

## EXPLANATORY STATEMENT

### ASIC CORPORATIONS (AMENDMENT) INSTRUMENT 2016/364

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (*ASIC*) makes *ASIC Corporations (Amendment) Instrument 2016* (the *Instrument*) under section 1020F(1) of the *Corporations Act 2001* (the *Act*).

Section 1020F(1) provides that ASIC may exempt a person of class of persons from all or specified provisions of Part 7.9 of the Act.

#### **A. Amendment to ASIC Class Order [CO 13/1534]**

##### **1. Background**

A trustee of a superannuation fund must provide, generally every twelve months, a periodic statement to a member of the fund to help the member understand their investment in the fund.

The *Superannuation Legislation Amendment (MySuper Measures) Regulation 2013* introduced paragraph 7.9.20(1)(o) of the *Corporations Regulations 2001* (the *Regulations*) which requires that superannuation product dashboards must be included as part of a periodic statement if the trustee is required to make publicly available a product dashboard for the investment option under section 1017BA of the Act.

The First Exemption set out in ASIC Class Order [CO 13/1534] provided interim relief from new fees and costs disclosure requirements for Product Disclosure Statements and periodic statements for reporting periods ending before 1 July 2014. As the new fee regime is now in operation, further relief is not required for the First Exemption.

The Second Exemption set out in ASIC Class Order [CO 13/1534] provides interim relief from paragraph 7.9.20(1)(o) so that it applies only to those periodic statements with a reporting period ending before 1 July 2016.

A condition of the interim relief is that the trustee must include a website address for the latest product dashboard either in, or in a document accompanying, the periodic statement. This also applies to periodic statements for members who are exiting the fund.

##### **2. Purpose of the Instrument**

The purpose of the Second Exemption is to address the compliance and administrative costs and the unreasonable burden imposed on trustees by including hard copies of product dashboards in periodic statements.

This approach is consistent with policy. Product dashboards are required to be made publicly available on the trustee's website under section 1017BA of the Act. Providing a member a website address for the product dashboard on the trustee's website in the periodic statement is consistent with policy objectives and achieves more effective and efficient disclosure for members.

The exemption will apply to periodic statements given in relation to reporting periods ending before 1 January 2016, to allow for further consideration and consultation on the requirement in subregulation 7.9.20(1)(o) of the Regulations.

A purpose of the Instrument is to extend the Second Exemption in CO 13/1534 for a further 12 months so that it now applies to periodic statements for reporting periods ending before 1 July 2017.

If the Second Exemption in [CO 13/1534] is extended to apply to reporting periods ending before 1 July 2017, this will align with the proposal to extend the choice product dashboard regime a further 12 months to 1 July 2017.

### **3. Operation of the Instrument**

The Instrument operates to extend the relief given from the requirement that periodic statements include, or are accompanied by, a product dashboard so that it applies to periodic statements with reporting periods that end before 1 July 2017.

### **4. Consultation**

ASIC did not undertake a public consultation process with respect to extending the operation of the Second Exemption of [CO 13/1534] as it is a minor modification to extend the duration of the interim relief. The purpose of extending the interim relief is to enable further consideration as to how best to clarify obligations relating to product dashboards. To this end, we consulted with the Treasury, who had no objection to this extension.

## **B. Amendments to ASIC Class Order [CO 14/443]**

### **1. Background**

The *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012* amended the Act, including by requiring trustees of certain superannuation funds to publish full portfolio holdings for the fund on the fund's website twice annually.

ASIC extended the original start date for the first reporting day for the portfolio holdings disclosure provisions to 31 December 2015 under ASIC Class Order [CO 14/443]. Under *ASIC Corporations (Amendment No. 2) Instrument 2015/338*, ASIC subsequently further extended the first reporting day for portfolio holdings disclosure provisions to 31 December 2016.

In the absence of regulations or amending legislation to fully implement these reforms, ASIC facilitated the deferrals and provided industry with the necessary legal certainty by making the class order and the subsequent amendment.

### *Portfolio holdings disclosure requirements*

The portfolio holdings disclosure requirements were designed to provide greater transparency in the superannuation industry and to allow members to understand where their superannuation is invested. The benefits of these requirements would include enabling members and analysts to assess the level of diversification and risk in particular superannuation products.

