

Offer document comparison—product disclosure statement and information memorandum

Product disclosure statements (PDSs) are used to promote a range of financial products, such as managed funds. A PDS is generally used to promote such offers to retail clients.

An information memorandum (IM) can generally only be used to promote offers to wholesale clients, although “personal offers” to retail clients can also be promoted under an IM.

A “personal offer” requires certain requirements under the Corporations Act 2001 to be satisfied. Under a “personal offer”, a maximum of \$2 million can be raised from up to 20 retail clients in any 12 month period.

The following table sets out a range of generic issues and differences between PDSs and IMs. Despite these differences, IMs often contain a similar type and level of disclosure as PDSs to ensure investors are not misled or deceived; and to ensure recipients receive sufficient information to make an investment decision about the offer.

Issue	Product disclosure statement	Information memorandum
General requirements	PDSs are highly regulated and must comply with specific requirements of the Act and ASIC policy.	IMs are not regulated and there are no specific requirements under the fundraising provisions of the Act; however, common law requirements still apply as well as those under the general provisions of the Act which relate to misleading and deceptive conduct.
Due diligence defence	Due diligence defence is available. Requires the issuer to undertake due diligence on the PDS and to verify every statement in the PDS.	No due diligence defence; however, it is advisable to undertake due diligence on the IM and to verify every statement in the IM.
Clients	Retail and wholesale clients.	Wholesale clients (and retail clients pursuant to a “personal offer”).
ASIC notification	ASIC notification required via a PDS in-use notice is required for unlisted funds.	No ASIC notification required.
Content requirement	There are specific content requirements for PDSs under the Act and ASIC policy, such as taxation, rights of investors, terms and conditions of interests in the fund, dispute resolution, borrowings and other significant characteristics.	No specific content requirements.
Details of the issuer	Information about the issuer of the PDS must be included. Details of the directors of the issuer can be incorporated into the PDS by reference, e.g., from a website.	No specific requirement to include information about the issuer; however, it is usual for such information to be included in an IM.
Forecasts	Forecast financial information must comply with ASIC Regulatory Guide 170 (RG 170). The issuer must have reasonable grounds for the inclusion of the forecast information.	Forecast financial information should comply with RG 170 due to ASIC’s ability to enforce it pursuant to the misleading and deceptive provisions of the Act. The issuer must have reasonable grounds for the inclusion of the forecast information.
Risks	The PDS must include specific details of the risks of an investment in the fund, including specific risks associated with the assets to be acquired.	Whilst not required, it is advisable to include specific details of the risks of an investment in the fund, including specific risks associated with the assets to be acquired.
Fees and expenses	Prescribed fee tables must be adopted together with additional information such as the buy/sell spread, the impact of GST, the manner in which adviser fees and commissions will be paid and the level of those commissions.	Details of the fees and expenses need to be included; however, there is no requirement to include the prescribed fee tables and information.

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Taxation	Information about the taxation implications of an investment in the fund and the taxation treatment of distributions must be included.	No requirement to include information about the taxation implications of an investment in the fund and the taxation treatment of distributions.
Minimum subscription obligations	<p>If the PDS states a minimum amount to be raised, then interests in the fund cannot be issued until this amount has been raised.</p> <p>Issuers have up to four months to raise the minimum subscription amount.</p> <p>A supplementary PDS is required to reduce the minimum subscription amount. Investors generally have a right to withdraw their application at this time.</p>	<p>No specific requirement to raise a minimum subscription amount within a particular time period.</p> <p>Issuers should consider whether a supplementary IM should be issued if the minimum subscription amount is being decreased for any reason, e.g., if the acceptance of the reduced amount significantly changes the nature of the offer or prospect for forecast returns.</p>
Updating the offer document	A PDS is required to be up to date for as long as investors are able to subscribe for interests under it. Generally, this is an issue for open funds that can accept applications under a PDS at any time.	<p>No specific requirement to keep an IM up to date.</p> <p>A supplementary IM may need to be issued to correct a material error or omission.</p>
Cooling-off rights	PDSs must state whether cooling-off rights apply with respect to an investment in the fund. Cooling-off rights will apply if the fund is "liquid". The fund may be "liquid" depending on the nature of the fund's assets.	There are no mandatory cooling-off rights for investors in unregistered funds.



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