paragraphs 7.1.04(4)(a) and (b) of the Act.

However, these contracts often contain ‘wash-out’ clauses. Contracts that contain a ‘wash-out’ clause may not, by definition, meet the obligation under paragraph 7.1.04(4)(c) of the exemption.

‘Wash-out’ clauses provide a means to completing the contract when, at delivery, certain events prevent the honouring of the contract through physical delivery of the commodity. For example, a ‘wash-out’ clause would excuse the physical delivery of wheat, if the wheat crop was badly damaged by hail prior to delivery. Instead, the contract could be honoured if the purchaser was, for example, paid the difference between the contract price and the wheat market value at the time of the hail damage.

A ‘wash-out’ clause would only apply if the physical delivery of the commodity was not possible.

As ‘wash-out’ clauses do not provide the seller with a choice to settle their position via cash payment or physical delivery, but instead provide a ‘fall-back’ position, it is proposed that contracts that contain ‘wash-out’ clauses be specifically excepted from the derivative definition.

### **Item 5 Proposed new regulation 7.1.04G – meaning of issuer of a foreign exchange contract**

The meaning of issuer is prescribed under section 761E of the Act.

Difficulty arises in identifying the issuer of a foreign exchange contract under subsection 761E(4), because mutual obligations arise under such a contract. This leads to difficulty in determining which party, if any, is obliged to disclose information required by the FSRA.

Foreign exchange contracts are essentially a special type of derivative. To clarify who is the issuer of a foreign exchange contract, it is proposed that the regulations will specify that, like derivatives, either party to a foreign exchange contract is deemed the issuer.

**Item 6 Proposed amendment of paragraph 7.1.35(1)(b) – conduct that does not constitute dealing in a financial product**

Paragraph 7.1.35(1)(b) currently provides that certain conduct does not constitute dealing in a financial product, where that conduct is carried out in relation to the holding of a financial product on trust for, or on behalf of, another person, and the holding of the product does not constitute the provision of a custodial or depository service because of paragraphs 7.1.40(a) to (d).

Regulation 7.1.40 is being altered by items 7, 8 and 9, which amend existing paragraph 7.1.40(g) and insert a new paragraph 7.1.40(i). This item makes a consequential amendment to paragraph 7.1.35(1)(b) to include a reference to paragraphs 7.1.40(g) and (i), such that where the holding of a financial product does not constitute the provision of a custodial or depository service due to paragraphs 7.1.40(g) and (i), conduct carried out in relation to the holding of that product will not constitute dealing in a financial product.

**Item 7 Proposed substitution of paragraph 7.1.40(g) – conduct that does not constitute the provision of a custodial or depository service**

This item amends paragraph 7.1.40(g), which currently provides that the holding of a financial product under an order of the Court does not constitute the provision of a custodial or depository service under section 766E of the Act. The amendment will extend the operation of the paragraph to include the order of any court (the words “court” and “Court” being defined in section 58AA of the Act) as well as the order of a board or tribunal established under State or Territory law.

However, the amendment also introduces a condition that the financial product must be held in relation to the administration of the whole or part of the estate of a *legally incapacitated person* (a definition of which is inserted by item 1).

**Items 8 and 9 Proposed amendment of subparagraph 7.1.40(h)(iv) and proposed new paragraph 7.1.40(i) – conduct that does not constitute the provision of a custodial or depository service**

Item 8 is a minor amendment to facilitate the insertion of new paragraph 7.1.40(i), which is effected by item 9. The new paragraph provides that the holding of a financial product by a trustee appointed under State or Territory law to administer compensation monies awarded to beneficiaries, or appointed under a trust established for a charitable purpose, will not constitute the provision of a custodial or depository service by that trustee.

**Item 10 Proposed new subregulation 7.6.02(5) – external dispute resolution schemes**

This item inserts new subregulation 7.6.02(5), the effect of which is to provide that a financial services licensee does not have to comply with the requirements of paragraph 912A(2)(b) of the Act (which requires licensees who provide financial services to retail clients to be members of one or more external dispute resolution schemes), in respect of financial services provided by the licensee in the capacity of – a trustee appointed under the will or on the intestacy of a person; a trustee appointed under an express trust between living persons where the interest in the trust is not a financial product; or an attorney appointed under an enduring power of attorney – where complaints in respect of the provision of those services may be made to a State or Territory Ombudsman.

The new subregulation therefore provides an exemption for licensees from the requirement to be members of external dispute resolution schemes in respect of the provision of certain defined

financial services, if those licensees are subject to oversight by a State or Territory Ombudsman in respect of the provision of those services.

