

## ASIC CLASS ORDER [CO 13/830]

### EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

*Superannuation Industry (Supervision) Act 1993*

The Australian Securities and Investments Commission (**ASIC**) makes Class Order [CO 13/830] under paragraph 328(1)(a) of the *Superannuation Industry (Supervision) Act 1993* (the *Act*).

Paragraph 328(1)(a) provides that ASIC may, in writing, exempt a particular person or a class of persons, from compliance with any or all of the modifiable provisions, which includes a provision of Part 2B of the Act.

#### 1. Background

On 29 May 2009, the Government commissioned the Super System Review (the **Review**), chaired by Jeremy Cooper, to make recommendations to improve the superannuation system. The Review's final report was handed to the Government on 30 June 2010.

The Government's response to the Review was a package of reform recommendations entitled Stronger Super. These reforms include:

- a) The creation of a new, simple, low-cost default superannuation product called 'MySuper'; and
- b) strengthening the governance, integrity and regulatory settings of the superannuation system, including enhancements to the disclosure and reporting requirements for superannuation (systemic transparency measures).

Some of the key disclosure requirements of the MySuper reforms, as set out in regulations 2.37 and 2.38 of the *Superannuation Industry (Supervision) Regulations 1993* (**Regulations**) and section 29QB of the Act, have a commencement date of 1 July 2013. Under these requirements, an RSE licensee of a registrable superannuation entity will be required to make publicly available and to keep up to date, at all times on the registrable superannuation entity's website:

- a) details of remuneration of executive officers and individual trustees (regulation 2.37); and
- b) various items of information relating to the relevant superannuation fund, such as trust deeds and summaries of significant event notices given to members of the fund (regulation 2.38).

Due to the inherent complexity of this area of the Stronger Super reforms and the need for the Government to consider industry feedback on a wide range of issues, the final form of regulations 2.37 and 2.38 is only likely to be resolved a short time before the intended commencement date of 1 July 2013. In the circumstances, RSE licensees

of a registrable superannuation entity may not have a reasonable opportunity to understand and prepare for the requirements before the provisions take effect.

## **2. Purpose of the class order**

The purpose of the class order is to provide RSE licensees of a registrable superannuation entity with additional time to make the necessary arrangements to comply with subsection 29QB(1) of the Act and regulations 2.37 and 2.38 of the Regulations.

## **3. Operation of the class order**

The class order has the effect of exempting RSE licensees of a registrable superannuation entity until 31 October 2013, from the requirement in subsection 29QB(1) of the Act to make publicly available, and to keep up to date, at all times on the registrable superannuation entity's website:

- a) details of remuneration of executive officers and individual trustees (regulation 2.37); and
- b) various items of information relating to the relevant superannuation fund, such as trust deeds and summaries of significant event notices given to members of the fund (regulation 2.38).

## **4. Consultation**

ASIC has consulted with the Department of Treasury. The Treasury was provided with feedback from industry in relation to the obligation under subsection 29QB(1) of the Act and regulations 2.37 and 2.38 of the Regulations, which has been taken into account when developing this class order.

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

## **Statement of Compatibility with Human Rights**

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

### **ASIC Class Order [CO 13/830]**

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 regulations 2.37 and 2.38 of the *Superannuation Industry (Supervision) Regulations 1994*, which were made under section 29QB of the *Corporations Act 2001*. Regulations 2.37 and 2.38 have a commencement date of 1 July 2013. These provisions require an RSE licensee of a registrable superannuation entity to make publicly available and to keep up to date, at all times on the registrable superannuation entity's website:

- a) details of remuneration of executive officers and individual trustees (regulation 2.37); and
- b) various items of information relating to the relevant superannuation fund, such as trust deeds and summaries of significant event notices given to members of the fund (regulation 2.38).

These changes are part of the Government's Stronger Super reforms. However, given the detail in these regulations is only likely to be resolved a short time before the intended commencement date of 1 July 2013, the class order defers the commencement date from 1 July 2013 to 31 October 2013 in order to provide RSE licensees with additional time to comply with the new requirements.

