**ASIC CLASS ORDER [CO 13/1420]**

**EXPLANATORY STATEMENT**

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (***ASIC***) makes Class Order [CO 13/1420] under subsection 1020F(1) of the *Corporations Act 2001* (the ***Act***).

Subsection 1020F(1) of the Act provides that ASIC may exempt a class of persons from all or specified provisions of Part 7.9 of the Act. Subsection 1020F(4) provides that an exemption may be subject to specified conditions. A person seeking to rely on the exemption must comply with the specified conditions.

1. **Background**

For the purposes of paragraph 1017D(5)(g) of the Act in relation to the disclosure obligations of superannuation trustees with respect to periodic statements, subregulation 7.9.20(2A) of the *Corporations Regulations 2001* (the ***Regulations***)introducedby the *Superannuation and Corporations Legislation Amendment (Low Income Superannuation Contribution) Regulation 2013* on 5 August 2013*.*

Subregulation 7.9.20(2A) requires that superannuation trustees must state separately in periodic statements given to its members:

1. the amount of Government co-contributions received; and
2. the amount of low income superannuation contributions received.

Note: Low income superannuation contributions (***LISC***) is a government co-contribution payment made towards the superannuation of low income earners, as set out in the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*.

Superannuation trustees must comply with this requirement in periodic statements (which must be sent to members at least annually), and in exit statements when a member leaves the fund.

On 24 October 2013, the Government released an exposure draft of the *Minerals Resources Tax Repeal and Other Measures Bill 2013* (the ***Bill***). The Bill proposes to abolish the payment of LISC for all financial years starting on or after 1 July 2014. In the event that the Bill is introduced and passed, LISC will only be paid in relation to the 2012–13 financial year.

In order to comply with subregulation 7.9.20(2A), superannuation trustees will need to implement systems changes, which will have both cost and timing implications. In the event that the Bill is introduced and passed, any significant costs applied to ensure compliance will be incurred unnecessarily.

If the Bill is not passed, the class order will allow industry time to implement the necessary changes to comply with subregulation 7.9.20(2A).

1. **Purpose of the class order**

The purpose of the class order is to provide interim relief from strict compliance with subregulation 7.9.20(2A). The class order seeks to:

1. facilitate business given the short length of time within which superannuation trustees have had to build, test and implement systems changes necessary to comply;
2. mitigate costs involved with systems changes and with managing operational risk arising out of complying with the new obligation in a short timeframe; and
3. provide certainty to industry pending the outcome of the Bill.
4. **Operation of the class order**

The class order exempts a trustee of a regulated superannuation fund from section 1017D of the Act to the extent that section requires the trustee to provide a periodic statement to its members that includes the separate reporting of LISC.

The class order requires a trustee to comply with one of two alternative conditions. The class order imposes two alternative conditions to accommodate the varying systems capabilities across the industry.

*First alternative condition*

Under the first alternative condition, the trustee must include in the periodic statement, the total amount of both the Government co-contribution and LISC received during the reporting period for the periodic statement. The trustee must refer to the total amount as “Government contribution” in the periodic statement.

*Second alternative condition*

Under the second alternative condition, the trustee must include in the periodic statement, the total amount of both the Government co-contribution and LISC received during the reporting period for the periodic statement. The trustee must refer to the total amount as “Co-contribution” in the periodic statement.

Both alternative conditions require that certain statements are made either in the periodic statement or in a document accompanying the periodic statement. The statements required will:

* clarify that either the “Government contribution” or “Co-contribution”, depending on which alternative condition is complied with, is the total of the amounts of Government co-contributions and LISC received during the reporting period;
* notify the member that they are able to request a breakdown of their Government co-contributions and LISC; and
* confirm the telephone number that members may call to make the request, either free of charge or for no more than the cost of a local call.

All the statements should be made in close proximity to each other to avoid causing confusion for the member, as might occur if the information were fragmented in various different locations across one or two documents. In a practical sense, this means that this information can be presented to the member in one or two sentences in a single location.

*Differences between first alternative condition and second alternative condition*

There are two differences in relation to the requirements of the first alternative condition and the second alternative condition. The first difference is the title of the line item in the periodic statement for reporting the total amount of the co-contribution and LISC payments. Under the first alternative condition, it is titled "Government contribution," whereas under the second alternative condition it is titled "Co-contribution". The second difference is that the second alternative condition requires a higher standard of disclosure—that is, the statements must be in a prominent position and style.

The second alternative condition requires a higher standard of disclosure to mitigate the potential for members to be misled as a result of LISC being effectively reported as a “co-contribution”.

In order to meet this higher standard of disclosure, issuers might, for example, consider measures such as increasing the size and style of the font of the statement, and placing the information on a bright coloured slip of paper physically affixed to the periodic statement (where a hard copy statement is issued).

The class order will only apply to reporting periods that end on or before 31 December 2014.

The exemption provided by the class order does not prevent a trustee of a superannuation fund from complying with the Act and Regulations as made.

1. **Consultation**

ASIC has consulted with the Commonwealth Treasury. Treasury has indicated its support for the class order and confirmed that the approach taken is consistent with the Government's policy.

ASIC also consulted with a number of industry associations. The feedback received from the industry associations has been taken into account in the development of the class order.

The Office of Best Practice Regulation has confirmed that a Regulation Impact Statement is not necessary.

**Statement of Compatibility with Human Rights**

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

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This class order 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 of the class order**

The class order relates to regulation 7.9.20 of the *Corporations Regulations 2001*, which was made under section 1017D of the *Corporations Act 2001*. These provisions set out the content requirements for periodic statements in relation to superannuation.

Subregulation 7.9.20(2A) was made on 5 August 2013. The subregulation requires superannuation trustees to separately report the amount of low income superannuation contributions (***LISC***) in a periodic statement for their members. LISC is a government payment for low income earners, with first payments due to be made in relation to the 2012–13 financial year.

The Government has released exposure draft *Minerals Resources Tax Repeal and Other Measures Bill 2013* (the ***Bill***). The Bill proposes to abolish LISC. If the Bill is passed prior to 1 July 2014, LISC will only be paid in relation to the 2012–13 financial year. In these circumstances, subregulation 7.9.20(2A) will become obsolete.

Superannuation trustees will incur considerable costs in order to comply with the subregulation. These costs will be incurred unnecessarily if the Bill is passed and the subregulation becomes obsolete. The class order will mitigate the costs of complying with the regulation pending the outcome of the Bill.

The class order will provide interim relief from compliance with the subregulation until 31 December 2014, subject to compliance with one of two alternative conditions, which require alternative forms of disclosure to members. The class order includes measures to minimise any detriment to fund members.

**Human rights implications**

This class order does not engage any of the applicable rights or freedoms.

**Conclusion**

This class order is compatible with human rights as it does not raise any human rights issues.