



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 219

Keeping superannuation websites up to date

November 2013

About this paper

This consultation paper sets out ASIC's proposals for how remuneration and other information on superannuation websites may be kept up to date under s29QB of the *Supervision Industry (Supervision) Act 1993* (SIS Act).

We are seeking feedback on these proposals from licensees of registrable superannuation entities (RSE licensees).

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 28 November 2013 and is based on the *Superannuation Industry (Supervision) Act 1993* as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

Contents

The consultation process	4
A Background	6
New requirements	6
Rationale for s29QB requirements	7
Required remuneration and other details	8
Options for dealing with uncertainty about the updating obligation.....	8
B Option 1: Safe harbour for RSE licensees	10
General approach—Providing a safe harbour	10
Exceptions to the 14-day period for updating RSEs’ websites.....	11
Tables illustrating how the class order will work.....	12
C Regulatory and financial impact	20
Appendix: Draft class order on keeping RSEs’ websites up to date ..	21
Key terms	24

The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on keeping superannuation websites up to date as part of the recent superannuation reforms. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section C, 'Regulatory and financial impact'.

Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential.

Comments should be sent by 3 February 2014 to:

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What will happen next?

Stage 1	28 November 2013	Release of ASIC consultation paper and draft class order
Stage 2	3 February 2014 February–March 2014	Comments due on the consultation paper Final drafting of class order and/or regulatory guide
Stage 3	March–April 2014	Release of class order and/or regulatory guide

A Background

Key points

The recent superannuation reforms require a licensee of a registrable superannuation entity (RSE) to publicly disclose on the RSE's website remuneration details of the licensee's executive officers or individual trustees, and other information and documents relating to the RSE and RSE licensee.

This information must be kept up to date at all times on the RSE's website (updating obligation), but the legislation does not say what this means. Industry participants have advised us that this creates uncertainty. ASIC offers three options for dealing with this uncertainty.

Under Option 1, we would modify the law to give RSE licensees a 'safe harbour' so that if they update the RSE's website within a given time (generally, 14 days), they will be taken to comply with their updating obligation.

Under Option 2, we would not issue a class order but would provide guidance on the updating obligation, and under Option 3, we would neither issue a class order nor provide guidance.

New requirements

- 1 The recently enacted s29QB¹ of the *Supervision Industry (Supervision) Act 1993* (SIS Act) requires an RSE licensee to disclose on the RSE's website:
 - (a) remuneration details of the RSE licensee's executive officers or individual trustees; and
 - (b) other information and documents relating to the RSE and RSE licensee (e.g. the trust deed and proxy voting policies).
- 2 Section 29QB requires this information to be publicly available on the RSE's website and kept up to date at all times—however, the legislation does not clarify what this means in practice. For example, should websites be updated on the day that the required information changes, or should they be updated within a specified number of days of such a change?
- 3 We propose three options for dealing with this uncertainty: see paragraphs 10–14. This paper seeks your views on which option you prefer for dealing with the uncertainty surrounding the updating obligation.

¹ Included in the SIS Act under the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012, registered 5 December 2012.

Commencement date

- 4 The new requirements were recently enacted with a commencement date of 1 July 2013. Under Class Order [CO 13/830] *RSE licensees of registrable superannuation entities*, ASIC delayed the commencement date of the requirements to 1 July 2014.

Rationale for s29QB requirements

- 5 In June 2010, the Super System Review, chaired by Jeremy Cooper, recommended improving superannuation by increasing systemic transparency. This was to be achieved by providing more extensive and timely information about superannuation funds to member proxies (e.g. independent advisers, regulators, researchers and analysts) in order to enhance competition between superannuation funds and sectors.²
- 6 In particular, the review recommended increasing systemic transparency by requiring an RSE licensee to disclose information on the RSE's website about a range of things, such as:
- (a) the remuneration of trustee directors and executives, in a manner similar to the existing requirements for listed companies (see s300A of the *Corporations Act 2001* (Corporations Act));
 - (b) governance information, including the RSE licensee's conflicts policy; and
 - (c) the RSE licensee's proxy voting policies and procedures.³
- 7 The previous Government accepted the recommendations and included them in its Stronger Super legislation.
- 8 The Revised Explanatory Memorandum to the Superannuation Legislation Amendment (Further MySuper And Transparency Measures) Bill 2012 (Revised Explanatory Memorandum) indicates that:
- (a) the amendments, including website disclosure of remuneration and other information, are designed to improve transparency, comparability and, consequently, accountability in Australia's superannuation system;⁴
 - (b) because superannuation is a compulsory system of retirement savings, RSE licensees should ensure that there is complete transparency about the financial products that members have an equitable interest in;⁵ and
 - (c) because a large amount of information is currently only available to RSE members by request, or through the members-only section of the website, regulations would prescribe certain documents to be published on the public section of the website.

