

ASIC CLASS ORDER [CO 06/0538]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

Paragraph 1020F(1)(a) – Exemption

The Australian Securities and Investments Commission (ASIC) makes Class Order [CO 06/0538] *Relief from enhanced disclosures in exit statements* under paragraph 1020F(1)(a) of the *Corporations Act 2001 (Act)*. Paragraph 1020F(1)(a) provides that ASIC may exempt a person or class of persons from all or specified provisions of Part 7.9 of the Act.

1. Background

Division 3 of Part 7.9 of the Act sets out disclosure requirements in relation to financial products that include, in section 1017D, the requirement to provide periodic statements and exit statements to holders of financial products with an investment component. This obligation applies to (amongst other things) superannuation products.

The *Corporations Regulations 2001 (Corporations Regulations)* detail additional requirements in relation to the disclosure of fees and costs in exit statements that are provided to former holders of superannuation products. The additional requirements include regulation 7.9.60B for details of transactions and paragraph 7.9.75(1)(e) for disclosure of indirect costs through the indirect cost ratio methodology. Another additional requirement for superannuation product exit statements is contained in paragraph 7.9.75(1)(b) of the Corporations Regulations for disclosure in relation to costs of common fund expenses attributable to an individual investor.

For superannuation products, these three additional reporting obligations apply in relation to exit statements that are issued on or after 1 July 2006 – see generally subparagraphs 7.9.60B(1)(b)(ii) and 7.9.16K(a)(ii) and item 1 of the table in subregulation 7.9.75(1A) of the Corporations Regulations.

The full superannuation trustee licensing and fund registration provisions of the *Superannuation Industry (Supervision) Act 1993 (SIS)* commence on 1 July 2006. After that date a superannuation fund must have as trustee a body corporate or group of individual trustees that hold a class of RSE licence appropriate to the types of superannuation interests issued by the fund, and the fund must be registered as a registrable superannuation entity. The RSE licensing system has prompted some superannuation fund trustees to wind-up their funds and exit the superannuation industry by 30 June 2006.

Concerns have arisen in relation to the interaction of the commencement of the requirement for the additional information in exit statements and the wind-up of superannuation funds ahead of SIS trustee licensing.

Members of funds that are paid out or are transferred to other funds as part of a wind-up would require exit statements with the additional information, if those exit statements are provided on or after 1 July 2006. Additional information is not required if the exit statements are provided on or before 30 June 2006.

The requirement for the additional material in exit statements provided on or after 1 July 2006 creates the potential for anomalous and inequitable application among fund members, ie:

- members of funds winding-up that were recently paid or transferred and already provided with exit statements for which additional content was not relevant;
- members of funds where the trustees have that have paid or transferred members but where complexities with respect to the wind-up delays the production and delivery of the members' exit statements past 30 June 2006;
- members of funds that will be able to be provided with exit statements prior to 1 July 2006 compared to and other members of the same fund who may receive their exit statements on or after 1 July 2006, with the latter members required to be provided with the additional material.

Costs would be incurred by trustees to produce exit statements with the additional material and those costs would be recovered from members' benefits. The systems changes to support additional disclosure would only be used once before the wind-up of the fund.

Where the fund is winding-up, additional information about that fund would not be capable of informing any member decision about the fund, or allow meaningful comparison of superannuation funds, as the current fund will cease to exist. On this basis the cost of meeting the additional requirements is more likely to outweigh their regulatory benefit in this case.

It is estimated that at least 125 funds with approximately 250,000 members would benefit from the proposed relief. By comparison, approximately 340 funds have already been wound up in 2005-2006 and were not required to provide exit statements with the additional content.

2. Purpose of the class order

The purpose of [CO 06/0538] is therefore to relieve trustees of superannuation funds from the requirement to provide an exit statement, on or after 1 July 2006, that includes the additional information required by regulation 7.9.60B and paragraphs 7.9.75(1)(b) and 7.9.75(1)(e) of the Corporations Regulations where the trustee has cashed, transferred or rolled over all the members of the fund on or before 30 June 2006 ahead of winding-up the fund.

3. The class order

[CO 06/0538] grants an exemption to the trustee of a superannuation fund regulated under SIS from the requirement to provide an exit statement that includes the additional information required by regulation 7.9.60B and paragraphs 7.9.75(1)(b) and 7.9.75(1)(e) of the Corporations Regulations where:

- (i) the trustee of the fund has given notice to the Australian Prudential Regulation Authority of a decision or resolution to wind up the fund in accordance with subregulation 11.07(3) of the *Superannuation Industry (Supervision) Regulations 1994*; and
- (ii) no person holds a superannuation product to which the fund relates on or after 1 July 2006.

4. Consultation

In preparing [CO 06/0538], ASIC considered a request for relief from the Association of Superannuation Funds of Australia. No further consultations took place because [CO 06/0538] is of a minor and machinery nature.