**Item 11 Proposed amendment of subregulation 7.6.02AA(2) – deferring commencement of section 912B**

Subsection 926B(1) of the Act provides that the regulations may provide that Part 7.6 applies as if specified provisions were omitted, modified or varied as specified in the regulations. This item amends Regulation 7.6.02AA which was inserted to modify section 912B of the Act in Part 7.6.

Section 912B imposes a requirement on financial services licensees who provide financial services to retail clients to have adequate compensation arrangements. The issues surrounding compensation were considered in an Issues Paper released by the Government in September 2002, which was followed by a Position Paper released in December 2003. Submissions received in response to both papers revealed a wide range of views on the scope and nature of appropriate compensation mechanisms.

Regulation 7.6.02AA was inserted to defer the application of the requirement in section 912B from 11 March 2004 until 11 March 2005. In the meantime however, the regulation continues to apply the requirements which applied prior to the enactment of section 912B, and which have continued to apply during the transition period for the *Financial Services Reform Act 2001*.

There are many complex issues surrounding compensation arrangements, and they require careful and detailed consideration. It is also necessary to provide interested stakeholders with an opportunity to comment on any proposed compensation mechanism(s) and sufficient time to transition to any new arrangements.

It is apparent that there will not be sufficient time for the Government to develop a final position, consult with interested stakeholders, and implement the arrangements before 11 March 2005. This item therefore amends Regulation 7.6.02AA to further defer the commencement of the application of section 912B until 1 July 2006.

**Item 12 Proposed new subregulations 7.7.02(5C) to (5E) – situations in which a Financial Services Guide is not required**

This item inserts a new subregulation 7.7.02(5C), which provides that a Financial Services Guide (FSG) does not have to be given in situations where a financial service is provided by a trustee appointed under the will or on the intestacy of a person, or under an express trust between living persons where the interest in the trust is not a financial product, or where a financial service is provided by an attorney appointed under an enduring power of attorney, and the beneficiary of the trust or donor of the enduring power of attorney (as the case requires) is a legally incapacitated person (a definition of which is inserted by item 1).

Subregulations 7.7.02(5D) and (5E) provide that, where the beneficiary of the trust or donor of the enduring power of attorney is a legally incapacitated person, then a FSG is required to be given to the parent, guardian or person managing the affairs of the legally incapacitated beneficiary or donor.

The reasoning behind the proposed subregulation is that a legally incapacitated beneficiary of a trust or donor of an enduring power of attorney will not be considered to be a ‘client’ to whom a FSG can be provided. However, where there is a parent, guardian or person managing the affairs of the legally incapacitated beneficiary or donor then that parent, guardian or other person will be considered to be a client to whom a FSG can be given. Where there is no parent, guardian or person

managing the affairs of the legally incapacitated beneficiary or donor (other than the trustee or attorney itself) then no FSG is required to be given.

**Item 13 Proposed new subregulations 7.8.01(11), (12), (13) and (14)**

Part 7.8 Division 2 of the *Corporations Act 2001* (the Act), stipulates requirements for how a financial services licensee is to deal with the money of clients. Section 981B of the Act specifies, amongst other things, that only certain monies can be placed into a Part 7.8 account.

Industry has indicated that this limitation, in relation to monies placed in a Part 7.8 account, provides practical difficulties and will result in unnecessary costs for clients.

For example, licensees often receive a single payment from a client, which will contain both money that must be held on trust and money that is not allowed to be placed into a Part 7.8 account. As such, if a licensee receives such a payment, they would technically breach the law regardless of the account into which they initially place the single payment.

The only way to overcome this problem is to instruct the client to make two or more separate payments to the licensee. It has been argued that this process could more easily be achieved (and at less cost) by the licensee.

Similar problems arise in relation to the receipt of unidentified monies, which may be in total, or in part, money that is required to be held on trust.

As such, this proposal would provide relief for licensees that receive mixed or unidentified payments from clients. The proposal would maintain the integrity of the trust account by ensuring that licensees identify and remove the non-trust money from the trust account, as soon as reasonably practicable or within 30 days.

**Item 14 Proposed new regulation 7.8.14A – lodgement of annual profit and loss statement and balance sheet**

Section 989B requires a financial services licensee to lodge a profit and loss statement, balance sheet and auditor's report with ASIC in respect of each financial year. Section 989D stipulates the time for lodging these documents, which for a licensee that is a non-body corporate, is within 2 months after the end of the financial year and for a body corporate, within 3 months.

