

ASIC CLASS ORDER [CO 14/443]

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 14/443] under subsection 1020F(1) of the *Corporations Act 2001* (the *Act*).

Paragraph 1020F(1)(a) of the Act provides that ASIC may exempt a person or class of persons from all or specified provisions of Part 7.9 of the Act.

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

1. Background

The *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012* amended the Act, including by requiring trustees of certain superannuation funds to:

- (a) publish on the fund's website a product dashboard which provides summary information for consumers about the fund's MySuper and choice products; and
- (b) publish full portfolio holdings for the fund on the fund's website twice annually.

The government made an announcement on 5 May 2014 stating that there will be a deferral of the start date for the choice product dashboard and the introduction of a portfolio holdings disclosure regime to 1 July 2015. In light of this and the absence of regulations or amending legislation to implement this decision, ASIC will facilitate this deferral and provide industry with the necessary legal certainty by making the class order at this time.

Product dashboard requirements for choice products

The product dashboard provides key information about a MySuper product or a choice product. The product dashboard requirements are set out in section 1017BA of the Act.

The product dashboard was intended to assist members and other users to more easily compare products and make informed choices. The product dashboard requirements took effect for MySuper products on 31 December 2013 and the requirements for

choice products were scheduled to take effect on 1 July 2014. In June 2013, the government made regulations – the *Superannuation Legislation Amendment (MySuper Measures) Regulation 2013* - that specify the detailed requirements regarding the presentation and content of the information in a product dashboard for a MySuper product. However, corresponding regulations have yet to be made for the product dashboard requirements in relation to choice products.

Portfolio holdings disclosure requirements

The portfolio holdings disclosure requirements were designed to provide greater transparency in the superannuation industry and to allow members to understand where their superannuation is invested. The benefits of these requirements would include enabling members and analysts to assess the level of diversification and risk in particular superannuation products.

The obligation of a trustee of a registrable superannuation entity (other than a pooled superannuation trust) to report full details of portfolio holdings as at 30 June and 31 December each year is set out in section 1017BB of the Act. The obligation is supported by the requirements in sections 1017BC, 1017BD and 1017BE of the Act that intermediaries must provide the trustee with full details of assets invested that are, or are derived from, an asset of a registrable superannuation entity. These "look through provisions" are designed to require the full reporting of superannuation assets that are invested through one or more intermediaries.

The portfolio holdings disclosure requirements are scheduled to take effect in relation to a first reporting date of 30 June 2014. Currently, no regulations have been made specifying the detailed presentation and content requirements for portfolio holdings disclosure.

2. Purpose of the class order

The class order defers the commencement of the product dashboard provisions for choice products to 1 July 2015 and defers the first reporting day for the portfolio holdings disclosure provisions to 31 December 2015.

In relation to the portfolio holdings disclosure requirements, the obligations of an intermediary to provide a notification that an asset invested is an asset of a superannuation fund, or is indirectly derived from an asset of a superannuation fund, do not have to be complied with until 1 July 2015. Further, an intermediary who receives a notification of this kind does not have to provide the investment information to the trustee of the superannuation fund until on or after the first reporting day of 31 December 2015.

The purposes of these deferrals are as follows:

- to allow further consultation in relation to the product dashboard requirements;
- to allow further time for the regulations relating to both requirements to be released;

- to provide industry with a reasonable period to prepare for the detailed presentation and content requirements relating to the above requirements; and
- to reduce the administrative burden on industry, including other parties who may be supplying information to trustees for the purposes of disclosing portfolio holdings under section 1017BB of the Act.

3. Operation of the class order

The class order:

- (a) defers the requirement to make a product dashboard publicly available for a choice product until 1 July 2015;
- (b) defers the first reporting date for the portfolio holdings disclosure requirements from 30 June 2014 to 31 December 2015;
- (c) modifies subsections 1017BC(2), 1017BD(2) and 1017BE(2) so that, for new arrangements, first parties and their agents are not required to give notifications under those subsections until 1 July 2015; and
- (d) defers second party reporting obligations under subsection 1017BC(3) of the Act in line with a first reporting date for portfolio holdings disclosure requirements of 31 December 2015.

4. Consultation

Treasury has conducted extensive consultation with stakeholders (including ASIC). The Discussion Paper *Better regulation and governance, enhanced transparency and improved competition in superannuation* was released on 28 November 2013, with a closing date for submissions of 12 February 2014. The Discussion Paper notes that there are two outstanding aspects of the current superannuation regulatory regime the subject of examination in the paper: the choice product dashboard and the portfolio holdings disclosure requirements. The Discussion Paper sought submissions regarding the content and format of choice product dashboards, and multiple aspects surrounding portfolio holdings disclosure including what model would be most appropriate and whether the information should be presented on an entity or a product level.

As a part of this consultation, industry stakeholders have requested an extension of the commencement date of the provisions to allow for a reasonable time to prepare for the requirements before the provisions take effect.

Statement of Compatibility with Human Rights

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

ASIC Class Order [CO 14/443]

The 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

The class order defers a number of obligations under sections 1017BA, 1017BB, 1017BC, 1017BD and 1017BE of the *Corporations Act 2001*. These sections deal with requirements for:

- (a) trustees of regulated superannuation funds with 5 or more members to make a product dashboard publicly available on the fund's website for each MySuper and choice product; and
- (b) trustees of registrable superannuation entities (other than pooled superannuation trusts) to publish portfolio holding information on a look-through basis twice annually on the entity's website.

The government made an announcement on 5 May 2014 stating that there will be a deferral of the start date for the choice product dashboard and the introduction of a portfolio holdings disclosure regime to 1 July 2015. In light of this and the absence of regulations or amending legislation to implement this decision, ASIC will facilitate this deferral and provide industry with the necessary legal certainty by making the class order at this time. As a result, the class order defers the commencement of both sets of provisions. The look through provisions will be deferred to 1 July 2015 to facilitate a first reporting date of 31 December 2015, and the product dashboard for choice products requirement will be deferred to 1 July 2015. This will allow further time for the regulations to be made and will provide superannuation trustees with additional time to prepare for the requirements once the regulations are made.

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.