



ASIC

Australian Securities & Investments Commission

[CO 01/463]

Electronic applications for life insurance and superannuation products

Issued 30/5/2001

Class Order [CO 01/463] should be read in conjunction with Information Release [IR 01/8] “Electronic applications for life insurance and superannuation products”.

This order comprises an exemption and modification.

The exemption facilitates, subject to a number of conditions, the electronic distribution of investment strategies documents under the determination under s153 of the SIS Act. It also enables a consumer to make an application for a superannuation interest by electronic means. It should be noted that electronic application forms to which this class order applies are not required to be copies of any paper counterparts.

The modification facilitates the electronic distribution of information under s157 of the SIS Act. A s157 document is not required by the SIS Act to be provided to a person at the same time and by same means as the KFS, investment strategies document (if any) and application form. However, where the s157 document is provided at the same time and by the same means as the KFS, investment strategies document (if any) and application form, a trustee may be more easily satisfied that the person has received the s157 document.

Australian Securities and Investments Commission
Superannuation Industry (Supervision) Act 1993
Sections 328 and 332
Exemption and Modification

Exemption

Pursuant to section 328 of the Superannuation Industry (Supervision) Act 1993 (“the SIS Act”) the Australian Securities and Investments Commission (“ASIC”) hereby grants the following exemption on the conditions set out below and for so long as they are met.

Each trustee of a public offer entity (“trustee”) is exempt from compliance with section 153 of the SIS Act to the extent that that provision may require:

- (a) a strategies document to be printed on paper, or
- (b) an application to be printed on paper and to contain a written signature or initials,

and may not be satisfied by:

- (c) the provision of an electronic strategies document by the trustee to a prospective applicant, or
- (d) the making of an electronic application by the applicant to the trustee.

Conditions

1. Except as permitted by this exemption, the trustee complies with section 153 of the SIS Act and the SIS Determination.
2. The trustee takes all reasonable measures to ensure that a person to whom an electronic application form is issued (“applicant”) was given access, at the same time and by the same means, to an electronic KFS and an electronic strategies document (if any) which meet the requirements (except as permitted by this exemption) of the SIS Determination and any approvals issued by ASIC pursuant to the SIS Determination.
3. The trustee does not issue a superannuation interest in response to an electronic application, unless:

- (a) the trustee has reasonable grounds to believe that condition 2 has been complied with in relation to the applicant;
 - (b) where the electronic application is not of the kind described in paragraph (c) of the definition of “electronic application form” appearing in the Interpretation section below - the trustee has used adequate alternative means to establish:
 - (i) the identify of the applicant; and
 - (ii) the applicant's acceptance of responsibility for any information included in the application (whether included by the applicant or some other person on the applicant's behalf); and
 - (c) if paragraph 3(b) applies – the content of the electronic application form which was provided to the applicant was modified from the content prescribed by the SIS Determination to reflect the method used to identify the applicant and their acceptance of responsibility for information included in the application.
4. The trustee takes all reasonable measures to ensure that an electronic application received by the trustee from the applicant is complete and unaltered.
 5. The trustee must keep, for at least seven years, in any durable and legible medium:
 - (a) records adequate to demonstrate that it has complied with these conditions; and
 - (b) if the trustee enables a person to apply for a superannuation interest by using software — a copy of each screen which would be displayed to a person using the software to apply for the interest.

Interpretation

For the purposes of the exemption given in this instrument:

1. unless the contrary intention appears, an expression has in this instrument the same meaning as it has in the SIS Act;
2. “electronic” includes facsimile, optical, and similar technologies;