Proposed regulation 7.8.14A modifies paragraph 989D(1)(b) to distinguish between those bodies corporate that are disclosing entities or registered schemes and those that are not. In doing so, the proposed regulation extends the time for lodgement of the reports for a body corporate which is not a disclosing entity or a registered scheme to four months. The proposed amendment would align the reporting timing obligations in section 989D of the Act with those in section 319 as well as other audit related disclosures required by the Australian Prudential Regulation Authority.

**Items 15 to 17 Proposed amendment of paragraph 7.9.08(1)(b), proposed new paragraph 7.9.08(1)(c) and proposed new regulation 7.9.08D – dealing with money received for a financial product before the product is issued – statutory funds to which the *Life Insurance Act 1995* applies**

Part 4 of the *Life Insurance Act 1995* (LIA) sets out the obligations of registered life insurance companies in respect of statutory funds. In particular section 30 of the LIA requires life insurance

companies to credit all amounts received in respect of the business of a statutory fund, including unallocated initial premiums, to be paid into a statutory fund.

Despite the requirement in the LIA, section 1017E of the Act requires an issuer to deposit all unallocated application monies (including for life insurance policies) into a separate designated trust account.

The proposed amendments would prescribe statutory funds to which the LIA applies under paragraph 1017E(2)(a)(ii) to enable a statutory fund to satisfy section 1017E of the Act. It is further proposed that paragraph 1017E(2)(b) be omitted which would enable statutory funds to continue to operate in their current form.

The proposed amendments would therefore rectify the inconsistency between the two acts and reduce administrative difficulties and additional costs for industry. This would be achieved while recognising that situations under the acts both aim to provide similar levels of protection to consumers' assets from creditors of the product issuer or life insurance office.

**Item 18 Proposed amendment to regulation 7.9.72 – modification of section 1017D of the Act: information already given**

With the proposed introduction of regulation 7.9.60B (Disclosure of transactions in periodic statements), a consequential amendment to regulation 7.9.72 is required.

Regulation 7.9.72 is intended to rationalise the disclosure obligations applying to superannuation and RSA products by ensuring that where they have complied with Subdivisions 5.2 and 5.3, paragraphs 1017D(5)(a) to (e) do not apply.

Specifically, regulation 7.9.72 is to be amended to ensure that proposed regulation 7.9.60B, made under paragraph 1017D(5)(c), applies to superannuation and RSA product periodic statements.

If proposed regulation 7.9.60B were introduced and regulation 7.9.72 not amended, superannuation and RSA products would be excluded from complying with regulation 7.9.60B.

**Item 19 Proposed repeal of regulation 7.9.72A – modification of section 1013D of the Act: amount payable for financial product**

With the proposed introduction of Schedule 1, it is no longer appropriate for this regulation (dealing with providing information about the basis for the calculation of an amount rather than specifying the amount) to continue to operate.

**Item 20 Proposed new regulation 7.9.97 – Off-market trading by professional investors etc**

Division 5A of the Corporations Act was introduced to protect unsophisticated investors from people offering to purchase their financial products, off-market.

In that regard, Division 5A was not intended to interfere with off-market trading between sophisticated investors. For this reason, the 'business relationship' test was introduced into Division 5A.

Industry has expressed concern that there may still be situations where off-market trading could occur and professional investors might be caught by the new provisions. As this was not the

intention of the legislation, a further test is proposed under section 1019D, which would ensure that Division 5A would only apply in relation to offers made to 'retail' investors.

**Item 21 Proposed substituted paragraphs 1017D(8) & (9) – exit reporting disclosure: referencing correction**

Part 13 of Schedule 10A (which modifies section 1017D) was inserted to provide an exception to exit reporting disclosure by removing the obligation for superannuation and retirement savings account providers for the supply of a periodic statement in order to prevent a possible duplication of information. Specifically this relates to an event where the benefits of former product holder are transferred to another entity, and that entity supplies the required information.

Part 13 was inserted on the basis of the requirements which were previously in the *Superannuation Industry (Supervision) Regulations 1994*. Unfortunately the references in paragraphs 1017D(8)(b)(i) – (iii) and 1017D(9)(b)(i) – (iii) were incorrectly drafted to apply to the incorrect subdivisions of Part 7.9 of the Regulations.

The proposed amendments would rectify this technical error by ensuring that the relevant paragraphs refer to the appropriate informational requirements set out in the regulations.