

Attachment 1 to CP 358: Draft instrument



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (In-use Notices for Employer-sponsored Superannuation and Superannuation Dashboards) Instrument 2022/XX

I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 2022

[DRAFT ONLY—NOT FOR SIGNATURE]

<signature>

<insert name>

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (In-use Notices for Employer-sponsored Superannuation and Superannuation Dashboards) Instrument 2022/XX*.

2 Commencement

This instrument commences at the same time that the *ASIC Corporations (Repeal) Instrument 2022/XX* commences.

3 Authority

This instrument is made under subsection 1020F(1) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

choice product has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

public offer superannuation fund has the meaning given by section 18 of the *Superannuation Industry (Supervision) Act 1993*.

registrable superannuation entity has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

regulated superannuation fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

responsible person has the meaning given by subsection 1013A(3) of the Act.

self-managed superannuation fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

standard employer-sponsored fund has the meaning given by section 16 of the *Superannuation Industry (Supervision) Act 1993*.

Part 2—Exemption

5 Obligation of trustees to make product dashboards for choice products publicly available

A trustee of a regulated superannuation fund does not have to comply with subsection 1017BA(1) of the Act in relation to choice products.

6 Obligation of trustees to include latest product dashboard in periodic statements

A trustee of a regulated superannuation fund that is required to make publicly available a product dashboard for the investment option, under section 1017BA of the Act, does not have to comply with section 1017D of the Act to the extent that provision requires the trustee to comply with paragraph 7.9.20(1)(o) of the *Corporations Regulations 2001*.

7 Conditions

A trustee that relies on the exemption in section 6 must include in, or in a document accompanying, the periodic statement:

- (a) a website address for the latest product dashboard for the investment option; and
- (b) a statement to the effect that the latest product dashboard for the investment option can be found at the website address.

Part 3—Declaration

8 Requirements for in-use notices of employer-sponsored superannuation

(1) Part 7.9 of the Act applies in relation to a responsible person for a Product Disclosure Statement or Supplementary Product Disclosure Statement for an interest in a public offer superannuation fund that is a standard employer-sponsored fund as if the provisions of that Part were modified or varied as follows:

(a) in subsection 1015D(2) omit “The”, substitute “Subject to subsection (2A), the”;

(b) after subsection 1015D(2) insert:

“(2A) Where section 1015DA applies in relation to the Statement, the responsible person for the Statement does not have to lodge a notice under subsection (2) for so long as the person complies with section 1015DA in relation to the Statement and:

(a) in the case where the Statement is a Product Disclosure Statement—in relation to any document that forms part of the Statement; and

(b) in the case where the Statement is a Supplementary Product Disclosure Statement—in relation to any Statement supplemented by the Statement.”;

(c) after section 1015D insert:

“1015DA Alternative notice facility for certain superannuation Statements

(1) This section applies in relation to:

(a) a Product Disclosure Statement for a superannuation product that is both:

(i) an accumulation product; and

(ii) an interest in a public offer superannuation fund that is a standard employer-sponsored fund;

where the Statement is made up of a common part and a variable choice part; and

(b) a Supplementary Product Disclosure Statement that supplements a Product Disclosure Statement of the kind referred to in paragraph (a), in relation to which a notice has not been lodged under subsection 1015D(2).

