

# EXPLANATORY STATEMENT

## ASIC SUPERANNUATION (AMENDMENT) INSTRUMENT 2015/396

Prepared by the Australian Securities and Investments Commission

*Superannuation Industry (Supervision) Act 1993*

The Australian Securities and Investments Commission (*ASIC*) makes *ASIC Superannuation (Amendment) Instrument 2015/396* (the *Instrument*) under section 335 of the *Superannuation Industry (Supervision) Act 1993* (the *SIS Act*).

Subsection 328(1) of the SIS Act provides that ASIC may, in writing, exempt from compliance with any or all of the modifiable provisions 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 SIS Act. By section 335, ASIC may, in writing, vary or revoke an exemption under subsection 328(1).

### 1. Background

To promote systemic transparency, subsection 29QC(1) of the SIS Act requires a Registrable Superannuation Entity (*RSE*) licensee to ensure that, where it is required to give information to APRA under a reporting standard that requires the information to be calculated in a particular way, and where the same or equivalent information is given to other persons, the information given to the other person is calculated in the same way as the information given to APRA.

The requirement under subsection 29QC(1) for RSE licensees to provide consistent information commenced on 1 July 2013. However, ASIC Class Order [CO 14/541] exempts RSE licensees from compliance with the requirement in subsection 29QC(1) until 1 July 2015.

The exemption in [CO 14/541] was granted as ASIC considered that further time was required to consult with industry on the application of subsection 29QC(1) to ensure that disclosure requirements appropriately aligned with APRA's reporting standards.

In December 2014, ASIC released Consultation Paper 227 *Disclosure and reporting requirements for superannuation trustees: s29QC (CP 227)*. In CP 227, ASIC sought feedback on options proposed for dealing with the uncertainty about how to achieve consistency between the disclosure requirements under subsection 29QC(1) and the data that is required to be reported under APRA's reporting standards. CP 227 raised issues around the treatment of investment objectives, return targets and the treatment of asset allocation information. Industry were generally supportive of applying section 29QC to performance information, although there was some debate about how performance should be measured in terms of net returns and net investment returns.

On 28 April 2015, APRA released amended superannuation reporting standards for industry consultation. These reporting standards are expected to take effect from 1 January 2016.

In these circumstances, ASIC considers that a further deferral of subsection 29QC(1) is appropriate to provide industry with further time to consider and respond to APRA's revised reporting standards, particularly in relation to performance related information. In addition, industry will have further time to consider ASIC guidance and any amendments made in relation to the disclosure requirement in subsection 29QC(1).

## **2. Purpose of the Instrument**

The purpose of the Instrument is to extend the exemption for RSE licensees in [CO 14/541] from the disclosure requirement in subsection 29QC(1) of the SIS Act until 1 January 2016.

This will provide further time for consideration of APRA's revised reporting standards and ASIC guidance issued in relation to the disclosure requirement in subsection 29QC(1) of the SIS Act.

## **3. Operation of the Instrument**

The Instrument amends [CO 14/541] so that the exemption for RSE licensees from the requirement in subsection 29QC(1) of the SIS Act continues until 1 January 2016.

## **4. Consultation**

ASIC has consulted with the Department of Treasury and APRA. In particular, ASIC's consultation with APRA highlighted the need for a deferral to the commencement of section 29QC in light of the release of APRA's revised reporting standards.

Further, ASIC has engaged extensively with industry by way of roundtables and CP 227. These consultations have highlighted that industry participants remain concerned with their ability to meet the requirements of section 29QC in light of the ongoing uncertainty concerning its operation. Industry will benefit from additional time to consider ASIC guidance.

## **Statement of Compatibility with Human Rights**

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

### **ASIC Superannuation (Amendment) Instrument 2015/396**

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) Instrument 2015/396* amends ASIC Class Order [14/541].

Class Order [CO 14/541] relates to subsection 29QC(1) of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act). Subsection 29QC(1) imposes an obligation on an RSE licensee to ensure that, where it is required to give information to APRA under a reporting standard that requires the information to be calculated in a particular way, and where the same or equivalent information is given to other persons, the information given to the other person is calculated in the same way as the information given to APRA.

The Instrument amends Class Order [CO 14/541] so that the exemption for RSE licensees from the requirement in subsection 29QC(1) of the SIS Act continues until 1 January 2016.

This will provide industry with further time for consultation on APRA's revised reporting standards, and additional time to consider ASIC Guidance in relation to the disclosure requirement in subsection 29QC(1).

#### **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.