

# ASIC Class Order [CO 12/415]

## About this compilation

### Compilation No. 1

This is a compilation of ASIC Class Order [CO 12/415] as in force on 23 July 2020. It includes any commenced amendment affecting the legislative instrument to that date.

This compilation was prepared by the Australian Securities and Investments Commission.

The notes at the end of this compilation (the *endnotes*) include information about amending instruments and the amendment history of each amended provision.

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## Australian Securities and Investments Commission Corporations Act 2001 — Paragraph 1020F(1)(c) — Declaration

### Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under paragraph 1020F(1)(c) of the *Corporations Act 2001* (the *Act*).

### Title

2. This instrument is ASIC Class Order [CO 12/415].

### Commencement

3. This instrument commences on the day it is registered under the *Legislative Instruments Act 2003*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (*FRLI*) in electronic form: see *Legislative Instruments Act 2003*, section 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

### Declaration

4. Part 7.9 of the Act applies in relation to a responsible person for a Product Disclosure Statement or Supplementary Product Disclosure Statement for an interest in a public offer superannuation fund that is a standard employer-sponsored fund as if provisions of that Part were modified or varied as follows:

- (a) in subsection 1015D(2) omit “The”, substitute “Subject to subsection (2A), the”;
- (b) after subsection 1015D(2) insert:

“(2A)Where section 1015DA applies in relation to the Statement, the responsible person for the Statement does not have to lodge a notice

under subsection (2) for so long as the person complies with section 1015DA in relation to the Statement and:

- (a) in the case where the Statement is a Product Disclosure Statement—in relation to any document that forms part of the Statement; and
  - (b) in the case where the Statement is a Supplementary Product Disclosure Statement—in relation to any Statement supplemented by the Statement.”; and
- (c) after section 1015D insert:

**“1015DA Alternative notice facility for certain superannuation Statements**

- (1) This section applies in relation to:
- (a) a Product Disclosure Statement for a superannuation product that is both:
    - (i) an accumulation product; and
    - (ii) an interest in a public offer superannuation fund that is a standard employer-sponsored fund,where the Statement is made up of a common part and a variable choice part; and
  - (b) a Supplementary Product Disclosure Statement that supplements a Product Disclosure Statement of the kind referred to in paragraph (a), in relation to which a notice has not been lodged under subsection 1015D(2).
- (2) The responsible person for the Statement must lodge with ASIC a notice (the ***primary notice***) that complies with subsection (3) as soon as practicable, and in any event within 5 business days, after:
- (a) the common part is first given to someone as part of any Product Disclosure Statement in a recommendation, issue or sale situation; or
  - (b) the Supplementary Product Disclosure Statement that relates to the common part is first given to someone in a recommendation, issue or sale situation to supplement any Product Disclosure Statement in relation to which this section applies.
- (3) The primary notice must specify each Product Disclosure Statement that:

- (a) includes the common part; and
  - (b) where paragraph (2)(b) applies—is supplemented by the Supplementary Product Disclosure Statement; and
  - (c) is given to someone in a recommendation, issue or sale situation before the lodgement of that notice.
- (4) The responsible person for the Statement must lodge with ASIC as soon as practicable after the end of each month and in any event within 5 business days of the end of that month, a notice (a **secondary notice**) that complies with subsections (5) and (6). Such notices must be lodged unless and until no Product Disclosure Statement that includes the common part is available to be given to someone in a recommendation, issue or sale situation.
- (5) The secondary notice must specify each Product Disclosure Statement that:
- (a) includes the common part; and
  - (b) where paragraph (2)(b) applies in relation to the primary notice—is supplemented by the Supplementary Product Disclosure Statement; and
  - (c) at any time before the end of the month to which the notice relates has been given to someone in a recommendation, issue or sale situation; and
  - (d) at the end of the month to which the notice relates, is available to be given to someone in a recommendation, issue or sale situation.
- (6) If a Supplementary Product Disclosure Statement that:
- (a) supplements a Product Disclosure Statement covered by subsection (5); and
  - (b) relates to the variable choice part of the Product Disclosure Statement,
- has been given to someone in a recommendation, issue or sale situation, the secondary notice must also specify the Supplementary Product Disclosure Statement and which of the Product Disclosure Statements it supplements.
- (7) For the purposes of subsection (2) a common part is taken not to be **first given** as part of a Statement in a recommendation, issue or sale situation where a common part containing the same information and statements

other than information and statements identifying the standard employer-sponsor in relation to the superannuation product to which the Statement relates has previously been given as part of another Statement in a recommendation, issue or sale situation.

