



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Amendment) Instrument 2016/1224

I, Anthony Graham, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date: 19 December 2016

Anthony Graham

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Amendment) Instrument 2016/1224*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Note: The register may be accessed at www.comlaw.gov.au.

3 Authority

This instrument is made under subsection 1020F(1) of the *Corporations Act 2001*.

4 Schedules

The instrument that is specified in Schedule 1 to this instrument is amended as set out in the applicable items in the Schedule, and any other item in the Schedule has effect according to its terms.

Schedule 1—Amendments

ASIC Class Order [CO 14/1252]

1 After paragraph 5C

Insert:

5CA. In paragraph 1017B(6)(a) of the Act, after “the” (second occurring), insert “change or”.

2 After sub-subparagraph 6(a)(ia)

Insert:

(iaa) after the definition of *balanced investment option*, insert

“*borrowing costs* means costs, including costs in an interposed vehicle, relating to a credit facility that is not a derivative financial product under which credit within the meaning of subregulation 7.1.06(3) is provided to:

- (a) a trustee of a superannuation entity; or
- (b) an interposed vehicle, or a trustee of an interposed vehicle, in or through which the property of a superannuation fund is invested.”.

3 Sub-subparagraph 6(a)(iv) (notional clause 101A)

(a) in paragraph 101A(1)(c), omit “.”, substitute “; and”;

(b) after paragraph 101A(1)(c), insert:

“(d) subject to subsection (3), would, if the amount had been paid as a cost out of a superannuation entity, be an investment fee or administration fee for the superannuation product or, if the amount had been paid out of the scheme property of the registered scheme, be a management cost of the managed investment product.”;

(c) in the note after subclause 101A(4), after “products”, insert “generally”.

4 Sub-subparagraph 6(a)(v) (notional clause 101B)

(a) in paragraph 101B(2)(a) omit:

“are traded on a financial market on which the entity to which the financial products relates is listed and that”;

(b) omit subclause 101B(4), substitute:

“(4) An entity is also an *interposed vehicle* in relation to a product or investment option if, having regard to the Product Disclosure Statement for the product or investment option and any other information issued by the responsible person, a security or interest in the entity could be reasonably regarded, by retail clients who may be expected to be given the Product Disclosure Statement or other information, as the means by which the benefit of investments by or through the entity is obtained, rather than the investment of the superannuation entity or registered scheme to which the product or investment option relates.”;

(c) in subclause 101B(6) omit the definition of *listed*.

5 Sub-subparagraph 6(b)(iii) (clause 102(h))

Omit “security,”, substitute “security or”.

6 After paragraph 6(b)

Insert:

(baa) in clause 103 (definition of *transactional and operational costs*) omit “.”, substitute:

“.

(f) costs incurred in or by an interposed vehicle that would be transactional and operational costs if they had been incurred by the superannuation entity to which the superannuation product or investment option relates or for the registered scheme to which the managed investment products relate,

and for a superannuation product does not include borrowing costs or costs that are indirect costs because of subclause 101A(3).”.

7 Subparagraph 6(e) (clause 209(m))

Omit subparagraph 6(e), substitute:

(e) omit paragraph 209(m), substitute:

“(m) for a superannuation product—details of borrowing costs including:

- (i) a description of the cost; and
- (ii) the amount, or an estimate if the amount is not known; and
- (iii) how and when the costs are recovered; and

- (iv) a statement that the cost is an additional cost to the investor.”.

8 Subparagraph 6(ea) (notional clause 209AA)

- (a) after “209(j)” insert “and paragraph 209(m)”; and
- (b) after “costs” (twice occurring), insert, “and, for a superannuation product or investment option in a superannuation product, borrowing costs”.

9 Sub-subparagraph 6(f)(ia) (definition of *administration fee*)

Omit the definition, substitute:

“An *administration fee* is a fee that relates to the administration or operation of the superannuation entity and includes costs that relate to that administration or operation, other than:

- (a) borrowing costs; and
- (b) indirect costs that are not paid out of the superannuation entity that the trustee has elected in writing will be treated as indirect costs and not fees, incurred by the trustee [*OR the trustees*] of the entity or in an interposed vehicle or derivative financial product; and
- (c) costs that are otherwise charged as an investment fee, a buy-sell spread, a switching fee, an exit fee, an activity fee, an advice fee or an insurance fee.”.

10 After sub-subparagraph 6(f)(ia)

Insert:

- (iaa) omit the note under the definition of *indirect cost ratio* in clause 209A, substitute:

“Note: A fee deducted from a member’s account or paid out of the superannuation entity is not an indirect cost.”.