#### **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.

## Summary page

### Title of matter: Proposed Class Order to defer the commencement of SIS regs 2.37 and 2.38 (executive remuneration and online disclosure requirements) from 1 July 2013 to 31 October 2013

#### What is the issue?

- 1 RPG is being asked to approve class order relief to defer the start date of section 29QB of the *Superannuation Industry (Supervision) Act* 1993 (SIS Act) and 2.37 and 2.38 of the *Superannuation Industry (Supervision) Regulations* 1994 (SIS regs) from 1 July 2013 to 31 October 2013, in accordance with Treasury's request, and the Minister's imminent announcement about other delays to commencement of disclosure reforms in Stronger Super.

What is your recommendation?

- 2 We recommend that RPG approve class order relief to defer the start date of section 29QB from 1 July 2013 to 31 October 2013.

#### What are the reasons for your recommendation?

- 3 The primary reasons for this recommendation are as follows:
  - (a) The superannuation industry will struggle to comply with the requirements in section 29QB and SIS regs 2.37 and 2.38 in time for the 1 July 2013 start date, due to the delays in the amending regulations being finalised;
  - (b) A delay to the start date will enable superannuation trustees to finalise preparations for complying with the Stronger Super regime.

#### How does this relate to ASIC's priorities?

- |                                     |   |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | 1. Confident and informed investors and consumers                                     |
| <input checked="" type="checkbox"/> | 2. Fair and efficient financial markets   |
| <input type="checkbox"/>            | 3. Corporate and business registration and licensing that fosters commercial dealings |

#### What are the risks for the achievement of ASIC's priorities?

- 4 Please refer to the reasons for the recommendation above. We note that if the 1 July start date is not changed, ASIC is going to receive a considerable number of queries and requests for relief or no-action from trustees. Further, those trustees who do attempt to comply, although they may make their best endeavours, may not have had sufficient time to make compliant and useful disclosure.

## Submission

### A Background

- 5 On 29 May 2009, the Government commissioned the Super System Review (the **Review**), chaired by Jeremy Cooper, to make recommendations to improve the governance, efficiency, structure and operation of the superannuation system. The Review's final report was handed to the Government on 30 June 2010.
- 6 The Government's response to the Review was a package of reform recommendations entitled Stronger Super. These reforms include:
  - The creation of a new, simple, low-cost default superannuation product called 'MySuper'; and
  - strengthening the governance, integrity and regulatory settings of the superannuation system, including enhancements to the disclosure and reporting requirements for superannuation (systemic transparency measures).
- 7 The MySuper and Governance reforms comprise most of the disclosure reforms relevant to ASIC, including product dashboard, portfolio holdings disclosure, executive officer remuneration and other systemic transparency disclosure requirements.
- 8 The MySuper legislation consists of four main tranches introduced during 2012. Tranches 1-3 have received Royal Assent, and tranche 4 passed in the Senate this week but has yet to receive Royal Assent. Regulations associated with both tranche 3 and 4 are expected to go to the EXCO meeting on Friday, 28 June 2013.
- 9 The start date for key parts of the MySuper regime, including section 29QB and SIS regs 2.37 and 2.38, is 1 July 2013.
- 10 However, due to numerous delays in the passing of legislation and regulations enacting these reforms, many superannuation trustees have had limited time to put in place often complex arrangements to enable compliance with the multiple MySuper requirements. For example, many of the reforms require the updating of trustee websites, changes to IT systems, and amendments to disclosure documents such as Product Disclosure Statements (PDS) and periodic statements, among other things.
- 11 Treasury and the Minister have been sympathetic to the pressures placed on industry by the law delays, and has dealt with industry concern about start dates by amending start dates in the legislation or in the upcoming regulations on Friday for some of the disclosure measures (product dashboard, PDS transition). However, Treasury has asked ASIC to use its power under s328 or s332 of the SIS Act to amend the start date for section 29QB requirements via class order (although, in the current political circumstances Treasury have asked that we not finalise the Class Order until Treasury have confirmed both the proposed extension date and the wishes of any incoming Minister).
- 12 ASIC has considered its powers under s328 and s332 of the SIS Act and notes it will most likely use the exemption power under s328. The precise approach will be settled with the Chief Legal Office.
- 13 We further note that in the current political circumstances, the other delays for product dashboard and PDS transition that are anticipated in the regulations at EXCO on Friday may not eventuate and ASIC may be asked whether we could assist in delaying the start dates for these disclosure requirements as well. We will commence drafting appropriate class orders

to be prepared for this possibility and would be grateful for the views of RPG as to whether a separate RPG paper is required in this situation.

