

ASIC CLASS ORDER [CO 12/416]

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 12/416] 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of section 4 of the *Legislative Instruments Act 2003* (the *LI Act*) by the last day for lodging the instrument as originally made for registration under Division 3 of Part 4 of the LI Act.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.

To overcome this problem, ASIC has made two class orders:

- ASIC Class Order [CO 12/415] (the *prospective class order*); and
- ASIC Class Order [CO 12/416] (the *retrospective class order*).

2. Purpose of the class order

The purpose of this class order is to *retrospectively* reinstate the effect of the original class order from the date it became unenforceable (1 October 2006) until the commencement of the prospective class order.

The purpose of the original class order and the prospective class order are more fully set out in the Explanatory Statement for the prospective class order.

3. Operation of the class order

This class order *retrospectively* reinstates the effect of the original class order from the date it became unenforceable (1 October 2006) until the commencement of the prospective class order.

The operation of the original class order and the prospective class order are more fully set out in the Explanatory Statement for the prospective class order.

The retrospective operation of this class order from 1 October 2006 does not disadvantageously affect the rights of any person or impose liabilities on a person in respect of anything done or omitted to be done before the date this class order is registered on the FRLI: subsection 12(2) of the LI Act.

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 retrospectively 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.