



**ASIC**  
Australian Securities &  
Investments Commission

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Dear

**SUPERANNUATION FUND SUCCESSOR FUND TRANSFER (SFT) REQUIREMENTS AND  
APPLICATIONS FOR RELIEF**

The purpose of this letter is to outline the types of situations where the Australian Securities and Investments Commission (**ASIC**) may consider granting you relief from the requirements of the *Corporations Act 2001* (**Corporations Act**) and other relevant legislation in the context of a fund merger. The letter also provides important practical information about the process of applying for relief.

ASIC is cognisant of increased merger activity within the superannuation industry and is committed to facilitating this process, keeping in mind members' best interests. We are working closely with APRA on matters relating to mergers.

In order to enable timely and efficient successor fund transfers (**SFTs**), we would like to highlight some common disclosure obligations as required by the *Corporations Act* that will be triggered in these circumstances. In situations of a merger, trustees are generally expected to meet these obligations to ensure members are adequately informed about changes to their circumstances.

Many of the relief applications that we receive in a merger context relate to disclosure obligations.

This letter will outline the circumstances in which ASIC has granted relief in the past in the context of a merger. We are highlighting these situations to help you make a decision about whether or not it may be appropriate for you to make an application for relief.

### **Disclosure obligations**

This letter will **not** capture all the obligations that apply, and trustees are responsible for ensuring they have identified the disclosure requirements relevant to them. It is important, however, that trustees are familiar with the following *Corporations Act* provisions:

1. Significant Event Notification (**SEN**): generally, the transferring trustee **must** give members a SEN per s1017B(2)(d). See also - [Information Sheet 90](#).
2. Product Disclosure Statement (**PDS**): generally, the receiving trustee **must** give the member a PDS for the new fund (s1012A – 1012C). See also - [Information Sheet 155 - Shorter PDSs](#); [Regulatory Guide 168 - PDSs](#).
3. Financial Services Guide (**FSG**): the receiving trustee **may** need to give the member an FSG in accordance with s941 and s941B, unless an exception applies. See also - [Regulatory Guide 175 - licensing](#).
4. Periodic statement (exit statement): the transferring trustee **must** give members a periodic statement (exit statement) per s1017D(1). See also - [Regulatory Guide 97 - fees and costs](#).

### **Applications for relief**

ASIC has discretionary powers to grant relief from certain provisions of the *Corporations Act* and the *Superannuation Industry (Supervision) Act 1993*. Our power to exempt and modify legislation (and the regulations made under legislation) allows us to change the law as it applies to a person where it may result in atypical or unforeseen circumstances, or unintended consequences.

Participants in the superannuation industry may make a relief application to request ASIC to exercise those powers. In determining applications for relief, we attempt to achieve two broad objectives – consistency and definite

principles. We strongly encourage you to review and consider our regulatory guidance regarding relief applications: [Regulatory Guide - 51](#). This guidance contains important information about the principles we take into account and the type of detailed information we expect you to provide.

The relief process can be lengthy, and we encourage trustees to identify the need to apply for relief as early as possible in their engagement with the merger process.

An application for relief should be submitted through the [ASIC Regulatory Portal](#). Applicants will need to pay fees for an application. Fees are set under legislation. We have provided about payment options in the portal. For more information, see the further information on our website about [how you apply for relief](#).

### ***When does ASIC grant relief?***

It is important to emphasise that there is no 'one-size-fits-all' approach to relief and we cannot guarantee that an application will be accepted. We generally only grant relief where there is a net regulatory benefit, or any regulatory detriment is minimal and outweighed by the commercial benefit.

Historically, under merger conditions, ASIC has granted relief from disclosure obligations relating to PDSs, SENs, FSGs and Periodic Statements. Often in these instances, the commercial burden imposed on trustees to produce disclosure materials outweighed the immediate benefit to disclosure by members and alternatives to the regulated disclosure requirements were identified to address the needs of members.

In these circumstances the detriment to members is often mitigated by conditions that apply to the relief. Conditional relief usually seeks to correct the absence of disclosure at a lower cost. For example, please read [Report 325](#) (39 – 40) which details the circumstances under which ASIC granted relief from the requirement to provide a PDS in circumstances of an SFT, on the condition that the trustee send a written notice to members that contained a reference to an internet website address where the PDS could be found.

It is important to note that in the above example, there was no change to transferring members' entitlements, and members would not be denied any disclosure that they would have otherwise been entitled to. This addressed some of the risk concerning disclosure.

In circumstances where there is no change to the administration, or features of the product, we are more inclined to grant relief. For example, please read [Report 664](#) (44 – 50) which describes the circumstances under which ASIC provided relief from the requirement that the trustee give transferring members a PDS, and from the requirement to provide members with an exit statement after the transfer. In these circumstances, members would hold a superannuation product with the same features as the product they held in the transferring fund, therefore the transfer did not involve changes that could properly be described as requiring transferring members to make an investment decision. The transfer also involved trustees in the same corporate group.

These examples are to be taken as guidance **only** and are not to be relied upon as a templated response to relief applications. Most relief applications are novel in nature and require a bespoke approach. It is the trustees' responsibility to assess whether making an application is required and appropriate.

While disclosure requirements in the Corporations Act have often been the subject of relief applications where mergers are concerned, the circumstances of your merger may present other challenges that you would want to seek relief for. These could include other disclosure obligations or licensing issues. For example, you may wish to consider making a relief application where law reforms that start on a particular day require you to comply with an obligation that will only apply for a short time before your merger and the cost of compliance for a short time may outweigh any benefit. We have received relief applications from trustees concerned about meeting annual member meeting obligations, or the notification requirements introduced through the *Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019*.

We have also received applications from trustees who were concerned about the application of the licensing and disclosure requirements to their advice businesses in the context of mergers.

Before applying for relief, we encourage you to check whether ASIC does have a power to grant relief in your case. ASIC does not have relief powers in relation to all obligations and requirements that may apply to you.

ASIC publishes [reports about relief applications](#), and these are a helpful source of information about applications ASIC has considered and circumstances where relief may have been considered appropriate.

**Further queries**

If you have any queries or would like to discuss any aspect of the information provided, please contact me on 0434 315 959 or [alex.purvis@asic.gov.au](mailto:alex.purvis@asic.gov.au) or Ana Apostoloska on 0435 125 924 or [ana.apostoloska@asic.gov.au](mailto:ana.apostoloska@asic.gov.au).

Yours sincerely



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