



Product Disclosure Statements

1. *PDS Disclosure Principles*

On 2 September 2008, ASIC issued *Regulatory Guide 46* which aimed at improving disclosure by **unlisted property funds**. The guide promotes eight disclosure principles to be applied to product disclosure statements dated on or after 30 November 2008.

As a reminder, the implementation timetable is as follows:

Date	Required Action
<i>By 30 November 2008 – open funds</i>	Responsible entities of open funds should provide existing investors with updated information covered by the disclosure principles (e.g. in a regular investor update or by including the information on a website that is used to communicate with investors).
<i>By 30 November 2008 – PDSs that are dated before 30 November 2008 but remain in use</i>	If an existing PDS is still in use, responsible entities should either: <ul style="list-style-type: none"> include the disclosure principle information on a website referred to in the PDS (if the omission of disclosure principle information from the PDS is not materially adverse) -see CO 03/127; or update the PDS by a new or a supplementary PDS so that it includes the disclosure principle information.
<i>New PDSs from 30 November 2008</i>	PDSs dated on or after 30 November 2008 should clearly and prominently disclose information covered by the disclosure principles.
<i>By 31 March 2009 – closed funds</i>	Responsible entities of closed funds should provide existing investors with updated information covered by the disclosure principles, unless the investors need earlier disclosure to make a decision on withdrawal rights that commence on or shortly after 31 March 2009.

For the purposes of the guide, ASIC considers an “open scheme” to be an unlisted property fund that gives investors the right to withdraw at any time between 30 November 2008 and 31 March 2009. ASIC considers that, if it is “likely” that investors will be given withdrawal rights in the period to 31 March 2009, then the responsible entity must give an initial update by 30 November 2008.

In addition, a PDS is required to explain how the responsible entity intends to update investors for ongoing disclosure. It is good practice for responsible entities to update investors on the status of the disclosure principle information *at least every 6 months*. Material changes to key information should be notified to investors in the most efficient and effective method of communication (eg. through a regular investor update or a website that is used to communicate with investors).



2. Lodgment of Product Disclosure Statement Notifications Online

From 1 January 2009, ASIC will require all notifications of product disclosure statements to be lodged online. This is due to a change to section 1015D of the *Corporations Act 2001* (Cth), which was amended by the *Corporations Legislation Amendment (Simpler Regulatory System) Act 2007*.

The following forms are affected by the change:

Form	When is this Form lodged?
Form FS88 (<i>PDS in-use notice</i>)	Form FS88 must be lodged when a PDS is first given to a person in a recommendation, issue or sale situation.
Form FS89 (<i>Notice of change to fees and charges in a PDS</i>)	Form FS89 must be lodged when a change is made to the fees and charges outlined in a PDS or a Supplementary PDS.
Form FS90 (<i>Notice that a product in a PDS has ceased to be available</i>)	Form FS90 must be lodged when a product in a PDS or a Supplementary PDS ceases to be available.

Online lodgment of the above forms will be mandatory from 1 January 2009. These forms will be available online from 22 December 2008 through the following ASIC online portals:

Portal	Who uses this Portal?
Australian Financial Services Licensee portal	AFS Licensees can register for access to lodge forms online.
Company Officeholder portal	A company officer can register for access to lodge forms online on behalf of their company.
Registered Agent portal	Agents can register for access to lodge forms online on behalf of a company that has appointed that agent to represent it.

To register for access to lodge forms online, go to www.asic.gov.au/register-for-access. ASIC's online user guides will also be available at this website from 1 January 2009.

If you have any queries about the implications of Product Disclosure Statements, please contact Rick Goldberg on (03) 9242 4734 or via email rick.goldberg@madgwicks.com.au, or contact Wendy Shang on (03) 9242 4744 or via email wendy.shang@madgwicks.com.au

- ▶ For information on Madgwicks' Corporate Equity group, please click [here](#).
- ▶ For information on Madgwicks' Corporate Finance group, please click [here](#).
- ▶ For information on Madgwicks' Funds Management & Superannuation group, please click [here](#).
- ▶ For information on Rick Goldberg, please click [here](#).