² Super System Review, *Final report: Part 2*, Commonwealth of Australia 2010, p.101, www.supersystemreview.gov.au

³ Super System Review, *Final report: Part 2*, Commonwealth of Australia 2010, pp.90 and 127

⁴ Revised Explanatory Memorandum, p.27.

⁵ Revised Explanatory Memorandum, p. 39.

Required remuneration and other details

- 9 The Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations), as amended by the Superannuation Legislation Amendment (MySuper Measures) Regulations 2013, prescribe the information required to be set out on an RSE's website. In particular:
- (a) reg 2.37 sets out the prescribed remuneration details; and
 - (b) reg 2.38 sets out other prescribed information and documents relating to the RSE and RSE licensee.

Note: In this paper, references to reg 2.37 (for example) are to the SIS Regulations.

Options for dealing with uncertainty about the updating obligation

Option 1

- 10 Under Option 1 (our preferred option), we would modify the law to give RSE licensees a 'safe harbour', so that if they update the RSE's website within a certain time (generally, 14 days), they would be taken to comply with their updating obligation.
- 11 We would modify the law under s332(1)(a) of the SIS Act, using the proposed class order appended to this paper.
- 12 Depending on your feedback, we may also provide guidance under Option 1. We are consulting in detail on Option 1 because it is our preferred option: see Section B.

Option 2

- 13 Under Option 2, we would not issue a class order but would issue guidance on the updating obligation. RSE licensees would not have a safe harbour but would be aware of ASIC's policy in relation to the updating obligation.

Option 3

- 14 Under Option 3, we would not issue a class order and would not give guidance.

Proposal

- A1 We propose to address possible uncertainty surrounding the updating obligation using one of the three options outlined above.

Your feedback

- A1Q1 Please provide your feedback in relation to Option 1 by responding to the detailed proposals set out in Section B of this paper.
- A1Q2 Do you think that ASIC should adopt Option 2, under which we would not issue a class order, but give guidance on the updating obligation? Please give reasons for your answer.
- A1Q3 Do you think that ASIC should adopt Option 3, under which we would not issue a class order nor give guidance on the updating obligation? Please give reasons for your answer.
- A1Q4 Would you prefer ASIC to adopt an approach other than Options 1, 2 or 3? If so, please outline the approach you consider we should take, and give your reasons.

Rationale

- 15 Option 1 is our preferred option on the basis of the increased level of certainty that it provides: see Section B for more information on this option.
- 16 By adopting Option 2, ASIC could address any uncertainty about the requirements in regs 2.37 and 2.38, including the updating obligation, by stating our expectations in guidance. A more formal solution may add unnecessary complexity.
- 17 If we provide neither a class order nor guidance, under Option 3, industry will determine the best way of complying with the updating obligation, having regard to existing industry structures and arrangements, with the result that the solutions may be more workable for RSE licensees.

B Option 1: Safe harbour for RSE licensees

Key points

We propose to give RSE licensees a 'safe harbour', so that they are taken to comply with the updating obligation if they update the RSE's website within the time set out in the draft class order.

Generally, this time is 14 days, but for some documents is less. We propose that:

- where a significant event notice or material change notice is sent to members, the website summary of such notices be updated within seven days; and
- where certain documents (a Product Disclosure Statement (PDS), RSE annual report, Financial Services Guide (FSG) or RSE licensee financial statement) are first given to relevant recipients, the RSE's website should be updated the same day.

We may also provide guidance, if required, on the updating obligation.

General approach—Providing a safe harbour

Proposal

B1 We propose to give RSE licensees a 'safe harbour', so that they are taken to comply with the updating obligation if they update the RSE's website within the time set out in the draft class order. This time is generally 14 days, except in some cases where it is less: see proposals B2–B3.

Your feedback

B1Q1 Do you have any comments on our general approach to:

- (a) providing a safe harbour for RSE licensees; and
- (b) the general time of 14 days for updating website information?

