

CORPORATIONS AMENDMENT REGULATION COMMENTARY

Item [1] – Disclosure of ‘common fund’ amounts in product disclosure statements (PDSs)

The proposed regulation would provide temporary relief from the requirement to disclose ‘common fund’ fees, expenses or charges referred to in paragraph 1013D(1)(d)(iii) in non-superannuation PDSs.

While this requirement currently exists in the law, there has been general uncertainty as to what exactly constitutes ‘common fund’ amounts. Importantly, with the making of the ‘enhanced fee disclosure regulations’ (*Corporations Amendment Regulations 2005 (No.1)*), a methodology has been introduced to determine ‘management costs’ using an Indirect Cost Ratio (ICR) which in turn satisfies the ‘common fund’ disclosure requirement.

These regulations will now provide the necessary certainty for industry to comply with the common fund disclosure requirement. However, the ‘enhanced fee disclosure regulations’ have a staggered application depending on the nature of the disclosure document and the type of product – superannuation or managed investment. Superannuation PDSs must comply with the new requirements from 1 July 2005, whilst managed investment product PDSs are to comply from 1 July 2006.

As a result, industry has sought temporary relief from the ‘common fund’ requirement for non-superannuation products to enable greater time to conduct due diligence procedures in applying the new methodology – which does not come into effect for such products until 1 July 2006. This will spread out compliance costs for industry over the course of a year, rather than compressing the timeframe for system changes and subsequent compliance activities for both superannuation and managed investment products.

Although the effect of these regulations is to delay the disclosure of ‘common fund’ amounts for non-superannuation products until after 1 July 2006, it is expected that those able to implement the new methodology (ICR) prior to it being mandatory will comply with the requirement as they roll-out new PDSs. In the meantime, it is also noted that paragraph 1013D(1)(d)(i), which requires information about the ‘cost of the product’ to be disclosed, will cover the majority of fees and costs otherwise disclosed in respect of ‘common fund’ amounts.

Item [2]

Deals with a very minor typographical amendment.

Items [3-5] – Disclosure of transactions in periodic statements

Regulation 7.9.60B deals with the disclosure of transactions in periodic statements for certain financial products. The regulation provides for the staggered introduction of these requirements depending on the particular document and type of financial product in question. For instance, regulation 7.9.60B provides a delay for superannuation product exit statements (paragraph (1)(b)) and for managed investment product periodic statements (paragraph (1)(c)).

Concerns have been raised about the timing of the application of regulation 7.9.60B to 'investment life insurance product' exit statements. These products are currently listed in section 1017D but fall outside of the scope of the new Part 4C 'enhanced fee disclosure regulations'.

The proposed amendments would amend regulation 7.9.60B so that the disclosure of transactions for 'investment life insurance products' are not mandated for exit statements issued before 1 July 2006. This would reduce compliance costs by giving industry greater time to undertake necessary systems changes.

Item [6] – Disclosure of 'common fund' amounts in periodic statements

The 'enhanced fee disclosure regulations' specify that periodic statements for certain superannuation products will be required to disclose an item showing the amount of 'Other Management Costs' that were not paid directly out of a member's account.

The requirement to disclose 'Other Management Costs' is based on the ICR concept, and as a result will satisfy the requirement in regulation 7.9.75 to disclose an investor's share of any common fund expenses, fees and charges that have been deducted from the fund.

By way of ASIC Class Order 04/1434, the requirement to compulsorily disclose 'common fund' amounts attributable to individual investors will take effect for periodic statements prepared after 1 July 2005. Industry has raised concerns that it will not be able to comply with the common fund requirements by 1 July 2005 as required.

The effect of the proposed regulation would be to delay the 'common fund' requirement in periodic statements from 1 July 2005 in relation to reporting periods commencing on or after 1 July 2005 to 1 July 2007, depending on the product and particular situation. This proposed timetable will align common fund disclosure with the commencement dates for the 'enhanced fee disclosure regulations'.

The proposed regulation therefore satisfies industry concerns about their desire to work on implementing one particular methodology (ICR) by aligning the timing of the disclosure of 'common fund' amounts with the application of the 'enhanced fee disclosure regulations'.

Rather than simply delaying the operation of the common fund disclosure requirement, the proposed amendment will maintain the disclosure obligation but provide an option not to disclose such an amount if the issuer includes specific statements in the periodic statement alerting investors that common fund expenses, fees and charges have been deducted and that further information can be obtained from the issuer of the product. In effect, this reinstates the pre-1 January 2005 position.