## B Issues analysis and recommendation

### Background:

#### **Draft Superannuation Legislation Amendment (MySuper Measures) Regulation 2013**

- 14 These regulations provide detail to some of the requirements of both tranche 3 and tranche 4 of the Stronger Super legislation. The regulations are due to go to EXCO on 28 June 2013, one business day before many of the requirements are to commence. 1 July 2013 is the commencement date for section 29QB. Division 2.6 of the draft regulations sets out new SIS regs 2.37 and 2.38, made for paragraphs 29QB(1)(a) and (b) of the SIS Act.
- 15 SIS reg 2.37 prescribes remuneration information that must be disclosed in respect of each executive officer of an RSE licensee and individual trustee of a superannuation trustee. For example, the information required to be disclosed includes the relevant person's name, position, date of appointment, amount of salary including cash, fees, bonuses, non-monetary benefits, superannuation, termination benefits, and share based payments.
- 16 SIS reg 2.38 prescribes the information an RSE licensee must make publicly available, including a current version of the trust deed, the governing rules, Product Disclosure Statement, annual report, Financial Services Guide, each director's record of attendance at board meetings for the last 7 years, a register of relevant interests and duties, a summary of the conflicts management policy, and proxy voting policies.
- 17 The purpose of these regulations is to improve transparency in superannuation. These requirements align with the requirements for listed companies under s 300A of the Corporations Act and will mean trustees must publish this information on the public section of their website. A failure to publish current information on the fund's website at all times will be a strict liability offence carrying a penalty of 50 penalty units.

#### **ASIC's powers to amend Tranche 3 and Tranche 4e**

- 18 Section 29QB of the SIS Act, which is located within Part 2B of the SIS Act, will commence on 1 July 2013. The consequential amendment to subparagraph 6(1)(c)(ia) of SIS Act says "[ASIC has general administration of] ... section 29QB ...". Consequently, ASIC will become "the Regulator" of section 29QB on 1 July 2013.
- 19 The provisions of Part 2B of the SIS Act are expressed to be "modifiable provisions": see s327 of the SIS Act. The source of power that ASIC will be using will be section 328 or 332 of the SIS Act, and preferably section 332.
- 20 As the amending Act (Tranche 3)) that makes these changes has been enacted, ASIC can exercise the powers before 1 July 2013, even though the provisions have not yet commenced: see section 4 of the *Acts Interpretation Act 1901*. In any event, ASIC will probably express the instrument to take effect on the later of FRLI registration or 1 July 2013.

## Issues analysis

s 47C, s 47E (d)

### Recommendation

25 We recommend that:

- RPG approve class order to defer the start date of section 29QB of the SIS Act from 1 July 2013 to 31 October 2013.

### Reasons for recommendation

26 The relief will provide the superannuation industry with a much-needed extension of time in which to make arrangements to ensure full compliance with the executive remuneration and website disclosure requirements in SIS regulations 2.37 and 2.38.

### External impacts

27 We expect that delaying the start date of the operation of these regulations will be welcomed by the superannuation industry, as it will give them the extra time they need to make the necessary changes to their systems and disclosure documents to ensure compliance with the executive officer remuneration and other website disclosure requirements. We do not anticipate that these changes will result in an additional burden on trustees.

- 28 We also note that if these regulations commence on 31 October 2013, they will coincide with the commencement of other Stronger Super disclosure requirements, ie the product dashboard and enhanced fee disclosure requirements in Product Disclosure Statements.

## **C Regulatory Impact Statement**

- 29 Regulatory Policy will be consulted on whether a Regulatory Impact Statement is required.

## **D Consultation**

- 30 The Chief Legal Office was consulted in the preparation of this submission and is comfortable with its recommendations. We have also consulted with Strategic Policy who provided feedback on key issues around regulatory burden, which have been incorporated into the paper.

