

[CO 04/1574]

Application form and cooling-off relief for certain transfers of members between financial products and interests within a superannuation fund

Issued 20/12/2004

Class Order [CO 04/1574] provides relief from the application form requirements in s1016A of the Corporations Act 2001 and modifies the cooling-off rights under s1019A in relation to transfer of fund members between superannuation products within a regulated superannuation fund as part of the rationalisation of the products in the fund in the following circumstances:

- *the trustee the fund has had specific conditions imposed by the Australian Prudential Regulation Authority in either its public offer ‘instrument of approval’ or its RSE license that require the trustee to apply an ‘equivalents rights’ test to ‘intra-fund transfers’;*
- *the trust deed for the fund also requires that the trustee to apply an ‘equivalents rights’ test to ‘intra-fund transfers’;*
- *the ‘intra-fund transfer’ is carried out in relation to all members who hold with the affected products and interests at substantially the same time; and*
- *at least 30 days before the intra-fund transfer the members to be transferred are given a significant event notice under s1017B and a Product Disclosure Statement for the new product the member will acquire.*

Australian Securities and Investments Commission Corporations Act 2001 — Subsection 1020F(1) — Exemption and Declaration

1. The Australian Securities and Investments Commission grants this exemption and makes this declaration under subsection 1020F(1) of the *Corporations Act 2001* (the *Act*).

Exemption from eligible application requirement

2. A trustee (the *trustee*) of a regulated superannuation fund does not have to comply with section 1016A of the Act in relation to the issue of a superannuation product in the course of an intra-fund transfer within the fund.

Declaration disapplying cooling-off period

3. Part 7.9 of the Act applies in relation to a superannuation product issued in the course of an intra-fund transfer as if section 1019A were modified or varied by:
- (a) in subparagraph (1)(b)(i) omitting “issue;” and substituting “issue (other than an issue of a superannuation product in the course of an intra-fund transfer within a regulated superannuation fund);”; and
 - (b) after subsection (1) inserting:

“(1A) In subsection (1):

intra-fund transfer means in relation a regulated superannuation fund:

- (a) a disposal of an interest in the fund and the acquisition of an interest in the fund of a different class in substitution for the interest disposed of; or
- (b) any other circumstance where a person’s membership of the fund in relation to a financial product or a sub-plan changes to membership of the fund in relation to another financial product or another sub-plan;

regulated superannuation fund has the meaning given by section 19 of the Superannuation Industry (Supervision) Act 1993.”.

Where exemption and declaration apply

4. The exemption in paragraph 2 and the declaration in paragraph 3 only apply where all of the following are satisfied:
- (a) The trustee either:
 - (i) holds an RSE licence (the *licence*); or
 - (ii) is an approved trustee.
 - (b) The licence or the approval as an approved trustee (as relevant) is subject to conditions to the following effect:
 - (i) the governing rules of the fund must contain a provision to the effect that the benefits of a member of the fund must not be transferred by way of an intra-fund transfer without the member’s consent unless:

- (A) the transfer is to a section, division or plan of the fund which confers on the member equivalent rights to the rights that the member had under the original section, division or plan in respect of the benefits; or
 - (B) the transfer could, in the absence of this instrument, have lawfully been made without the member's consent; and
- (ii) the trustee must not transfer the benefits of a member of the fund by way of an intra-fund transfer unless the member consents to the transfer or the transfer is of one of the types referred to in subparagraph (i)(A) or (i)(B).
- (c) The governing rules of the fund contain the provision referred to in subparagraph (b)(i).
 - (d) The trustee has not obtained the member's consent for the intra-fund transfer.
 - (e) The trustee has taken all reasonable steps to ensure that:
 - (i) the condition referred to in subparagraph (b)(ii) has been satisfied in relation to the intra-fund transfer; and
 - (ii) one of the following applies:
 - (A) each interest in the fund that is, immediately before the disposal, in the same class as the interest disposed of in the course of the intra-fund transfer, is also disposed of and substituted at substantially the same time and no further interests in that class are issued; or
 - (B) where the intra-fund transfer is otherwise than by way of the disposal of and substitution of an interest—each person who has a membership of the fund in relation to a financial product (the *original product*) of the same class or the same sub-plan (the *original sub-plan*) to which the intra-fund transfer relates changes to membership of the fund in relation to another financial product or another sub-plan at substantially the same time and no person subsequently becomes a member of the fund in relation to the original product or original sub-plan; and
 - (iii) at least 30 days before the superannuation product is issued to a person in the course of the intra-fund transfer, the person is given:

- (A) a notice in relation to the proposed transfer in accordance with section 1017B of the Act; and
- (B) a Product Disclosure Statement for the product.

Interpretation

5. In this instrument:

approved trustee has the meaning given by subsection 10(1) of the Superannuation Industry (Supervision) Act 1993;

intra-fund transfer means in relation to a regulated superannuation fund:

- (a) a disposal of an interest in the fund and the acquisition of an interest in the fund of a different class in substitution for the interest disposed of; or
- (b) any other circumstance where a person's membership of the fund in relation to a financial product or a sub-plan changes to membership of the fund in relation to another financial product or another sub-plan;

regulated superannuation fund has the meaning given by section 19 of the Superannuation Industry (Supervision) Act 1993; and

RSE licence means a licence granted under section 29D of the *Superannuation Industry (Supervision) Act 1993*.

Dated the 20th day of December 2004

Signed by Brendan Byrne
as a delegate of the Australian Securities Investments Commission