

## EXPLANATORY STATEMENT

### ASIC SUPERANNUATION (AMENDMENT NO.1) INSTRUMENT 2015

Prepared by the Australian Securities and Investments Commission

*Superannuation Industry (Supervision) Act 1993*

The Australian Securities and Investments Commission (**ASIC**) makes *ASIC Superannuation (Amendment No.1) Instrument 2015* (the **Instrument**) under section 335 of the *Superannuation Industry (Supervision) Act 1993* (the **SIS Act**).

Subsection 332(1) of the SIS Act 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. By section 335, ASIC may, in writing, vary or revoke a declaration under subsection 332(1).

#### 1. Background

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 (SIS Regulations)*. These requirements, originally scheduled to commence on 1 July 2013, have been deferred by ASIC Class Orders [CO 13/830], [CO 13/1275] and [CO 14/592] and have now largely come into effect on 1 July 2015.

Under these requirements, an RSE licensee of a registrable superannuation entity is 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.

ASIC Class Order [CO 14/509] clarified the requirement under section 29QB of the Act that superannuation websites must be kept up to date at all times. To achieve this, that class order provided RSE licensees with a safe harbour so that if they update the registrable superannuation entity's website within the time frames prescribed they will be taken to comply with the updating obligations under section 29QB.

[CO 14/509] also modified regulations 2.37 and 2.38 of the SIS Regulations by clarifying how references to 'financial year' are to operate in various circumstances.

[CO 14/509] also deferred the start date until 1 July 2015 for certain disclosures required pursuant to subsection 29QB(1) of the Act for standard employer-sponsored sub-plans.

## **2. Purpose of the class order**

The purpose of Instrument is to further defer the start date until 1 July 2016 for certain disclosures required pursuant to subsection 29QB(1) of the Act for standard employer-sponsored sub-plans. This will provide further time for consideration of the commercial sensitivity issues that arise in the context of these types of sub-plans.

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

The Instrument amends [CO 14/509] to defer the start date of disclosure requirements in relation to such documents until 1 July 2016 for standard employer-sponsored sub-plans. This means that in respect of standard employer-sponsored sub-plans, RSE documents such as product disclosure statements, trust deeds and governing rules, actuarial reports of defined benefit funds, annual reports and summaries of significant event notices do not have to be published on the RSE's website until 1 July 2016 or may be redacted if the document relates to both the sub-plan and the RSE more generally.

This deferral is intended to allow time for more consultation in respect of RSE documents that contain potentially sensitive information in relation to standard employer-sponsored sub-plans. As a result of feedback received from industry, ASIC understands that most issues regarding commercially sensitive information relate to sub-plans as defined in [CO 14/509]. There is no intention to extend the scope of this deferral to other documents or information required by regulations 2.37 and 2.38 of the SIS Regulations.

## **4. Consultation**

ASIC did not undertake a public consultation process with respect to deferring the start date of disclosure requirements for standard employer-sponsored sub-plans under [CO 14/509] as it is a minor modification to extend the duration of the interim relief. The purpose of extending the interim relief is to enable further consideration as to how best to clarify obligations relating to employer-sponsored sub-plans. To this end, we consulted with The Treasury, who had no objection to this extension.

## Statement of Compatibility with Human Rights

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

### ASIC Superannuation (Amendment No.1) Instrument 2015

The 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*.

#### Overview

*ASIC Superannuation (Amendment No.1) Instrument 2015* (the **Instrument**) amends ASIC Class Order [CO 14/509].

Class Order [CO 14/509] relates to regulations 2.37 and 2.38 of the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations), made for the purposes of section 29QB of the Superannuation Industry (Supervision) Act 1993 (SIS Act), which 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 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 amendments made by the Instrument to Class Order [CO 14/509] defer the start date until 1 July 2016 for certain disclosures required pursuant to subsection 29QB(1) of the Act for standard employer-sponsored sub-plans. This will provide further time for consideration of the commercial sensitivity issues that arise in the context of these types of sub-plans.

#### Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

#### Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.