- (2) The responsible person for the Statement must lodge with ASIC a notice (the **primary notice**) that complies with subsection (3) as soon as practicable, and in any event within 5 business days, after:
 - (a) the common part is first given to someone as part of any Product Disclosure Statement in a recommendation, issue or sale situation; or
 - (b) the Supplementary Product Disclosure Statement that relates to the common part is first given to someone in a recommendation, issue or sale situation to supplement any Product Disclosure Statement in relation to which this section applies.
- (3) The primary notice must specify each Product Disclosure Statement that:
 - (a) includes the common part; and
 - (b) where paragraph (2)(b) applies—is supplemented by the Supplementary Product Disclosure Statement; and
 - (c) is given to someone in a recommendation, issue or sale situation before the lodgement of that notice.
- (4) The responsible person for the Statement must lodge with ASIC as soon as practicable after the end of each financial year, and in any event within 5 business days of the end of each financial year, a notice (a **secondary notice**) that complies with subsections (5) and (6). Such notices must be lodged unless and until no Product Disclosure Statement that includes the common part is available to be given to someone in a recommendation, issue or sale situation.
- (5) The secondary notice must specify each Product Disclosure Statement that:
 - (a) includes the common part; and
 - (b) where paragraph (2)(b) applies in relation to the primary notice—is supplemented by the Supplementary Product Disclosure Statement; and
 - (c) at any time before the end of the financial year to which the notice relates has been given to someone in a recommendation, issue or sale situation; and
 - (d) at the end of the financial year to which the notice relates, is available to be given to someone in a recommendation, issue or sale situation.

- (6) If a Supplementary Product Disclosure Statement that:
- (a) supplements a Product Disclosure Statement covered by subsection (5); and
 - (b) relates to the variable choice part of the Product Disclosure Statement,

has been given to someone in a recommendation, issue or sale situation, the secondary notice must also specify the Supplementary Product Disclosure Statement and which of the Product Disclosure Statements it supplements.

- (7) For the purposes of subsection (2) a common part is taken not to be **first given** as part of a Statement in a recommendation, issue or sale situation where a common part containing the same information and statements (other than information and statements identifying the standard employer-sponsor in relation to the superannuation product to which the Statement relates) has previously been given as part of another Statement in a recommendation, issue or sale situation.
- (8) For the purposes of this section, a Supplementary Product Disclosure Statement **relates** to the common part of a Product Disclosure Statement or the variable choice part of a Product Disclosure Statement (as the case may be) if it:
- (a) corrects a misleading or deceptive statement in that part; or
 - (b) corrects an omission of information which the Product Disclosure Statement is required to contain, by adding that information to that part; or
 - (c) updates or adds to the information in that part.

Note: A Supplementary Product Disclosure Statement may relate to both the common part and the variable choice part of a Product Disclosure Statement.

- (9) In this section:

accumulation product means a superannuation product other than a superannuation product in relation to which the holder would be a defined benefit member within the meaning of section 83A of the SIS Act.

common part means the part of a Product Disclosure Statement that does not contain the statements and information set out in the variable choice part.

Note: By section 1013L, a Product Disclosure Statement may be made up of 2 or more separate documents that are given at the same time. Similarly the common part may consist of such documents.

public offer superannuation fund has the meaning given by section 18 of the SIS Act.

SIS Act means the *Superannuation Industry (Supervision) Act 1993*.

SIS regulations means the *Superannuation Industry (Supervision) Regulations 1994*.

standard employer-sponsor has the meaning given by section 16 of the SIS Act.

standard employer-sponsored fund has the meaning given by section 16 of the SIS Act.

standard employer-sponsored member has the meaning given by section 16 of the SIS Act.

variable choice part means, in relation to a Product Disclosure Statement for a superannuation product that is an interest in a standard employer-sponsored fund, a document or documents that only include any or all of the following information relating to a feature of the product chosen by the standard employer-sponsor from a selection of features made available by the trustee of the fund:

- (a) information about matters set out in regulation 4.02A or 4.02AA (as applicable) of the SIS regulations concerning investment strategies;
- (b) information about any insurance product that provides insurance cover to standard employer-sponsored members who hold the product;
- (c) the fees which apply to the superannuation product including those that relate to particular investment strategies available in relation to the product;
- (d) information about any written agreement relating to the vesting of benefits of the kind referred to in paragraph 5.08(2)(b) of the SIS regulations;
- (e) the level of employer contributions in respect of standard employer-sponsored members who hold the product.”

Part 4—Repeal

9 Repeal

This instrument is repealed on 1 October 2027.