Rationale

18 Fourteen days is consistent with industry feedback received to date and also with the time allowed to update most elements of the product dashboard in s1017BA of the Corporations Act: see Information Sheet 170 *MySuper product dashboard requirements for superannuation trustees* (INFO 170). We consider that this timing appropriately balances:

- (a) RSE licensees' need for time to collate the required information; and
- (b) users' need for timely information.

Exceptions to the 14-day period for updating RSEs' websites

Seven days: Significant event notice

Proposal

B2 For a significant event notice or material change notice prescribed by reg 2.38(2)(h), we propose to give RSE licensees a 'safe harbour' so that they are taken to comply with the updating obligation if they update the RSE's website summary of such notices within seven days after the notice is first sent to members.

Your feedback

B2Q1 Do you agree with the proposed seven-day period for updating the RSE's website summary of significant event or material change notices?

B2Q2 If not, please state the period you prefer and give your reasons.

Rationale

19 When RSE licensees are preparing a significant event notice or material change notice, they should be able to quickly prepare, at the same time or shortly after, a summary of the notice and post it to the RSE's website within seven days. We have given guidance on what such a summary might look like: see Stronger Super FAQ D2 *What is a summary of each significant event or material change notice?*

20 We also consider that stakeholders who have not received the notice may have an interest in the information being released more quickly than 14 days, and that a seven-day release time is consistent with such an interest.

Same day: PDS, RSE annual report, FSG, RSE licensee financial statement

Proposal

B3 For a document prescribed by regs 2.38(2)(e)–(g) or 3(b) (i.e. a PDS, RSE annual report, FSG or RSE licensee financial statement, respectively), we propose to give RSE licensees a 'safe harbour' so that they are taken to comply with the updating obligation if they post the document to the RSE's website on the day the document is first given to a relevant recipient.

Your feedback

B3Q1 Do you agree with this proposal?

B3Q2 If not, what time do you consider that RSE licensees should have to post such documents to the RSE's website and still be taken to comply with the updating obligation? Please give your reasons.

Rationale

- 21 RSE licensees providing RSE annual reports to RSE members, or RSE licensee financial statements to the Australian Prudential Regulation Authority (APRA) or company members, can post them to the RSE's website on the same day because no further work is required, other than possibly converting them to a suitable format (e.g. PDF or HTML), which can be done at the same time or before the documents are given to recipients.
- 22 A PDS first given to someone in a recommendation, issue or sale situation can be posted to the RSE's website on the same day because no further work is required, other than possibly converting the PDS to a suitable format, which can be done beforehand. Similarly, an FSG can be posted to the RSE's website on the day it is first given to clients.

Tables illustrating how the class order will work

Issue

- B4** If ASIC issues a class order similar to the proposed class order in the appendix, should we also publish tables similar to Table 1 and Table 2 below to help RSE licensees comply with the updating obligation?

Your feedback

- B4Q1 If we were to publish tables similar to Table 1 and Table 2, would this help you in complying with your updating obligation? Please give reasons for your answer.
- B4Q2 Do you think ASIC should give any other guidance in relation to the updating obligation? If so, please give details of the guidance you seek and state why you think it is needed.

Rationale

- 23 Table 1 and Table 2 outline the information and documents that must be posted to an RSE's website under s29QB of the SIS Act and regs 2.37 and 2.38.
- 24 They illustrate the operation of the proposed class order using the concepts of 'trigger' and 'release time' as a simple way of dealing with the complexities of regs 2.37 and 2.38, even though the proposed class order does not use these concepts.
- 25 An RSE licensee can take advantage of the safe harbour offered by the proposed class order if it updates the RSE's website after a trigger event (trigger) within a given number of days (release time) after the trigger. This means that:

$$\text{update time} = \text{trigger} + \text{release time}$$

- 26 For example, if a trigger is on 10 November and the release time is 14 days, the RSE licensee would have to update the website on or before 24 November to be taken as complying with the updating obligation.
- 27 The release time is 14 days except for:
- (a) significant event notices prescribed by reg 2.38(2)(h), where it is seven days; and
 - (b) PDSs, RSE annual reports, FSGs and RSE licensee financial statements prescribed by regs 2.38(2)(e)–(g) and (3)(b) respectively, in which case, the release time is the same day that the document is first given to a relevant recipient (i.e. zero days).