3. an “electronic application” is an application made by a person using an electronic application form;
4. an “electronic application form” is:
 - (a) a form of application for a superannuation interest which is stored or transmitted by electronic means;
 - (b) software by means of which a person has applied for such an interest;
or
 - (c) a printed copy of a form described in paragraph (a) or of an application generated by software described in paragraph (b);
5. an “electronic KFS” is an electronic copy of a paper Key Features Statement pursuant to the SIS Determination and includes any stickers or inserts in accordance with clause 29 of the SIS Determination. A printed copy of an electronic KFS is also an electronic KFS;
6. an “electronic strategies document” is an electronic copy of a strategies document. A printed copy of an electronic strategies document is also an electronic strategies document;
7. a “section 157 document” is a document under section 157 of the SIS Act;
8. the “SIS Determination” is the determination issued under subsection 153(4) of the SIS Act dated 14 October 1997;
9. a “strategies document” is a separate investment strategies document pursuant to clauses 24 and 25 of the SIS Determination; and
10. an “electronic copy” of a document, as referred to in paragraphs 5 and 6 of this Interpretation section, is a substantially faithful copy of any relevant paper version (“original”), but which may differ from the original:
 - (a) in content, if the differences are trivial (for instance, typographical and spelling mistakes, and corrections of those mistakes, if they do not affect the sense); or

- (b) in presentation (for instance, its general layout and formatting), if the differences do not result in a person breaching Part 18 or sections 161 or 162 of the SIS Act,

and in each case if those differences are not likely to:

- (c) cause a reasonable person to confuse part or all of another document with the electronic copy; or
- (d) reduce the likelihood of a reasonable person reading any part of the electronic copy.

Subject to paragraphs 10(c) and (d), further examples of permissible differences in presentation under paragraph 10(b) include any or all of the following:

- (e) immaterial differences in the arrangement of material;
- (f) prompts to assist a person to read the electronic copy;
- (g) hypertext links:
 - (i) within the electronic copy;
 - (ii) from the electronic copy to another document (for instance, a section 157 document);
 - (iii) to assist a person to apply for, or pay for, a superannuation interest;
- (h) the absence from (or simplification in) the electronic copy of graphics of a promotional or decorative nature (as opposed to those presenting substantive information, including headings, graphs and tables); and
- (i) the use in the electronic copy of codes to control the display of the document, which are not themselves intended to be displayed.

Modification

Pursuant to section 332 of the SIS Act, ASIC hereby declares that Part 19 of the SIS Act is to have effect, in relation to each trustee of a public offer entity, as if that Part were modified by inserting after section 158 a new section as follows:

“158A(1) For the purposes of section 157 of this Act, the trustee of a public offer entity is taken to be satisfied on reasonable grounds that a

person has received documents issued, or authorised to be issued, by the trustee that contain the information prescribed under section 157(1)(a) if:

- (a) the trustee has provided the documents or information to the person by electronic means or, where a copy of a document must be provided to the person, the trustee has provided an electronic copy of that document; and
- (b) the trustee has taken all reasonable measures to ensure that the person has accessed the documents or information or the electronic copy of the document before the trustee issued a superannuation interest to the person.

158A(2) For the purposes of subsection (1), an electronic copy of a document must be a substantially faithful copy of any relevant paper version (“the original”), but may differ from the original:

- (a) in content, if the differences are trivial (for instance, typographical and spelling mistakes, and corrections of those mistakes, if they do not affect the sense); or
- (b) in presentation (for instance, its general layout and formatting), if the differences do not result in a person breaching Part 18 or sections 161 or 162,

and in each case if those differences are not likely to:

- (c) cause a reasonable person to confuse part or all of another document with the electronic copy; or
- (d) reduce the likelihood of a reasonable person reading any part of the electronic copy.

Subject to paragraphs (c) and (d), further examples of permissible differences in presentation under paragraph (b) include any or all of the following:

- (e) immaterial differences in the arrangement of material;
- (f) prompts to assist a person to read the electronic copy;
- (g) hypertext links:
 - (i) within the electronic copy;
 - (ii) from the electronic copy to another document;

- (iii) to assist a person to apply for, or pay for, an interest;

- (h) the absence from (or simplification in) the electronic copy of graphics of a promotional or decorative nature (as opposed to those presenting substantive information, including headings, graphs and tables); and

- (i) the use in the electronic copy of codes to control the display of the document, which are not themselves intended to be displayed.”.

Dated this 30th day of May 2001.

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Signed by Brendan Byrne

as a delegate of the Australian Securities and Investments Commission