

EXPLANATORY STATEMENT for ASIC CORPORATIONS (AMENDMENT) INSTRUMENT 2017/569

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (*ASIC*) makes *ASIC Corporations (Amendment) Instrument 2017/569* (the ***Instrument***) under section 1020F(1) of the *Corporations Act 2001* (the ***Act***).

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

Under section 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the relevant powers because of section 5C of the Act), where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

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* (the ***Regulations***) 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 this 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 2019.

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 1017BA 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 July 2019, 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 two years so that it now applies to periodic statements for reporting periods ending before 1 July 2019.

If the Second Exemption in [CO 13/1534] is extended to apply to reporting periods ending before 1 July 2019, this will align with the proposal to extend the choice product dashboard regime a further two years to 1 July 2019, as examined later.

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 2019.

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.

ASIC consulted with the Treasury who were supportive of the proposed 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]. 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. Under *ASIC Corporations (Amendment) Instrument 2016/351*, the commencement date of the product dashboard provisions for choice products was extended further to 1 July 2017 and the first reporting day for portfolio holdings disclosure provisions was extended again to 31 December 2017.

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 specified 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 consulted on draft regulations for choice dashboards, as well as changes to the legislation. The *Superannuation Legislation Amendment (Transparency Measures) Bill 2016*, which included changes to the start dates for the choice dashboard requirements, was introduced into parliament on 17 March 2016 but lapsed when Parliament was suspended on 15 April 2016.

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 included 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 lapsed when Parliament was suspended on 15 April 2016.

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 2019 and defer the first reporting day for the portfolio holdings disclosure provisions to 31 December 2019.

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 2019. 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 2019.

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 2019;
- (b) defers the first reporting date for the portfolio holdings disclosure requirements from 31 December 2017 to 31 December 2019;
- (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 2019; and

- (d) defers second party reporting obligations under subsection 1017BC(3) of the Act to 1 July 2019.

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 government to evaluate its position in relation to the choice product dashboard and portfolio holdings disclosure requirements and the obligations in relation to including a product dashboard with a periodic statement. The deferral of the relevant requirements as a result of the Instrument allow the government the opportunity to review the requirements and, where required, to enable legislation to pass. The Instrument preserves the current position in relation to product dashboard and portfolio holdings requirements for an additional two years. As a result, the Instrument provides certainty to the industry in the near future.

ASIC consulted with Treasury who were supportive of the proposed extension.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Amendment) Instrument 2017/569

ASIC Corporations (Amendment) Instrument 2017/569 (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

The Instrument amends ASIC Class Order [CO 13/1534] and [CO 14/443].

Amendment to ASIC Class Order [CO 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 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] provided 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 2016. This was extended to reporting periods ending before 1 July 2017 by *ASIC Corporations (Amendment) Instrument 2016/364*.

The purpose of the Instrument is to extend the Second Exemption in [CO 13/1534] by another two years so that it now applies to periodic statements for reporting periods ending before 1 July 2019. The deferral was given to allow the government an opportunity to review the legal requirements in this area and, where required, to provide more time for relevant legislation to pass.

Amendment to ASIC Class Order [CO 14/443]

ASIC Class Order [CO 14/443] deferred the obligation for a superannuation trustee to publish a product dashboard for a choice product from 1 July 2016 to 1 July 2017. The Instrument extends the start date by two years to 1 July 2019. This was done to allow the government an opportunity to review the legal requirements in this area and, where required, to provide more time for relevant legislation to pass.

In addition, ASIC Class Order [CO 14/443] deferred various obligations under sections 1017BA, 1017BB, 1017BC, 1017BD and 1017BE of the *Corporations Act 2001* in relation to a superannuation trustee publishing portfolio holdings information on the fund's website twice a year. That Class Order extended the first reporting date from 31 December 2016 to 31 December 2017 and this extension was also applied to the obligations of intermediate entities to provide the superannuation trustee with investment information to enable the trustee to publish its portfolio holdings information.

The Instrument extends the first reporting date by an additional two years from 31 December 2017 to 31 December 2019. The Instrument grants a corresponding extension in relation to the obligations of intermediate entities to report information that will enable the superannuation trustee to comply with its portfolio holdings disclosure obligations. The Instrument granted the two year extensions to allow the government an opportunity to review the legal requirements in this area and, where required, to provide more time for relevant legislation to pass.

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.