The obligation of a trustee of a registrable superannuation entity (other than a pooled superannuation trust) to report full details of portfolio holdings as at 30 June and 31 December each year is set out in section 1017BB of the Act. The obligation is supported by the requirements in sections 1017BC, 1017BD and 1017BE of the Act that intermediaries must provide the trustee with full details of assets invested that are, or are derived from, an asset of a registrable superannuation entity. These "look through provisions" are designed to require the full reporting of superannuation assets that are invested through one or more intermediaries.

The portfolio holdings disclosure requirements were originally intended to take effect in relation to a first reporting date of 30 June 2014. Currently, no regulations have been made specifying the detailed presentation and content requirements for portfolio holdings disclosure. The government has consulted on draft regulations for portfolio holdings disclosure, as well as changes to the legislation. The Superannuation Legislation Amendment (Transparency Measures) Bill 2016, which includes changes to the start dates for the portfolio holdings disclosure requirements and the repeal of sections 1017BC, 1017BD and 1017BE of the Act, was introduced into parliament on 17 March 2016 but is yet to pass.

## **2. Purpose of the Instrument**

The Instrument will amend CO 14/443 to defer the obligations under sections 1017BC, 1017BD and 1017BE of the Act to 30 June 2017.

The purpose of this deferral is to allow further time for the amending legislation and regulations relating to the requirements to be made.

## **3. Operation of the Instrument**

The Instrument extends the relief under existing CO 14/443 in relation to subsections 1017BC(2), 1017BD(2) and 1017BE(2) so that, for new arrangements, first parties and their agents are not required to give notifications under those subsections until 1 July 2017.

#### **4. Consultation**

ASIC did not undertake a public consultation process with respect to the deferral of the portfolio holdings disclosure provisions as it is a minor modification to extend the commencement date. The primary purpose of extending the commencement date is to allow further time for the amending legislation and regulations relating to the requirements to be released. To this end, we consulted with The Treasury, who had no objection to ASIC effecting the deferrals.

## Statement of Compatibility with Human Rights

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

### **ASIC Corporations (Amendment) Instrument 2016/364**

The 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*.

#### **Overview**

*ASIC Corporations (Amendment) Instrument 2016/364* (the **Instrument**) amends ASIC Class Order [CO 13/1534] and ASIC Class Order [CO 14/443].

#### *Amendment to ASIC Class Order 13/1534*

The *Superannuation Legislation Amendment (MySuper Measures) Regulation 2013* introduced paragraph 7.9.20(1)(o) of the *Corporations Regulations 2001*. This requires that superannuation product dashboards must be included as part of a periodic statement provided to members if the trustee is required to make publicly available a product dashboard for the investment option under section 1017BA of the *Corporations Act 2001*.

ASIC Class Order [CO 13/1534] provides interim relief from the requirement in subregulation 7.9.20(1)(o) if a trustee includes in the periodic statement a website address for the latest product dashboard for the investment option. The interim relief applies to periodic statements for reporting periods ending before 1 July 2016.

The purpose of the Instrument is to extend the Second Exemption in [CO 13/1534] for a further twelve months so that it now applies to periodic statements for reporting periods ending before 1 July 2017.

#### *Amendment to ASIC Class Order 14/443*

ASIC Class Order [CO 14/443] defers a number of obligations under sections 1017BC, 1017BD and 1017BE of the *Corporations Act 2001*. These sections deal with requirements on intermediaries to provide certain information to trustees of registrable superannuation entities (other than pooled superannuation trusts), and the obligation on the latter to publish portfolio holding information twice annually on the entity's website.

In the absence of regulations or amending legislation to implement these reforms, ASIC has facilitated these deferrals and provided industry with the necessary legal certainty by making the Instrument. The Instrument extends the deferral of the commencement of sections 1017BC, 1017BD and 1017BE.

As a result the requirement to include product dashboards in periodic statements will be deferred to 1 July 2017, and the supporting information requirements under sections 1017BC, 1017BD and 1017BE relating to the portfolio holdings disclosure requirement will be deferred to 1 July 2017. This will allow further time for the amending legislation and regulations to be made and will provide superannuation trustees with additional time to prepare for the requirements.

**Human rights implications**

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

**Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.