

ASIC CLASS ORDER [CO 13/1534]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (*ASIC*) makes Class Order [CO 13/1534] under subsection 1020F(1) of the *Corporations Act 2001* (the *Act*).

Subsection 1020F(1) of the Act provides that ASIC may exempt a class of persons from all or specified provisions of Part 7.9 of the Act. Subsection 1020F(4) provides that an exemption may be subject to specified conditions. A person seeking to rely on the exemption must comply with the specified conditions.

1. Background

A trustee of a superannuation fund that offers to issue interests in the fund to a person is obliged to disclose information in a Product Disclosure Statement. Product Disclosure Statements provide key information to a person to assist them in making a decision with regards to joining a particular fund. A Product Disclosure Statement must provide information on fees and costs associated with the product (among other things).

A trustee of a superannuation fund must also provide, generally every 12 months, a periodic statement to a member of the fund to help the member understand their investment in the fund. This includes an understanding of fees and costs incurred during the relevant period.

Fees and costs disclosure is heavily prescribed for both Product Disclosure Statements and periodic statements in relation to superannuation products. As a result of recent reforms in superannuation, fees and costs disclosure is changing.

The changes to the Corporations Regulations disclosure requirements in relation to fees and costs, reflect basic changes to fees and costs already made to the *Superannuation Industry (Supervision) Act 1993* (SIS Act) as a result of the *Superannuation Legislation Amendment (Further MySuper Transparency Measures) Act 2012* and the MySuper changes. These changes restrict the types of fees that can be charged in some cases, or require other fees to only be charged on a cost recovery basis. There are also changes to fee and cost terminology in the SIS Act which have required changes to the fee tables and templates in the Corporations Regulations.

First Exemption

With respect to the First Exemption of the class order, changes to disclosure with respect to fees and costs information in Product Disclosure Statements and periodic statements for a superannuation product were made by items 7 to 68 and 70 to 86 of

Schedule 1 of the *Superannuation Legislation Amendment (MySuper Measures) Regulation 2013* which was introduced on 28 June 2013. The changes to disclosure come into effect from 31 December 2013.

Feedback from industry associations indicates that compliance by 31 December 2013 would result in significant compliance costs and imposes unreasonable burdens on trustees. In the transition period, consumers will, however, continue to receive fee and cost information.

The class order extends the date of compliance from 31 December 2013 to 1 July 2014 for Product Disclosure Statements given on or after that date, and reporting periods on or after 1 July 2014 for periodic statements and aligns it with the commencement date for managed investment products.

Second Exemption

With respect to the Second Exemption of the class order, for the purposes of paragraph 1017D(5)(g) of the Act in relation to the disclosure obligations of superannuation trustees for periodic statements, subregulation 7.9.20(1)(o) of the *Corporations Regulations 2001* (the **Regulations**) was introduced by the *Superannuation Legislation Amendment (MySuper Measures) Regulation 2013*.

Subregulation 7.9.20(1)(o) notes that for a regulated superannuation fund, if the trustee is required to make publicly available a product dashboard for the investment option, under section 1017BA of the Act, the latest product dashboard for the investment option must be included. This means that the product dashboard would be required to be included as part of a periodic statement, including periodic statements when a member exits the fund.

The class order provides interim relief from compliance with subregulation 7.9.20(1)(o), if a trustee includes in the periodic statement, or accompanies the periodic statement with, a website address for the latest product dashboard for the investment option. This also applies to periodic statements provided to members who are exiting the fund.

2. Purpose of the class order

First Exemption

The purpose of the First Exemption is to address the compliance and administrative costs and the unreasonable burden imposed on trustees associated with compliance by 31 December 2013.

Second Exemption

The purpose of the Second Exemption is to address the compliance and administrative costs and the unreasonable burden imposed on trustees by including hard copies of product dashboards in periodic statements.

This approach is consistent with policy. Product dashboards are required to be made publicly available on the trustee's website under section 1017B of the Act. Providing a member a website address for the product dashboard on the trustee's website in the periodic statement is consistent with policy objectives and achieves more effective and efficient disclosure for members.

The exemption will apply to periodic statements given in relation to reporting periods ending before 1 January 2015, to allow for further consideration and consultation on the requirement in subregulation 7.9.20(1)(o) of the Regulations.

3. Operation of the class order

The First Exemption will apply with respect to Product Disclosure Statements given before 1 July 2014 and with respect to periodic statements given in relation to reporting periods ending before 1 July 2014.

The Second Exemption will apply to periodic statements given in relation to reporting periods ending before 1 January 2015.

The exemptions provided by the class order does not prevent a trustee of a superannuation fund from complying with the Act and Regulations as made.

4. Consultation

ASIC has consulted with the Commonwealth Treasury. Treasury has confirmed that the approach taken is consistent with the Government's policy.

APRA has also been consulted.

ASIC also consulted with a number of industry associations. The feedback received from the industry associations has been taken into account in the development of the class order.

The Office of Best Practice Regulation has confirmed that a Regulation Impact Statement is not necessary.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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This class order 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*.

Overview of the class order

First Exemption

Changes to disclosure with respect to fees and costs information in Product Disclosure Statements and periodic statements for a superannuation product were made by the *Superannuation Legislation Amendment (MySuper Measures) Regulation 2013* which was introduced on 28 June 2013. The changes to disclosure come into effect from 31 December 2013.

Feedback from industry associations indicates that compliance by 31 December 2013 would result in significant compliance costs and imposes unreasonable burdens on trustees.

The purpose of the First Exemption is to address the compliance and administrative costs and unreasonable burden imposed on trustees of superannuation funds by extending the date of compliance from 31 December 2013 to 1 July 2014 for Product Disclosure Statements and reporting periods on or after 1 July 2014 for periodic statements.

Second Exemption

Subregulation 7.9.20(1)(o) was made on 28 June 2013 and requires that where a trustee of a superannuation fund is required to make publicly available a product dashboard for the investment option, under section 1017BA of the Act, the latest product dashboard for the investment option must be included. This means that a product dashboard would be required to be included as part of a periodic statement, including a periodic statement when a member exits the fund.

The class order provides interim relief from compliance with subregulation 7.9.20(1)(o), if a trustee includes in the periodic statement a website address for the latest product dashboard for the investment option.

The purpose of the Second Exemption is to address the compliance and administrative costs and unreasonable burden imposed on trustees by including hard copies of product dashboards.

Human rights implications

This class order does not engage any of the applicable rights or freedoms.

Conclusion

This class order is compatible with human rights as it does not raise any human rights issues.