Table 1: Illustration of how the proposed class order operates for remuneration details prescribed by reg 2.37—Release time for all items is 14 days

Remuneration details prescribed by reg 2.37			
Item	Condition (if any)	Details	Trigger
<i>General</i>			
1		The name of each person who is a relevant executive officer or relevant individual trustee	When the person is newly appointed or changes their name
2	If a person: (a) began to hold a position as a relevant executive officer or relevant individual trustee during the current financial year; or (b) retired from a position as a relevant executive officer or relevant individual trustee during the current financial year	The date on which the person: (a) began holding the position; or (b) retired from the position	When the condition is met
3	If the position of a person who is either of the following changes during the current financial year: (a) a relevant executive officer who is a chief executive officer or director; (b) a relevant individual trustee	(a) The person's name and position; and (b) when the change occurred	When the condition is met
4	If a relevant executive officer who is not mentioned in item 3 has retired during the current financial year	(a) The relevant executive officer's name and position; and (b) when the retirement took effect	When the condition is met

Remuneration details prescribed by reg 2.37			
Item	Condition (if any)	Details	Trigger
<i>Payments and benefits (as affected by reg 2.37(2))</i>			
5		The short-term employee benefits of each relevant executive officer or relevant individual trustee for the two most recently completed financial years, divided into at least the following components: (a) cash salary, fees and short-term compensated absences; (b) short-term cash profit sharing and other bonuses; (c) non-monetary benefits; and (d) other short-term employee benefits	The first day of the current financial year
6		The post-employment benefits of each relevant executive officer or relevant individual trustee for the two most recently completed financial years, divided into at least the following components: (a) pension and superannuation benefits; and (b) other post-employment benefits	The first day of the current financial year
7		The long-term employee benefits other than benefits mentioned in items 5 and 6 for each relevant executive officer or relevant individual trustee for the two most recently completed financial years (any amount attributable to a long-term incentive plan being separately identified)	The first day of the current financial year
8	If a person's position as a relevant executive officer or relevant individual trustee was terminated during the current financial year	The person's termination benefits	When the condition is met
9	If a person: (a) began to hold a position as relevant executive officer or relevant individual trustee during the most recently completed financial year; and (b) received a payment as part of the consideration for agreeing to hold the position	Details of the payment, including: (a) the monetary value of the payment; and (b) the date of the payment	The first day of the current financial year

Remuneration details prescribed by reg 2.37			
Item	Condition (if any)	Details	Trigger
10		<p>The share-based payments made to each person who was a relevant executive officer or relevant individual trustee during the two most recently completed financial years, divided into at least the following components:</p> <ul style="list-style-type: none"> (a) equity-settled, share-based payment transactions, showing separately: <ul style="list-style-type: none"> (i) shares and units; and (ii) options and rights; (b) cash-settled, share-based payment transactions; and (c) all other forms of share-based payment compensation (including hybrids) 	The first day of the current financial year
<i>Compensation (as affected by reg 2.37(2))</i>			
11	If a grant of a cash bonus, performance-related bonus or share-based payment compensation benefit, whether part of a specific contract for services or not, was made to a relevant executive officer or relevant individual trustee during the most recently completed financial year	<p>The terms and conditions of each grant affecting compensation, including the following:</p> <ul style="list-style-type: none"> (a) the grant date; (b) the nature of the compensation granted; (c) the service and performance criteria used to determine the amount of compensation; (d) if there has been any alteration of the terms or conditions of the grant since the grant date—the date, details and effect of each alteration; (e) the percentage of the bonus or grant for the financial year that was paid to the person, or that vested in the person, in the financial year; (f) the percentage of the bonus or grant for the financial year that was forfeited by the person (because the person did not meet the service and performance criteria for the bonus or grant) in the financial year; (g) the financial years, after the most recently completed financial year, for which the bonus or grant will be payable if the person meets the service and performance criteria for the bonus or grant; and (h) estimates of the maximum and minimum possible total value of the bonus or grant (other than option grants) for financial years after the most recently completed financial year 	The first day of the current financial year

