

EXPLANATORY STATEMENT

ASIC CORPORATIONS (AMENDMENT NO.2) INSTRUMENT 2015

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (*ASIC*) makes ASIC Corporations (Amendment No.2) Instrument 2015 (the *Instrument*) under section 1020F(1) of the Corporations Act 2001 (the *Act*).

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

A. Amendment to ASIC Class Order [CO 13/1534]

1. Background

A trustee of a superannuation fund must provide, generally every twelve months, a periodic statement to a member of the fund to help the member understand their investment in the fund.

The *Superannuation Legislation Amendment (MySuper Measures) Regulation 2013* introduced paragraph 7.9.20(1)(o) of the *Corporations Regulations 2001* which requires that superannuation product dashboards must be included as part of a periodic statement if the trustee is required to make publicly available a product dashboard for the investment option under section 1017BA of the Act.

The First Exemption set out in ASIC Class Order [CO 13/1534] provided interim relief from new fees and costs disclosure requirements for Product Disclosure Statements and periodic statements for reporting periods ending before 1 July 2014. As the new fee regime is now in operation, further relief is not required for the First Exemption.

The Second Exemption set out in ASIC Class Order [CO 13/1534] provides interim relief from paragraph 7.9.20(1)(o) so that it applies only to those periodic statements with a reporting period ending before 1 July 2015.

A condition of the interim relief is that the trustee must include a website address for the latest product dashboard either in, or in a document accompanying, the

periodic statement. This also applies to periodic statements for members who are exiting the fund.

2. Purpose of the instrument

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.

A purpose of the Instrument is to extend the Second Exemption in CO 13/1534 for a further 12 months so that it now applies to periodic statements for reporting periods ending before 1 July 2016.

If the Second Exemption in [CO 13/1534] is extended to apply to reporting periods ending before 1 July 2016, this will align with the proposal to extend the Choice product dashboard a further 12 months to 1 July 2016.

3. Operation of the instrument

The Instrument operates to extend the relief given from the requirement that periodic statements include, or are accompanied by, a product dashboard so that it applies to periodic statements with reporting periods that end before 1 July 2016.

4. Consultation

ASIC did not undertake a public consultation process with respect to extending the operation of the Second Exemption of [CO 13/1534] 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 product dashboards. To this end, we consulted with the Treasury, who had no objection to this extension.

B. Amendments to ASIC Class Order [CO 14/443]

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.

ASIC extended the original start date for the commencement of the product dashboard provisions for choice products to 1 July 2015 and the first reporting day for the portfolio holdings disclosure provisions to 31 December 2015 under *ASIC Class Order [CO 14/443]* [CO 14-443]

In the absence of regulations or amending legislation to fully implement these reforms, ASIC facilitated this deferral and provided industry with the necessary legal certainty by making the class order.

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 originally intended 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 were originally intended 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 instrument

The class order defers the commencement of the product dashboard provisions for choice products to 1 July 2016 and defers the first reporting day for the portfolio holdings disclosure provisions to 31 December 2016.

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 2016. 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 2016.

The purposes of these deferrals are as follows:

- to allow further time for the regulations relating to both requirements to be made;
- 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 instrument

The instrument:

- (a) defers the requirement to make a product dashboard publicly available for a choice product until 1 July 2016;

- (b) defers the first reporting date for the portfolio holdings disclosure requirements from 30 June 2015 to 31 December 2016;
- (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 2016; 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 2016.

5. Consultation

ASIC did not undertake a public consultation process with respect to the deferral of the commencement date of the product dashboard requirements for choice products and the first reporting day for the portfolio holdings disclosure provisions as it is a minor modification to extend the commencement date. The primary purpose of extending the commencement date is to allow further time for the regulations relating to both requirements to be released. To this end, we consulted with The Treasury, who had no objection to the deferral.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Amendment No.2) 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 Corporations (Amendment No.2) Instrument 2015 (the **Instrument**) amends ASIC Class Orders [CO 13/1534] and [CO 14/443].

Amendment to ASIC Class Order 13/1534

The *Superannuation Legislation Amendment (MySuper Measures) Regulation 2013* introduced paragraph 7.9.20(1)(o) of the *Corporations Regulations 2001*. This requires that superannuation product dashboards must be included as part of a periodic statement provided to members if the trustee is required to make publicly available a product dashboard for the investment option under section 1017BA of the *Corporations Act 2001*.

ASIC Class Order [CO 13/1534] provides interim relief from the requirement in 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 interim relief applies to periodic statements for reporting periods ending before 1 July 2015.

The purpose of the Instrument is to extend the Second Exemption in [CO 13/1534] for a further twelve months so that it now applies to periodic statements for reporting periods ending before 1 July 2016.

Amendment to ASIC Class Order 14/443

ASIC Class Order [CO 14/443] 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.

In the absence of regulations or amending legislation to implement these reforms, ASIC has facilitated this deferral and provided industry with the necessary legal certainty by making the class order. The Instrument extends the deferral of the commencement of both sets of provisions.

As a result the look through provisions will be deferred to 1 July 2016 to facilitate a first reporting date of 31 December 2016, and the product dashboard for choice products requirement will be deferred to 1 July 2016. 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 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.