## **E Implementation**

- 31 The decision will be implemented by the making of a class order. The terms of the instrument will be settled with the Chief Legal Office.
- 32 If RPG agrees with the approach recommended in this paper, the following steps will need to be taken.
- (a) The class order will be registered on the Federal Register of Legislative Instruments and published on the ASIC website together with an explanatory statement.

## **F Communication**

- 33 Subject to RPG's views, if the class order is made, we propose dissemination of knowledge of the class order via a media release.



# s 22

From: Martin Fung/Sydney/NSW/ASIC  
To: helpdesk@obpr.gov.au  
Cc: s 47F Jenny Taing/Melbourne/VIC/ASIC@ASIC, Alex Purvis/Hobart/TAS/ASIC@A  
Date: 26/06/2013 03:52 PM  
Subject: Transitional relief from disclosure requirements under Supervision Industry (Supervision) Act [DLM=Sensitive]

Dear OBPR,

ASIC is hoping to provide industry with interim class order relief from certain provisions of the Superannuation Industry (Supervision) Act 1993.

This is required because new regulations prescribing disclosure requirements will be made and commence within a very short period of time, leaving industry with very little time to actually implement the changes. ASIC intends to provide transitional relief (via class order) to allow industry time to implement systems and change disclosure documents to meet the obligations. Both industry and Treasury are supportive of the relief.

We have provided more detailed information below.

Given the 1 July 2013 commencement date of the regulations (which are still to be made), we intend to submit the class order to FRLI on **Friday, 28 June**, so would appreciate OBPR's comments as soon as possible.

Many thanks.

Kind regards,

Martin Fung | Lawyer | Strategic Policy | ASIC | ☎ +61 2 9911 2882 | ✉ <mailto:Martin.Fung@asic.gov.au>

ASIC is preparing a class order under paragraph 328(1)(a) of the *Superannuation Industry (Supervision) Act 1993* (the *Act*) to exempt RSE licensees of a registerable superannuation entity to defer the requirement to comply with subsection 29QB(1) of the Act which requires remuneration details to be made publically

available on the superannuation entity's website, from 1 July 2013 to 31 October 2013. Treasury is supportive of this relief, following feedback from industry.

The class order would also then operate to defer the requirement to comply with regulations made under section 29QB; namely, regulations 2.37 and 2.38 of the *Superannuation Industry (Supervision) Regulations 1993 (Regulations)*:

- Regulation 2.37 prescribes remuneration information that must be disclosed in respect of each executive officer of an RSE licensee and individual trustee of a superannuation trustee. For example, the information required to be disclosed includes the relevant person's name, position, date of appointment, amount of salary including cash, fees, bonuses, non-monetary benefits, superannuation, termination benefits, and share based payments.
- Regulation 2.38 prescribes the information an RSE licensee must make publicly available, including a current version of the trust deed, the governing rules, Product Disclosure Statement, annual report, Financial Services Guide, each director's record of attendance at board meetings for the last 7 years, a register of relevant interests and duties, a summary of the conflicts management policy, and proxy voting policies.

### **Reasons for class order relief**

The primary reasons for this class order are as follows:

- a) The superannuation industry will struggle to comply with the requirements in regulation 2.37 and 2.38 in time for the 1 July 2013 start date, due to the delays in the amending regulations being finalised; and
- b) A delay to the start date will enable superannuation trustees to finalise preparations for complying with the Stronger Super regime.

### **There will be little or no regulatory impact**

We fully expect that delaying the start date of the operation of section 29QB(1) and regulations 2.37 and 2.38 will be welcomed by the superannuation industry, as it will give them the extra time they need to make the necessary changes to their systems and disclosure documents to ensure compliance with the executive officer remuneration and other website disclosure requirements.

We also note that if these regulations commence on 31 October 2013, they will coincide with the commencement of other MySuper legislation, ie the product dashboard and enhanced fee disclosure requirements in Product Disclosure Statements. This should put to rest any concern that delaying the commencement of these regulations may be adding a further due date for industry to remember, and hence be more likely overlooked.