Remuneration details prescribed by reg 2.37			
Item	Condition (if any)	Details	Trigger
12	If, during the most recently completed financial year, a contract for services was negotiated between the RSE licensee and a relevant executive officer or relevant individual trustee	An explanation of: (a) how the amount of compensation was determined; and (b) how the terms of the contract affect compensation in future periods	The first day of the current financial year
13	If the terms of share-based payment transactions (including options or rights) granted as compensation to a relevant executive officer were altered or modified by the RSE licensee during the most recently completed financial year	(a) The date of the alteration or modification; and (b) the market price of the underlying equity instrument at the date of the alteration or modification; and (c) the terms of the grant of compensation immediately before the alteration or modification, including: (i) the number and class of the underlying equity instruments; (ii) the exercise price for any option or other right affected by the alteration or modification, immediately before and after the alteration or modification; (iii) the time remaining until expiry of the underlying equity instruments; and (iv) each other condition in the terms affecting the vesting or exercise of an option or other right; (d) the modified or altered terms; and (e) the difference between: (i) the total of the fair value of the options or other rights affected by the alteration or modification immediately before the alteration or modification; and (ii) the total of the fair value of the options or other rights immediately after the alteration or modification	The first day of the current financial year

Remuneration details prescribed by reg 2.37			
Item	Condition (if any)	Details	Trigger
14	If, during the most recently completed financial year, options and rights over an equity instrument issued or issuable by the RSE licensee or by a related body corporate were provided as compensation to a person who was a relevant executive officer or relevant individual trustee	<p>(a) The number of options and the number of rights that, during the financial year, were:</p> <ul style="list-style-type: none"> (i) granted; and (ii) vested; and <p>(b) the terms and conditions of each grant made during the financial year, including:</p> <ul style="list-style-type: none"> (i) the fair value per option or right at grant date; (ii) the exercise price per share or unit; (iii) the amount, if any, paid or payable by the person; (iv) the expiry date of the grant; (v) when the options or rights may be exercised; and (vi) a summary of the service and performance criteria that must be met before the beneficial interest vests in the person 	The first day of the current financial year
15	If an equity instrument that is issuable by the RSE licensee or a related body corporate was issued as a result of the exercise, during the most recently completed financial year, of options and rights that were granted as compensation to a relevant executive officer or relevant individual trustee	<p>(a) How many equity instruments were issued;</p> <p>(b) if the number of options or rights exercised differs from the number of equity instruments disclosed under paragraph (a)—how many options or rights were exercised;</p> <p>(c) the amount paid under each instrument; and</p> <p>(d) the amount payable under each instrument that is yet to be paid</p>	The first day of the current financial year
16	If an amount attributable to the service of a relevant executive officer who is a director, or a relevant individual trustee, for the most recently completed financial year is paid to an organisation or entity rather than to the relevant executive officer or relevant individual trustee	<p>(a) The amount; and</p> <p>(b) the name of the organisation or entity</p>	The first day of the current financial year

Table 2: Illustration of how the proposed class order operates for documents and information prescribed by reg 2.38

Information and documents prescribed by reg 2.38	Trigger	Release time	Reason if release time is less than 14 days
<i>Information and documents relating to the RSE</i>			
(2)(a) both: (i) a current version of the trust deed; and (ii) any material not incorporated in the current version of the trust deed	When the current version of the trust deed or any material not incorporated therein changes	14 days	
(2)(b) the governing rules	When the rules change	14 days	
(2)(c) rules relating to the nomination, appointment and removal of trustees or trustee directors	When the rules change	14 days	
(2)(d) the most recent actuarial report for each defined benefit fund	When the RSE licensee receives the actuarial report	14 days	
(2)(e) the most recent PDS for each superannuation product (within the meaning of Ch 7 of the Corporations Act) offered by the entity	When a copy of the PDS is first given to someone in a recommendation, issue or sale situation	Same day	The document has a preparation period and can be posted to the RSE's website when issued. See paragraph 22.
(2)(f) the annual report for the previous financial year	When the annual report is first provided or made available to an RSE member	Same day	The document has a preparation period and can be posted to the RSE's website when issued. See paragraph 21.
(2)(g) the FSG	When the FSG is first made available to a retail client	Same day	The document has a preparation period and can be posted to the RSE's website when issued. See paragraph 22.
(2)(h) a summary of each significant event notice or material change notice made to RSE members within the previous two years	When the latest significant event or material change notice is first sent to an RSE member	7 days	After preparing a notice, preparing a summary of the notice should not take long; other stakeholders may need the information to be released quickly. See paragraphs 19–20.
(2)(i) the name and Australian Business Number of each outsourced service provider who provides a service which may affect a material business activity of the entity	When a person is first appointed as an outsourced service provider	14 days	

