

EXPLANATORY STATEMENT

ASIC SUPERANNUATION (AMENDMENT) INSTRUMENT 2016/1232

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 2016/1232* (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] exempted 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.

Further, on 28 April 2015, APRA released amended superannuation reporting standards for industry consultation and ASIC, through ASIC Superannuation (Amendment) Instrument 2015/396 extended the exemption from the requirements of s29QC(1) until 1 January 2016 to allow provide industry further time to consider and respond to APRA's revised reporting standards.

In conjunction with this work, on 29 November 2016, ASIC extended the transition period to 30 September 2017 for trustees of superannuation funds and responsible entities of managed funds and other managed investment schemes to comply with updated fee and cost disclosure requirements in relation to product disclosure statements.

Further, following a public consultation in December 2015 to January 2016, new requirements for Choice product dashboards were set out by the Government in the Superannuation Legislation Amendment (Transparency Measures) Bill 2016. This Bill, which was pending in Parliament, lapsed when Parliament was prorogued in April 2016.

Consequently, at this point in time, ASIC considers that a further delay until 1 January 2019 will provide time for the Choice product dashboard requirements to be settled, which may be beneficial in settling the policy position for the application of s29QC.

2. Purpose of the Instrument

The purpose of the Instrument is to further 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 2019.

This will defer the commencement of the subsection 29QC(1) disclosure obligations to a time ASIC currently anticipates will allow for the requirements for the Choice product dashboards to be developed and settled, as well as for industry to properly consider any new requirements to be introduced in this area.

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 2019.

4. Consultation

ASIC has previously engaged extensively with industry by way of roundtables and CP 227, and has sought feedback in respect of two versions of a draft instrument to modify the application of s29QC (most recently in October–November 2016).

The s29QC consultation process has 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 any synergies that arise out of aligning s29QC with the requirements for both the MySuper and Choice product dashboards.

Statement of Compatibility with Human Rights

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

ASIC Superannuation (Amendment) Instrument 2016/1232

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 2016/1232 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], as previously amended by ASIC Superannuation (Amendment) Instruments 2015/396 and 2015/1098, so that the exemption for RSE licensees from the requirement in subsection 29QC(1) of the SIS Act continues until 1 January 2019.

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.