

# ASIC CLASS ORDER [CO 12/415]

## EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (*ASIC*) makes ASIC Class Order [CO 12/415] under paragraph 1020F(1)(c) of the *Corporations Act 2001* (the *Act*).

Paragraph 1020F(1)(c) provides that ASIC may declare that Part 7.9 of the Act applies in relation to a person or class of persons as if specified provisions were omitted, modified or varied as specified in the declaration.

### 1. Background

Section 1015D of the Act requires that a person must lodge an “in-use” notice with ASIC in certain circumstances, including where a Product Disclosure Statement (PDS) for a financial product is first made available. The in-use notice provisions only apply where the PDS for the product is not required to be lodged with ASIC. The in-use notice provisions apply to standard employer-sponsored superannuation products.

ASIC Class Order [CO 04/1030] (the *original class order*), which took effect on 14 October 2004, provided relief so as to permit the lodgment of a single in-use notice in relation to the common part used by each PDS or Supplementary PDS for standard employer-sponsored superannuation products.

The original class order was inadvertently not registered on the Federal Register of Legislative Instruments (*FRLI*) within the meaning of section 4 of the *Legislative Instruments Act 2003* (the *LI Act*) by the last day for lodging the instrument as originally made for registration under Division 3 of Part 4 of the LI Act. As a consequence, the original class order ceased to be enforceable by or against the Commonwealth, or by or against any other person or body, from 1 October 2006.

This class order is being made in conjunction with ASIC Class Order [CO 12/416] (the *retrospective class order*). The retrospective class order provides the same relief as this class order but with retrospective effect from 1 October 2006 to the date of commencement of this class order.

### 2. Purpose of the class order

The purpose of the class order is to prospectively reinstate the effect of the original class order.

The purpose of the original class order and this class order is to allow in-use information to be provided to ASIC in a manner that reduces the administrative burden for the trustees of superannuation funds with large numbers of essentially identical products that would otherwise require the lodgement of a separate in-use notice for each product.

### **3. Operation of the class order**

The operative provisions of this class order are in substantially the same terms as the original class order. They provide an alternative to lodging multiple in-use notices under subsection 1015D(2) of the Act for certain standard-employer sponsored superannuation funds. Notification to ASIC under the existing in-use provisions remain open to responsible persons not wishing to utilise the class order.

The class order permits the lodgment of a single in-use notice in relation to the common part used by each PDS for standard employer-sponsored superannuation products. Issuers using this new procedure will also be required to provide ASIC with a list of those superannuation products that have used that common part. This list must be updated on a monthly basis.

Instead of lodging an in-use notice with ASIC in relation to every PDS that is in use, the class order allows the lodgement of one primary notice in circumstances where a number of PDSs share the same common part.

#### The primary notice

If responsible persons for PDSs choose to rely on the class order, a primary notice in relation to the common part must be lodged with ASIC as soon as practicable, and in any event within five business days, after a copy of that common part is first given to someone as part of a PDS.

#### The secondary notice

If responsible persons for PDSs choose to rely on the class order, for the life of the common part (ie the period over which the common part does not change), those responsible persons must lodge a secondary notice within five business days of the end of each month that the common part is used.

#### Review

It is expected that the operation of the class order will be reviewed, particularly in light of legislative changes and developments in industry practice since the making of the original class order. Meantime, ASIC considers that the declaration in the original class order should be remade in its original form so as to put industry in the position they would have been in but for the failure to register the original class order.

#### **4. Statement of Compatibility with Human Rights**

This statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* because it does not engage any of the applicable rights or freedoms.

#### **5. Consultation**

As this class order prospectively reinstates the effect of the original class order on which the financial services industry had been relying, ASIC considers the making of this class order to be of a minor and technical nature which does not require consultation.