

## EXPLANATORY STATEMENT

### ASIC CORPORATIONS (AMENDMENT) INSTRUMENT 2016/351

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (*ASIC*) makes *ASIC Corporations (Amendment) Instrument 2016* (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.

#### 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**]. Under *ASIC Corporations (Amendment No. 2) Instrument 2015/338*, ASIC subsequently further extended the commencement date of the product dashboard provisions for choice products to 1 July 2016 and the first reporting day for portfolio holdings disclosure provisions to 31 December 2016.

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

##### *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. The government has consulted on draft regulations for choice dashboards, as well as changes to the legislation. The Superannuation Legislation Amendment (Transparency Measures) Bill 2016, which includes changes to the start dates for the choice dashboard requirements, was introduced into parliament on 17 March 2016 but is yet to pass.

### 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. The government has consulted on draft regulations for portfolio holdings disclosure, as well as changes to the legislation. The Superannuation Legislation Amendment (Transparency Measures) Bill 2016, which includes changes to the start dates for the portfolio holdings disclosure requirements and the repeal of sections 1017BC, 1017BD and 1017BE of the Act, was introduced into parliament on 17 March 2016 but is yet to pass.

## **2. Purpose of the instrument**

The Instrument will amend CO 14/443 to defer the commencement of the product dashboard provisions for choice products to 1 July 2017 and defer the first reporting day for the portfolio holdings disclosure provisions to 31 December 2017.

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 2017. 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 1 July 2017.

The purpose of this deferral is to allow further time for the amending legislation and regulations relating to the requirements to be made.

### **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 2017;
- (b) defers the first reporting date for the portfolio holdings disclosure requirements from 30 June 2016 to 31 December 2017;
- (c) extends the relief under existing CO 14/443 in relation to 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 2017; and
- (d) defers second party reporting obligations under subsection 1017BC(3) of the Act to 1 July 2017.

### **4. 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 or the first reporting day for the portfolio holdings disclosure provisions as it is a minor modification to extend the commencement dates. The primary purpose of extending the commencement dates is to allow further time for the amending legislation and regulations relating to both requirements to be released. To this end, we consulted with The Treasury, who had no objection to ASIC effecting the deferrals, given that The Treasury had proposed the deferrals in Superannuation Legislation Amendment (Transparency Measures) Bill 2016, introduced into the Parliament on 17 March 2016. The changes in this instrument reflect the start dates in the Superannuation Legislation Amendment (Transparency Measures) Bill 2016 and provide certainty in terms of timing in the event that the legislation does not pass before 1 July 2016.

## Statement of Compatibility with Human Rights

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

### **ASIC Corporations (Amendment) Instrument 2016/351**

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) Instrument 2016/351* (the **Instrument**) amends ASIC Class Order [CO 14/443].

#### *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 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 Instrument. The Instrument extends the deferral of the commencement of these provisions.

As a result the first portfolio holdings reporting date will be deferred to 31 December 2017, and the product dashboard for choice products requirement will be deferred to 1 July 2017. This will allow further time for the amending legislation and regulations to be made and will provide superannuation trustees with additional time to prepare for the requirements.

**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.