

16 December 2015

Mr Jason McNamara
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Dear Mr McNamara

ASIC class order [CO 02/314]: *Employee redundancy funds: relief*

I am writing to the Office of Best Practice Regulation (**OBPR**) regarding the Australian Securities and Investments Commission (**ASIC**) class order [CO 02/314]: *Employee redundancy funds: relief*, which, as per the *Legislative Instruments Act 2003*, had been scheduled to sunset on 1 October 2016. However, it has been decided that the instrument is to be remade without significant amendment to extend the interim class order relief for 24 months, to expire on 1 October 2018, to provide sufficient time for Government to consider the findings from the Final Report of the Royal Commission into Trade Union Governance and Corruption (**Royal Commission**).

[CO 02/314] provides interim class order relief to employee redundancy funds and operators of these funds from complying with the *managed investments and associated provisions* contained within the *Corporations Act 2001* (**Corporations Act**), including the requirements:

- to hold an Australian financial services licence;
- to register the fund as a managed investment scheme; and
- to comply with the managed investment provisions contained within Chapter 5C of the Corporations Act and other associated provisions contained within the Corporations Act (including product disclosure statements (**PDS**) and ongoing disclosure requirements and the anti-hawking provisions).

ASIC certifies that [CO 02/314] is operating effectively and efficiently, and that therefore a Regulation Impact Statement is not required for this regulation to be remade.

The assessment that the regulation is operating effectively and efficiently has been informed by a consultation process which involved formal public consultation via Consultation Paper 238 *Remaking ASIC class order on employee redundancy funds; [CO 02/314]* (**CP 238**) released on 4 September 2015 seeking feedback from operators and promoters of employee redundancy funds, trade unions and employee associations, over the period 4 September 2015 until 2 October 2015. ASIC has also considered the recommendations contained in the Interim Report of the Royal Commission relating to [CO 02/314].

Feedback from employee redundancy fund operators

ASIC received four responses to CP 238 from, or on behalf of, employee redundancy fund operators. All of the respondents were supportive of employee redundancy funds continuing to be exempt from complying with the managed investment and associated provisions outlined above whether this was achieved by extending relief under the class order or through

law reform. Various submissions were made by the respondents about employee redundancy funds including whether employee redundancy funds meet the definition of a managed investment scheme and in what circumstances employee redundancy funds should be exempted from complying with the managed investment and associated provisions. ASIC also received submissions that:

- exemption from the managed investment and associated provisions should be achieved by law reform instead of class order relief; and
- the 12 month extension contemplated in CP 238 was unworkable, that any legislative response is unlikely to result in this time, and that the relief should be extended for a period of at least four years.

Interim Report of Royal Commission

Separately, the Royal Commission has referred its Interim Report (tabled in Parliament on 19 December 2014) to ASIC in which it recommends that ASIC give consideration to whether the exemptions (and in particular, the PDS exemptions) granted to employee redundancy funds by [CO 02/314] remain appropriate. The Final Report of the Royal Commission is due to be delivered by 31 December 2015.

ASIC response to feedback and Interim Report recommendations


ASIC considers that:

- any law reform resulting from Government consideration of the recommendations made in the Final Report of the Royal Commission is unlikely to occur before [CO 02/314] sunsets on 1 October 2016, or indeed before 1 October 2017 (the date contemplated in CP 238 for the relief to sunset);
- pending the release of the Final Report and Government consideration of this report, it is not appropriate for ASIC to commence full policy review (or a review of particular exemptions) and instead it is necessary to extend the interim relief provided to employee redundancy funds for a limited period;
- an extension of 24 months provides a sufficient but limited period of time for Government to consider and respond to any recommendations concerning employee redundancy funds made by the Royal Commission and for ASIC to complete a full policy review and undertake all necessary steps.

I acknowledge that OBPR will publish this letter for transparency purposes.

If you have any queries about this advice, please contact Caitilin Hawkins on (03) 9280 3219, or caitilin.hawkins@asic.gov.au.

Yours sincerely



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Investment Managers and Superannuation