



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2019/1056

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2019/1056* (the **amending instrument**).

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

Summary

1. ASIC makes the amending instrument to extend the relief in ASIC Class Order [CO 14/443] *Deferral of choice product dashboard and portfolio holdings disclosure regimes* from portfolio holdings disclosure (**PHD**) requirements.
2. The continued deferral will facilitate the Government considering and settling its policy position on the PHD requirements, including making regulations to prescribe the content and format of disclosure.

Purpose of the instrument

3. The PHD requirements were introduced into the *Corporations Act 2001* (the **Act**) by the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012*. The provisions require most superannuation trustees to publish investment holdings information on their websites within 90 days of each 'reporting day' (being 30 June or 31 December each year).
4. On 5 May 2014, the Government announced that the first reporting day would be deferred to 1 July 2015. To facilitate this deferral, ASIC made CO 14/443. ASIC has subsequently amended CO 14/443 to implement a series of further deferrals, most recently to insert a first reporting day of 31 December 2019.
5. Effective 5 April 2019, the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019* amended the PHD requirements. These amendments simplified the PHD requirements and introduced exemptions for specific entities and types of holdings. The amendments also revised the first reporting day in section 1540 of the Act to 31 December 2019 which aligns with the date in CO 14/443.
6. Without regulations to support the PHD requirements, there is no information prescribed to standardise the format for PHD and provide further information

about specific exemptions from the requirements. In 2017, the Government consulted on draft regulations to support PHD.

7. The amending instrument allows further time to develop and make regulations by amending CO 14/443 to extend the first reporting date from 31 December 2019 to 31 December 2020.
8. This deferral does not represent a policy view by ASIC in relation to the application of the PHD requirements or a view as to the time likely to be taken by Government in settling a policy view.

Consultation

9. Before making the amending instrument, ASIC consulted with the Department of the Treasury and APRA but did not undertake a formal public consultation process. This is because the amendments do not affect the position of any entity relying on the existing relief and are a transitional measure of a minor or machinery nature.

Operation of the instrument

10. The PHD requirements are imposed by subsection 1017BB(1) of the Act. The requirements are imposed on trustees of registrable superannuation entities except trustees of a pooled superannuation trusts, single member funds or small APRA funds.
11. The amending instrument defers the first reporting day for PHD requirements in CO 14/443 so that a trustee of a registrable superannuation entity to whom the requirements apply does not have to comply with subsection 1017BB(1) of the Act in relation to a reporting day occurring before 31 December 2020.
12. The amending instrument commences on the day after it is registered on the Federal Register of Legislation.

Incorporation by reference

13. The amending instrument does not incorporate any matter by reference for the purposes of section 14 of the *Legislation Act 2003*.

Retrospective application

14. The amending instrument does not have retrospective application.

Legislative authority

15. ASIC makes the amending instrument under subsection 1020F(1) of the Act. Subsection 1020F(1) 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

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- (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.
16. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument, 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

17. 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*.
18. Instruments (not being regulations) relating to superannuation are not disallowable legislative instruments: see regulation 9 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
19. ASIC considers there is a reasonable basis for the view that the amending instrument to which this Explanatory Statement relates is properly described as an instrument relating to superannuation. Nonetheless, ASIC has decided to prepare a Statement of Compatibility with Human Rights, which 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 2019/1056

Overview

1. The amending legislative instrument amends ASIC Class Order 14/443 to continue the deferral of the portfolio holdings disclosure requirements in section 1017BB of the *Corporations Act 2001*.
2. The portfolio holdings disclosure requirements apply to most superannuation trustees. The continuation of the deferral is necessary to allow Government additional time to implement regulations to support the disclosure requirements.

Assessment of human rights implications

3. The amending legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

4. The amending legislative 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*.