Information and documents prescribed by reg 2.38	Trigger	Release time	Reason if release time is less than 14 days
(2)(j) the following information about each executive officer of the RSE licensee of the entity or each individual trustee of the entity (relevant person): (i) the relevant person's name; (ii) the qualifications of the relevant person; (iii) a summary of the relevant person's experience as a trustee or board member, including the periods during which the relevant person served as a trustee or board member;	When a person is first appointed as a relevant person, their qualifications change or, in the case of the summary of their relevant experience as a trustee or board member, the first day of the current financial year	14 days	
(2)(k) the record of attendance at board meetings for each director for: (i) the last seven financial years; or (ii) if the director has served for a period of less than seven years—that period;	The first day of the current financial year	14 days	
(2)(l) a register of relevant interests and a register of relevant duties;	When the register commences or changes	14 days	
(2)(m) a summary of the conflicts management policy;	When the policy commences or changes	14 days	
(2)(n) the proxy voting policies;	When the policies commence or change	14 days	
(2)(o) a summary of when, during the previous financial year, and how the entity has exercised its voting rights in relation to shares in listed companies.	The first day of the current financial year	14 days	
<i>Information and documents relating to the RSE licensee</i>			
(3)(a) if the RSE licensee is a body corporate—the constitution;	When the constitution commences or changes	14 days	
(3)(b) the annual financial statement for the previous financial year.	When the annual financial statement for the RSE licensee is first provided to APRA or a member of the RSE licensee	Same day	The document has a preparation period and can be posted to the RSE's website when issued. See paragraph 21.

C Regulatory and financial impact

- 28 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:
- (a) rapid dissemination of information to the market; and
 - (b) giving RSE licensees or their agents enough time to prepare and post documents or information to the RSE's website.
- 29 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:
- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
 - (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
 - (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).
- 30 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.
- 31 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:
- (a) the likely compliance costs;
 - (b) the likely effect on competition; and
 - (c) other impacts, costs and benefits.

See 'The consultation process', p. 4.

Appendix: Draft class order on keeping RSEs' websites up to date

Australian Securities and Investments Commission Superannuation Industry (Supervision) Act 1993—Subsection 332(1)(a)—Declaration

Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under subsection 332(1)(a) of the *Superannuation Industry (Supervision) Act 1993* (the *Act*).

Title

2. This instrument is ASIC Class Order [CO 14/XX].

Commencement

3. This instrument commences on the later of:
 - (a) the date it is registered under the *Legislative Instruments Act 2003*; and
 - (b) 1 July 2014.

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. Section 29QB of the Act has effect in relation to an RSE licensee of a registrable superannuation entity as if that section were modified by inserting after subsection 29QB(1):

“(1A) If subsection (1) requires the RSE licensee of a registrable superannuation entity to make publicly available, or update, particular details, a particular document or particular information on the registrable superannuation entity’s website, the RSE licensee is taken to satisfy that requirement if:

 - (a) for details prescribed by regulation 2.37 of the *Superannuation Industry (Supervision) Regulations 1994* (*Regulations*) – the details (as updated if applicable) are included on the registrable superannuation entity’s website by the following time:
 - (i) for details about a person referred to in item 1 of the table in regulation 2.37 – within 14 days after the person referred to in the item:
 - (A) is appointed as a relevant executive officer or relevant individual trustee; or
 - (B) changes their name; and
 - (ii) for details referred to in any of items 2 to 4 of the table – within 14 days after the condition referred to in the relevant item occurs; and
 - (iii) for details referred to in any of items 5 to 7 and 9 to 16 of the table (as affected by subregulation 2.37(2)) – within 14 days after the end of the most recently completed financial year referred to in the relevant item; and
 - (iv) for details referred to in item 8 of the table (as affected by subregulation 2.37(2)) – within 14 days after the condition referred to in the item occurs; and