- (8) For the purposes of this section, a Supplementary Product Disclosure Statement ***relates*** to the common part of a Product Disclosure Statement or the variable choice part of a Product Disclosure Statement (as the case may be) if it:
- (a) corrects a misleading or deceptive statement in that part; or
  - (b) corrects an omission of information which the Product Disclosure Statement is required to contain, by adding that information to that part; or
  - (c) updates or adds to the information in that part.

Note: A Supplementary Product Disclosure Statement may relate to both the common part and the variable choice part of a Product Disclosure Statement.

- (9) In this section:

***accumulation product*** means a superannuation product other than a superannuation product in relation to which the holder would be a defined benefit member within the meaning of section 83A of the SIS Act.

***common part*** means the part of a Product Disclosure Statement that does not contain the statements and information set out in the variable choice part.

Note: By section 1013L, a Product Disclosure Statement may be made up of 2 or more separate documents that are given at the same time. Similarly the common part may consist of such documents.

***public offer superannuation fund*** has the meaning given by section 18 of the SIS Act.

***SIS Act*** means the *Superannuation Industry (Supervision) Act 1993*.

***SIS regulations*** means the *Superannuation Industry (Supervision) Regulations 1994*.

***standard employer-sponsor*** has the meaning given by section 16 of the SIS Act.

***standard employer-sponsored fund*** has the meaning given by section 16 of the SIS Act.

***standard employer-sponsored member*** has the meaning given by section 16 of the SIS Act.

***variable choice part*** means, in relation to a Product Disclosure Statement for a superannuation product that is an interest in a standard employer-sponsored fund, a document or documents that only include any or all of the following information relating to a feature of the product chosen by the standard employer-sponsor from a selection of features made available by the trustee of the fund:

- (a) information about matters set out in regulation 4.02A or 4.02AA (as applicable) of the SIS regulations concerning investment strategies;
- (b) information about any insurance product that provides insurance cover to standard employer-sponsored members who hold the product;
- (c) the fees which apply to the superannuation product including those that relate to particular investment strategies available in relation to the product;
- (d) information about any written agreement relating to the vesting of benefits of the kind referred to in paragraph 5.08(2)(b) of the SIS regulations;
- (e) the level of employer contributions in respect of standard employer-sponsored members who hold the product.”.

## **Interpretation**

5. In this instrument:

***public offer superannuation fund*** has the meaning given by section 18 of the *Superannuation Industry (Supervision) Act 1993*.

***responsible person*** has the meaning given by subsection 1013A(3) of the Act.

***standard employer-sponsored fund*** has the meaning given by section 16 of the *Superannuation Industry (Supervision) Act 1993*.

## Notes to ASIC Class Order [CO 12/415]

### Note 1

ASIC Class Order [CO 12/415] (in force under 1020F(1)(c) of the *Corporations Act 2001*) as shown in this compilation comprises that Class Order amended as indicated in the tables below.

### Table of Instruments

| Instrument number | Date of registration                | Date of commencement | Application, saving or transitional provisions |
|-------------------|-------------------------------------|----------------------|------------------------------------------------|
| [CO 12/415]       | 2/5/2012 ( <i>see</i> F2012L00982)  | 2/5/2012             |                                                |
| 2020/579          | 22/7/2020 ( <i>see</i> F2020L00932) | 23/7/2020            | -                                              |

### Table of Amendments

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

| Provision affected                                                                                              | How affected |
|-----------------------------------------------------------------------------------------------------------------|--------------|
| Subparagraph 4(c)<br>(notional subsection<br>1015DA(9)—<br>definition of <i>variable<br/>choice part</i> )..... | am. 2020/579 |