

# FINANCIAL Services Update

Our regular update on financial services legislation, regulation, policy and other areas of interest

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## The Move to New Accounting Standards – Relief for Managed Investment Schemes

Late in 2004 ASIC issued Class Order CO 04/1575 in order to facilitate the adoption by managed investment schemes of the new Australian accounting standards equivalent to International Financial Reporting Standards (AEIFRS). This class order gives relief by enabling references to accounting standards in managed investment scheme constitutions to be changed without a special resolution of members where such changes do not affect investor rights. The changes permitted to be made without member approval are confined to changes to allow generally accepted accounting principles or standards to mean those principles or standards as generally accepted or in force immediately before 1 January 2005. The purpose of the relief is to facilitate a smooth transition to AEIFRS and avoid the need to change unit pricing systems.

If you operate a managed investment scheme and your constitution contains references to current accounting standards or principles you can take advantage of the relief and make the necessary amendments to your scheme constitution, therefore avoiding having to change your unit pricing systems.

## FSG relief for secondary service providers

ASIC has recently issued a number of class orders to give relief to secondary service providers from the requirement to provide FSG's. Secondary service providers generally provide financial services to retail clients through an

intermediary and, as such, there is no direct relationship between the secondary service providers and the retail clients who receive their services.

From 1 July 2005, a secondary service provider is not required to give an FSG in the following circumstances:

- ♦ **General** - Where a retail client receives a secondary service provider's FSG from an intermediary by arrangement between the secondary service provider and the intermediary and the FSG is posted on the secondary service provider's website or otherwise made available upon request.
- ♦ **Experts** - Where an expert's report is to be included in a disclosure document such as a PDS or prospectus.
- ♦ **Arrangers** - Where an arranger acting under an intermediary authorisation arranges for the issue of a financial product. In this situation, the arranger's FSG may be included as a separate and clearly identifiable part of a product provider's PDS.

The relief provided by ASIC is useful as it recognises that there is no direct relationship between a secondary service provider and the retail client who ultimately receives the general advice giving rise to the requirement to provide an FSG.

If you are a secondary service provider to whom the relief may apply, you should ensure that you meet the conditions that must be met under the relevant class order before the relief is available. Please contact a member of the Hall & Wilcox Financial Services team if you require further information regarding the relief.

## ASIC Guidance on PDS Disclosure

ASIC recently released guidance as to the compliance issues product issuers should take into account when preparing and reviewing a PDS in order to guarantee that they meet the content and presentation requirements of the law.

Particular problems or compliance issues identified by ASIC in relation to PDSs include:

- ♦ the failure of the PDS to meet the clear, concise and effective requirement;
- ♦ the length of PDSs;
- ♦ specific compliance obligations in relation to multiple product issuers or PDSs containing multiple financial products;
- ♦ disclosure of fees and costs;
- ♦ insufficient disclosure of risk;
- ♦ the level of detail in the PDS, particularly in relation to the disclosure of risks associated with certain investments;
- ♦ clarity regarding consumer rights;
- ♦ substantiation of financial projections;
- ♦ the use of benchmarks and performance figures; and
- ♦ ensuring that the product issuer's AFSL covers the financial product being offered under the PDS.

The above issues are significant in determining the PDS issuer's compliance with the requirements under the Corporations Act, Corporations Regulations and Policy Statement 168 with respect to PDSs. If you are a product issuer or otherwise involved in the issue of a PDS, it is important that you consider the issues highlighted in ASIC's guide when you next prepare a PDS.

## FPA Paper on Conflict Management

FPA recently issued a paper addressing the impact on FPA members of the requirement for AFSL holders to have procedures in place for managing conflicts and ASIC Policy Statement 181 regarding conflict management by AFSL holders (which came into effect on 1 January 2005 and was discussed in our last update). The paper suggests procedures for management of conflicts of interest which will comply with PS 181, including the following:

- ensuring that someone occupies the position of a conflicts officer;
- ensuring that all staff undertake an assessment as to any potential or actual conflicts within their own practices;
- disclosing any identified conflicts (actual, apparent or potential) and, if disclosure is inadequate to control the conflict, ensuring the conflict is avoided altogether;
- the preparation of a report on the management of conflicts by the conflicts officer for the board or management of the business to consider; and
- ensuring that conflicts of interest are a standing agenda item for Board meetings.