11 Sub-subparagraph 6(f)(ib) (definition of *investment fee*)

Omit paragraph (b), substitute:

- “(b) costs that relate to the investment of assets of the entity, other than:
 - (i) borrowing costs; and
 - (ii) indirect costs that are not paid out of the superannuation entity that the trustee has elected in writing will be treated as indirect costs and not fees, incurred by the trustee [*OR the trustees*] of

the entity or in an interposed vehicle or derivative financial product; and

- (iii) costs that are not otherwise charged as an administration fee, a buy-sell spread, a switching fee, an exit fee, an activity fee, an advice fee or an insurance fee.”.

12 Sub-subparagraph 6(f)(ii) (definition of *switching fee*)

Omit the definition, substitute:

“[In the case of a MySuper product:]

A *switching fee* for a MySuper product is a fee to recover the costs of switching all or part of a member's interest in a superannuation entity from one class of beneficial interest in the entity to another.

[In the case of a superannuation product that is not a MySuper product:]

A *switching fee* for a superannuation products other than a MySuper product, is a fee to recover the costs of switching all or part of a member’s interest in the superannuation entity from one investment option or product in the entity to another.

Note: If a Product Disclosure Statement covers both a MySuper product and another superannuation product, both definitions of *switching fee* must be included.”.

13 Subparagraph 6(g)

After subclause 221(2), insert:

“(3) In the Consumer Advisory Warning in subclause (2) ‘account’ may be replaced with ‘investment’.”.

14 Paragraphs 8 and 8A

Omit the paragraphs (excluding the heading), substitute:

“8. Subject to paragraph 8A, 8C and 8D, paragraphs 4 to 7 (except paragraphs 5, 5CA and 5D) apply in relation to a Product Disclosure Statement (regardless of when it was first given) from the earliest of the following:

- (a) from 1 February 2017 if the responsible person for the Statement has not given ASIC a notice in writing before 1 February 2017:
 - (i) identifying themselves and the Statement; and
 - (ii) stating that the person intends to provide to ASIC written information relating any relevant superannuation products or

- relevant investment products to which the Statement relates before 1 March 2017; and
- (iii) if all financial products to which the Statement relates will not be offered for issue after 30 September 2017, identifying those products;
- (b) from 1 March 2017 if ASIC is notified in accordance with sub-subparagraph (a)(i) and (ii) but not sub-subparagraph 8(a)(iii) and the following statements have not been provided to ASIC in writing before 1 March 2017:
- (i) a statement which contains or purports to contain the information specified in paragraph 8AB in the form and in accordance with the instructions available on ASIC's website on 19 December 2016; and
- (ii) a statement of the person authorising the provision of the information that the person is authorised to provide it on behalf of the responsible person for the Statement that they believe that the:
- (A) amount stated for the purposes of sub-subparagraph 8AB(a)(i) or sub-subparagraph 8AB(b)(i) as applicable is a reasonable estimate; and
- (B) amount stated for the purposes of sub-subparagraph 8AB(a)(ii) or sub-subparagraph 8AB(b)(ii) as applicable is correct;
- (c) from the date that is 6 business days after ASIC has requested in writing the responsible person to provide the statements referred to in paragraph 8AC in relation to a superannuation product, investment option or managed investment product to which the Statement relates, unless by that date the statements have been provided in writing to ASIC;
- (d) when the responsible person for the Statement has included in the Statement or a Statement that relates to a MySuper product, investment option or managed investment product to which the Statement relates or published on a website of the responsible person from which the Statement can be accessed, a notice to the effect that this instrument (as amended by the *ASIC Corporations (Amendment) Instrument 2016/1224* and the *ASIC Corporations (Amendment and Repeal) Instrument 2015/876*) applies to the Statement;
- (e) from commencement of the *ASIC Corporations (Amendment) Instrument 2016/1224* if the responsible person for the Statement has before that commencement included in the Statement or a Statement that relates to a MySuper product, investment option or

managed investment product to which the Statement relates or published on a website of the responsible person from which the Statement can be accessed, a notice to the effect that this instrument (as amended by the *ASIC Corporations (Amendment and Repeal) Instrument 2015/876*) applies to the Statement;

- (f) if the Statement is first given after the commencement of this provision and relates to a MySuper product, investment option or managed investment product that was not covered by a Product Disclosure Statement that was first given before the commencement of this provision, from the time the Statement is first given;
- (g) 30 September 2017.

8AA. Paragraphs 8(a) to (c) do not apply in relation to a Product Disclosure Statement for an interest in a time-sharing scheme.