- (b) for a document or information prescribed by regulation 2.38 of the Regulations – the document or information (as updated if applicable) is included on the registrable superannuation entity’s website by the following time:
- (i) for a document referred to in any of paragraphs 2.38(2)(a) to (c) of the Regulations – within 14 days after the document beginning to apply in relation to the registrable superannuation entity or being amended (as the case may be); and
 - (ii) for an actuarial report referred to in paragraph 2.38(2)(d) of the Regulations – within 14 days after the RSE licensee receives the report; and
 - (iii) for a Product Disclosure Statement referred to in paragraph 2.38(2)(e) of the Regulations – the day that a copy of the Product Disclosure Statement (including any Supplementary Product Disclosure Statement or Replacement Product Disclosure Statement) is first given to a person in a recommendation, issue or sale situation; and
 - (iv) for a document referred to in paragraph 2.38(2)(f) of the Regulations – the day that the document is first provided or made available to a member; and
 - (v) for a Financial Services Guide referred to in paragraph 2.38(2)(g) of the Regulations – the day that the Financial Services Guide is first made available to a person under section 941A or 941B of the *Corporations Act 2001*; and
 - (vi) for a summary of a significant event or material change notice referred to in paragraph 2.38(2)(h) of the Regulations – within 7 days after the notice is first sent to members; and
 - (vii) for information in relation to a person referred to in paragraph 2.38(2)(i) of the Regulations – within 14 days after the person is appointed to provide a service referred to in that paragraph; and
 - (viii) for information in relation to a person referred to in paragraph 2.38(2)(j) of the Regulations – within 14 days after:
 - (A) the person is appointed as an executive officer of the RSE licensee or an individual trustee; or
 - (B) the person’s qualifications change; or
 - (C) the end of each financial year during which the person served as a trustee or board member; and
 - (ix) for a record of attendance for a director referred to in paragraph 2.38(2)(k) of the Regulations – within 14 days after the end of each financial year during some or all of which the person was a director; and
 - (x) for a register referred to in paragraph 2.38(2)(l) of the Regulations – within 14 days after the register being established or updated; and
 - (xi) for a summary of the conflicts management policy referred to in paragraph 2.38(2)(m) – within 14 days of the policy being established or amended; and
 - (xii) for a policy referred to in paragraph 2.38(2)(n) of the Regulations – within 14 days after the policy being established or amended; and

- (xiii) for the summary referred to in paragraph 2.38(2)(o) of the Regulations – within 14 days after the end of the previous financial year referred to in the paragraph; and
 - (xiv) for a constitution of an RSE licensee referred to in paragraph 2.38(3)(a) of the Regulations – within 14 days of the constitution beginning to apply in relation to the RSE licensee or being amended; and
 - (xv) for the statement referred to in paragraph 2.38(3)(b) of the Regulations – the day that the statement is first provided to APRA or a member of the RSE licensee.
- (1B) In subsection (1A) a reference to a document being amended or updated includes a reference to the document being replaced.
- (1C) In subsection (1A):

recommendation, issue or sale situation means a *recommendation situation*, an *issue situation* or a *sale situation* within the meaning of Division 2 of Part 7.9 of the *Corporations Act 2001*.

Replacement Product Disclosure Statement has the same meaning as in the *Corporations Act 2001*.

relevant executive officer has the same meaning as in subregulation 2.37(1) of the Regulations.

relevant individual trustee has the same meaning as in subregulation 2.37(1) of the Regulations.

Supplementary Product Disclosure Statement has the same meaning as in the *Corporations Act 2001*.”.

Dated this ____ day of _____ 2014

Signed by _____
as a delegate of the Australian Securities and Investments Commission

Key terms

Term	Meaning in this document
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
PDS	Product Disclosure Statement
reg 2.37 (for example)	A regulation of the SIS Regulations (in this example, numbered 2.37)
release time	The time after a trigger within which an RSE's website must be updated under ASIC's proposed modification of the law
Revised Explanatory Memorandum	Revised Explanatory Memorandum to the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012
RSE	A registrable superannuation entity (e.g. a superannuation fund)
RSE licensee	A person or group of persons licensed by APRA to operate an RSE (e.g. the corporate trustee of a superannuation fund or the group of individual trustees of a superannuation fund)
s29QB (for example)	A section of the SIS Act (in this example, numbered 29QB)
safe harbour	Where RSE licensees are safe from claims that they have not complied with the updating obligation. Licensees may obtain this safety if they comply with the proposed class order
SIS Act	<i>Supervision Industry (Supervision) Act 1993</i>
SIS Regulations	Superannuation Industry (Supervision) Regulations 1994
trigger	An event that gives rise to an obligation under regs 2.37 or 2.38 to update an RSE's website
updating obligation	The obligation of the licensee of an RSE to keep the RSE's website up to date at all times