If you are a financial planner it is important to be mindful that conflict management is of particular importance to the financial planning industry, which plays an important intermediary role between product issuers and the retail client. You must ensure that you have a conflict management policy in place, with the procedures suggested by the FPA useful in assessing the compliance of your policy with relevant requirements.

## Fee Disclosure Update

### ASIC Dollar Disclosure Policy

Further to our last update where we discussed the new dollar disclosure regulations, ASIC has released its dollar disclosure policy in PS 182. PS 182 sets out the following:

- guidance for providing entities and product issuers on what is an “amount in dollars” and the appropriateness of “worked dollar examples”;
- an outline of the limited class order relief ASIC has granted from the dollar disclosure requirements where it is satisfied that, for compelling reasons, compliance would be impossible, unreasonably burdensome or not in the interests of a client or class of clients (discussed below); and
- guidance on when ASIC will consider granting relief in circumstances other than those covered by the class order relief already provided.

Together with the policy statement, ASIC has issued Class Order CO1434 extending the deadline for compliance with dollar disclosure obligations to 1 July 2005. Further, ASIC has provided class order relief in the following circumstances from the dollar disclosure requirements:

- disclosure of items contingent on unknown facts and circumstances;
- the costs of derivatives, foreign exchange contracts, general insurance products and life risk insurance products;
- interest payable on deposit products;
- non-monetary benefits and interests; and
- amounts denominated in a foreign currency.

### New Fee Disclosure Regulations

Last month the Government made Corporations Amendment Regulations 2005 (“Regulations”) to give effect to the Government’s ‘single fee measure’ package

announced in June 2004 in support of the superannuation choice of fund reforms.

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

- a standardised fee template;
- an additional explanation of fees and costs section;
- an example of annual fees and costs table; and
- a consumer advisory warning box.

The PDS requirements apply to superannuation products from 1 July 2005 and to managed investment products from 1 July 2006.

Further, periodic statements for superannuation and managed investment products will be required to include:

- an explanation of ‘other management costs’ that were not paid directly out of a member’s account;
- an item showing total fees paid as a single dollar amount during the period; and
- an explanation of fees and costs section.

The Regulations also introduce the concept of an “Indirect Cost Ratio” - ie, the ratio of a fund’s management costs that are not deducted directly from a member’s account to the fund’s total average net assets over a certain period. The new requirements under the Regulations are consistent with the dollar disclosure requirements.

There is no doubt that fee disclosure is becoming increasingly complex, even though the new requirements are aimed at achieving clarity and comparability in this area. Feel free to contact a member of the Hall & Wilcox Financial Services team if you require assistance working through the maze of fee disclosure requirements applicable to your disclosure documents.

### For more information, please contact a member of our Financial Services and Superannuation Team:

Tony Macvean Partner (03) 9603 3582  
tony.macvean@hallandwilcox.com.au

Chris Ketsakidis Partner (03) 9603 3528  
chris.ketsakidis@hallandwilcox.com.au

Harry New Senior Associate (03) 9603 3559  
harry.new@hallandwilcox.com.au

Adrian Verdnik Senior Associate (03) 9603 3579  
adrian.verdnik@hallandwilcox.com.au

Funda Yalcin Solicitor (03) 9603 3566  
funda.yalcin@hallandwilcox.com.au

John Sudano Solicitor (03) 9603 3531  
john.sudano@hallandwilcox.com.au

### Hall & Wilcox

#### Lawyers

Level 30, Bourke Place, 600 Bourke Street, Melbourne Victoria 3000

Telephone: (03) 9603 3555 Fax: (03) 9670 9632 www.hallandwilcox.com.au Email: information@hallandwilcox.com.au

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