



**ASIC**  
Australian Securities &  
Investments Commission

## Explanatory Statement

### *ASIC Corporations (Amendment) Instrument 2019/599*

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2019/599*.

The Explanatory Statement is approved by the Australian Securities and Investments Commission (**ASIC**).

#### Summary

1. *ASIC Corporations (Amendment) Instrument 19/599* (the **amending instrument**) amends ASIC Class Order [CO 14/1252] (the **class order**).
2. Schedule 10 to the *Corporations Regulations 2001* (the **Corporations Regulations**) sets out requirements for the disclosure of fees and costs of superannuation and managed investment products in Product Disclosure Statements (PDSs) and in periodic statements that must be given to product holders. Schedule 10D to the Regulations sets out those requirements for superannuation products which are required to use a shorter PDS.
3. The class order has modified certain aspects of Schedule 10 and Schedule 10D to the Corporations Regulations.
4. The *Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019* (the **PYSP Regulations**) made a number of amendments to Schedule 10 and Schedule 10D to the Corporations Regulations as part of the Protecting Your Superannuation Package reforms effective from 1 July 2019. The PYSP regulations were made to support the policy objectives of the *Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019* (the **PYSP Act**).
5. The PYSP Regulations amend Schedule 10 and Schedule 10D of the Corporations Regulations as made and amended by Government, and not as those Schedules appear as modified by the class order.
6. The interaction of the amendments to Schedule 10 and Schedule 10D to the Corporations Regulations to be made by the PYSP Regulations and the modifications made the class order would, if not corrected, result in aspects of the PYSP Regulations not being given effect and aspects of the modifications made by the class order not operating as intended or ceasing to have effect.

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## **Purpose of the instrument**

7. The purpose of the amending instrument is to amend the class order to ensure that the amendments made by the PYSP Regulations are given effect and to ensure that modifications to Schedule 10 and Schedule 10D made by the class order (not inconsistent with the PYSP Regulations) continue to operate as intended.
8. The interaction of the amendments to Schedule 10 and Schedule 10D to the Corporations Regulations to be made by the PYSP Regulations and the modifications made the class order would result in issues arising in relation to:
  - (a) the amendments made to reflect the prohibition on regulated superannuation funds and approved deposit funds charging exit fees imposed by amendments to the *Superannuation Industry (Supervision) Act 1993* (as made by the PYSP Act); and
  - (b) paragraphs with the same clause number, affecting paragraphs that provide significant transitional relief from aspects of fee and costs disclosure.

## **Consultation**

9. ASIC has made the amendments in the amending instrument after consultation with industry bodies – the Association of Superannuation Funds of Australia, Financial Services Council and Australian Institute of Superannuation Trustees. These industry bodies represent a significant group of superannuation trustees and responsible entities of managed investment schemes.
10. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement (RIS) is not required in order to make the amending instrument.

## **Operation of the instrument**

11. The amending instrument amends the class order to resolve these issues:
  - (a) Items 1 to 3 and 7 amend the class order to ensure that the result of the modifications made by the class order align with the amendments made by the PYSP Regulations to support the prohibition on regulated superannuation funds and approved deposit funds charging exit fees.
  - (b) Item 4 to 6 amends the class order by ‘renumbering’ notional paragraphs inserted into Schedule 10 by the class order to reflect the insertion of a new paragraph into Schedule 10 by the PYSP regulations. This will ensure that the visibility and continued intention of the notional paragraphs that had been inserted into Schedule 10 by the class order remain clear.
12. The instrument commences on the later of:
  - (a) 1 July 2019;
  - (b) the day after it is registered on the Federal Register of Legislation.

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### **Legislative authority**

13. ASIC makes the amending instrument under subsection 1020F(1) of the *Corporations Act 2001* (the *Act*).
14. Subsection 1020F(1) of the Act provides that ASIC may
  - (a) exempt a person or financial product or a class of persons or financial products from all or specified provisions of Part 7.9 of the Act; or
  - (b) declare that Part 7.9 of the Act applies in relation to a person or financial product, or a class of persons or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.
15. Under subsection 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.

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

16. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

## Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### ***ASIC Corporations (Amendment) Instrument 19/599.***

#### Overview

1. The Corporations Regulations 2001 (the ***Corporations Regulations***) sets out requirements for the disclosure of fees and costs of superannuation and managed investment products. ASIC Class Order [CO 14/1252] (***class order***) modifies certain aspects of those disclosure requirements.
2. The *Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019* (the ***PYSP Regulations***) made a number of amendments to the requirements for the disclosure of fees and costs of superannuation in the Corporations Regulations as part of the Protecting Your Superannuation Package reforms from 1 July 2019.
3. The interaction of the amendments to the Corporations Regulations to be made by the PYSP Regulations and the modifications made by the class order would, if not corrected, result in aspects of the PYSP Regulations not being given effect and aspects of the modifications made by the class order not operating as intended or ceasing to have effect.
4. The amending instrument ensures that the result of the modifications made by the class order align with the amendments to be made by the PYSP Regulations and that modifications made by the class order (not inconsistent with the PYSP Regulations) continue to operate as intended.

#### Assessment of human rights implications

5. This instrument does not engage any of the applicable rights or freedoms.

#### Conclusion

6. This 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*.