8AB. The information for the purposes of paragraph 8(a) is:

- (a) for each relevant superannuation product or relevant investment option within a superannuation product of the responsible person for the Product Disclosure Statement, the amounts that would be required under clause 201 of Schedule 10 to the Regulations or subclause 8(3) of Schedule 10D to the Regulations, the total cost of the product required under clause 211 of Schedule 10 or paragraph 8(2)(b) of Schedule 10D and the amount required under paragraph 209(j) of Schedule 10:
 - (i) in a Product Disclosure Statement prepared in accordance with Schedule 10 on the date the information is provided to ASIC as if paragraphs 4 to 7 applied to the Statement; and
 - (ii) as stated or incorporated by reference in the Statement or if applicable any updating information provided in accordance with an exemption given by ASIC from section 1012J of the Act; and
- (b) for each relevant managed investment product of the responsible person for the Product Disclosure Statement, the amounts that would be required under clause 202 or clause 202A of Schedule 10 to the Regulations or subclause 8(3) of Schedule 10E to the Regulations as applicable, the total cost of the product required under clause 211 of Schedule 10 or paragraph 8(2)(b) of Schedule 10E and the amount required under clause 209(j) of Schedule 10:
 - (i) in a Product Disclosure Statement prepared in accordance with Schedule 10 on the date the information is provided to ASIC as if Clause 4 to 7 applied to the Product Disclosure Statement; and

- (ii) as stated or incorporated by reference in the Statement or if applicable any updating information provided in accordance with an exemption given by ASIC from section 1012J of the Act.

For the purposes of this paragraph apply the following disregarding any superannuation product, investment option or managed investment product in respect of which there is no Product Disclosure Statement in use during February 2017, notified under sub-subparagraph 8(a)(iii) or in relation to which paragraphs 4 to 7 (except paragraphs 5, 5CA and 5D) apply:

- (c) a superannuation product is a **relevant superannuation product** of a responsible person if the product is a generic MySuper product issued by the person;
- (d) an investment option is a **relevant investment option** of a responsible person if:
 - (i) the investment option is not a generic MySuper product and relates to assets that are no less than all other investment options of the responsible person other than a generic MySuper product (at the end of the last financial year); or
 - (ii) the investment option relates to assets of more than \$100 million (at the end of the last financial year);
- (e) a managed investment product is a **relevant managed investment product** if:
 - (i) the value of the scheme property relating to managed investment products of the same class is no less than the value of the scheme property of each other class of managed investment products of the responsible person (at the end of the last financial year); or
 - (ii) the scheme property to which the product relates has a value of more than \$100 million (at the end of the last financial year).

8AC. The statements required by subparagraph 8(c) are the statements that would be required by paragraph 8(b) if:

- (a) the reference to a relevant investment option in subparagraph 8AB(d) were a reference to a superannuation product or investment option of the person specified in the request under subparagraph 8(c);
- (b) the reference to a relevant managed investment product in subparagraph 8AB(e) were a reference to a managed investment product specified in the request under subparagraph 8(c);

- (c) the time as of which the information in the statements had to be current was a time determined by the responsible person in writing that is no earlier than 1 February 2017 and no later than 28 February 2017.
- 8A. Subparagraphs 6(bb), (c), (d), (f)(i), (fa), (fb), (g) and (h) and paragraph 7 apply in relation to a Product Disclosure Statement from the time the Statement first complies with those subparagraphs if this is before the time the provision would apply because of paragraph 8.
- 8B. Despite paragraph 1 of Schedule 2 to *ASIC Corporations (Amendment and Repeal) Instrument 2015/876*, ASIC Class Order [CO 14/1252] as in force immediately before the commencement of *ASIC Corporations (Amendment and Repeal) Instrument 2015/876* applies in relation to a Product Disclosure Statement that relates only to financial products to which a Statement relates that included a statement that ASIC Class Order [CO 14/1252] applies to the Statement until the earlier of:
- (a) the date that paragraphs 4 to 7 (except paragraphs 5, 5CA and 5D) applies in relation to the Statement under paragraph 8; and
- (b) the date from which the Statement complies with paragraphs 4 to 7 as in force immediately after the commencement of this instrument.
- 8C. If paragraphs 6(e), (ea) and (f) other than (f)(i) as in force immediately before the commencement of the *ASIC Corporations (Amendment) Instrument 2016/1224* applied in relation to a Product Disclosure Statement at that time, those provisions continue to apply in relation to the Statement and any other Product Disclosure Statement (first given after that commencement) that relates only to financial products to which the first mentioned Statement relates until the earlier of:
- (a) 30 September 2017; and
- (b) when the Statement first complies with those paragraphs as in force immediately after that commencement.
- 8D. If a Product Disclosure Statement:
- (a) is first given after the commencement of this provision; and
- (b) relates to a MySuper product, investment option or managed investment product that was covered by a notice given to ASIC for the purposes of subparagraph 8(a) and statements given to ASIC for the purposes of paragraph 8(b); and
- (c) does not relate to any other MySuper product, investment option or manage investment scheme;

paragraphs 4 to 7 (except 5, 5CA and 5D) apply to the Statement from 30 September 2017 other than to the extent those provisions apply earlier because of subparagraphs 8(c) or (d) or paragraphs 8A or 8C.”.