

ASIC CLASS ORDER [CO 14/509]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Superannuation Industry (Supervision) Act 1993

The Australian Securities and Investments Commission (**ASIC**) makes ASIC Class Order [CO 14/509] under subsection 332(1) of the *Superannuation Industry (Supervision) Act 1993* (the **Act**).

Subsection 332(1) provides that ASIC may, in writing, declare that a modifiable provision is to have effect, as if it were modified as specified in the declaration, in relation to a particular person or a class of persons or a particular group of individual trustees or a class of groups of individual trustees. The modifiable provisions include a provision of Part 2B of the Act and a provision of regulations made under Part 2B.

1. Background

On 29 May 2009, the Government commissioned the Super System Review to make recommendations to improve the superannuation system. The Review's final report was handed to the Government on 30 June 2010.

The Government's response to the Review was a package of reform recommendations entitled Stronger Super (the **reforms**). These reforms included strengthening the governance, integrity and regulatory settings of the superannuation system including enhancements to the disclosure and reporting requirements for superannuation (**systemic transparency measures**).

One of the objectives of the systemic transparency measures is to increase transparency and accountability in the superannuation sector. The Government noted that a large amount of information was only available to members through request or on the member only section of the fund's website. Greater transparency required certain information to be made available to the public as well.

To promote systemic transparency, section 29QB of the Act requires the publication, on the public section of the fund's website, of information and documents prescribed in regulations 2.37 and 2.38 of the *Superannuation Industry (Supervision) Regulations 1994*. These requirements, originally scheduled to commence on 1 July 2013, have been deferred by ASIC Class Orders [CO 13/830] and [CO 13/1275] and now come into effect on 1 July 2014.

Under these requirements, an RSE licensee of a registrable superannuation entity will be required to make publicly available and to keep up to date at all times, on the registrable superannuation entity's website, details and remuneration of executive officers and individual trustees and information and documents relevant to the superannuation fund.

2. Purpose of the class order

The purpose of the class order is to clarify the requirement under section 29QB of the Act that superannuation websites must be kept up to date at all times. To achieve this, the class order provides RSE licensees with a safe harbour so that if they update the responsible superannuation entity's website within the time frames prescribed they will be taken to comply with the updating obligations under section 29QB.

3. Operation of the class order

The class order sets release times for each document or item of information prescribed under the Regulations. These include:

- a) name and details of executive officers and individual trustees of the RSE licensee (regulation 2.37(1), Items 1-4);
- b) remuneration, payments and benefits made to executive officers and individual trustees (regulation 2.37(1), Items 5-16); and
- c) various documents and information relating to the relevant superannuation fund, such as trust deeds and summaries of significant event notices given to members of the fund (regulation 2.38).

The class order uses the concepts of 'triggers' and 'release times' as a simple way of dealing with the complexities of the regulations although these terms are not used in the class order. An RSE licensee can take advantage of the safe harbour offered by [CO14/509] if it updates the responsible superannuation entity's website after a trigger event within a given time after the day the trigger occurs. This means that:

$$\text{update time} = \text{trigger} + \text{release time.}$$

The release times are:

- a) 20 business days for executive officer details (items 1-4 in reg 2.37(1)); and
- b) 4 months for remuneration items (items 5 – 16 in reg 2.37(1)); and
- c) 20 business days for all information and documents required under reg 2.38.

An example of this is if a trigger occurs on 10 November 2014 (Monday) and the release time is 20 business days, the RSE licensee must update the responsible superannuation entity's website by the end of 8 December 2014 (Monday) to be taken as complying with the updating obligation. That is, the day of the trigger is not counted as being one of the 20 business days.

To extend the example to one of the prescribed documents, the trigger for the publication of the PDS of a superannuation product will be when a copy 'is first given to a person in a recommendation, issue or sale situation' which, in this example, is the 10 November 2014. This means that the PDS must be on the website 20 business days from the day *after* it is given (ie day 'one' is 11 November 2014). Counting the release time of 20 business days from that date, means that the website will be up to date if the PDS is published by 8 December 2014).

We consider that the release times we have set, following industry consultation, are sufficiently generous for RSE licensees to be able to comply with the requirements of section 29QB, as modified by the class order.

We regard a failure to comply with a time period specified by [CO 14/509] as a breach of the section 29QB updating obligation and expect RSE licensees who are also Australian financial services licensees to apply their normal breach handling procedures to such a breach.

[CO 14/509] also modifies regulations 2.37 and 2.38 by clarifying how references to ‘financial year’ are to operate in various circumstances.

4. Consultation

When regulations 2.37 and 2.38 were released, feedback from industry indicated uncertainty around the meaning of the term ‘up to date at all times’. ASIC released Consultation Paper 219 *Keeping superannuation websites up to date* in November 2013, and obtained industry’s comments on its proposed times for publication of the various matters required by these regulations. ASIC accepted a number of points made by industry and has released [CO14/509] and Regulatory Guide 252 *Keeping superannuation websites up to date* to clarify how RSE licensees can comply with the obligation to keep registrable superannuation entities’ websites up to date.

The Office of Best Practice Regulation confirmed that a Regulation Impact Statement was 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

The class order relates to regulations 2.37 and 2.38 of the *Superannuation Industry (Supervision) Regulations 1994*, which were made under section 29QB of the *Superannuation Industry (Supervision) Act 1993*. Because of the operation of ASIC Class Order [CO 13/830], the requirements of these provisions will commence on 1 July 2014. These provisions require the licensee of a registrable superannuation entity (RSE) to make publicly available, and to keep up to date at all times, on the registrable superannuation entity's website:

- a) details of executive officers and individual trustees, including their remuneration (regulation 2.37); and
- b) various items of information relating to the relevant superannuation fund, such as trust deeds and summaries of significant event notices given to members of the fund (regulation 2.38).

The class order provides RSE licensees with a 'safe harbour' so that if they update the RSE's website within the time frames prescribed they will be taken to comply with the updating obligations under section 29QB.

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.