

EXPLANATORY STATEMENT for ASIC Corporations (Amendment No. 1) Instrument 2015

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (*ASIC*) makes ASIC Corporations (Amendment No. 1) Instrument 2015 (the *amending instrument*) under subsection 926A(2) of the *Corporations Act 2001* (the *Act*). This subsection of the Act provides that ASIC may declare that provisions in Part 7.6 (other than Divisions 4 and 8) of the Act apply in relation to a person or financial product, or a class of persons or financial products, as if the provision or provisions were omitted, modified or varied as specified in the declaration.

The amending instrument amends ASIC Class Order [CO 14/1262] *Relief for 31 day notice term deposits* (the *principal class order*). The principal class order was made under subsection 926A(2) of the Act. Under subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the relevant powers because of section 5C of the Act), where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

1. Background

The Corporations Amendment (Register of Relevant Providers) Regulation 2015 (the *amending regulations*) introduced the regulatory framework for the Financial Adviser Register (the *Register*). The purpose of the amending regulations is to create a public register of all natural persons providing personal advice on more complex products to retail clients.

The Register will keep a list of individuals that are authorised to provide personal advice on “relevant financial products” (that is, more complex products such as superannuation, shares, managed investment schemes and life insurance). These individuals are generally perceived by consumers as financial advisers.

Those who provide general advice only or personal advice only on simpler products (for example, motor vehicle insurance or basic deposit products) are not required to be listed on the Register. These individuals (such as bank counter staff and insurance call centre staff) are not generally perceived by consumers as financial advisers.

Section 922C of the Act, which is inserted by the amending regulations, defines “relevant financial product”. “Relevant financial product” means all financial products except for those specified in the definition. A “basic banking product” is one such specified exception.

“Basic banking product” has the meaning given by section 961F of the Act, which forms part of Part 7.7A of the Act. The definition of “basic banking product” includes a “basic deposit product”.

The principal class order notionally modifies the definition of a “basic deposit product” for the purposes of Parts 7.6 (other than Divisions 4 and 8), 7.7 and 7.9 of the Act. The effect of the principal class order is that 31 day notice term deposits of up to five years are basic deposit products for the purposes of Parts 7.6 (other than Divisions 4 and 8), 7.7 and 7.9 of the Act. The principal class order does not have effect for the purposes of Part 7.7A of the Act.

Despite the amending regulations being made for the purposes of Part 7.6 of the Act, there is doubt about whether the modified definition of “basic deposit product” made by the principal class order would have effect for the purposes of the Register. In other words, there is doubt about whether an individual who is authorised to provide personal advice on a 31 day notice term deposit of up to five years would be nonetheless required to be included on the Register. This is because that kind of product might not be considered to be a “basic banking product” for the purposes of the amending regulations, even though it would be a “basic deposit product” for the purposes of Part 7.6 of the Act.

2. Purpose of the instrument

The purpose of the amending instrument is to ensure that the modified definition of “basic deposit product” (that is, modified by the principal class order so that it also covers a 31 day notice term deposit of up to five years) has effect for the purposes of the Register.

The amendment will have the effect that only those individuals authorised to give personal advice on more complex products (rather than just simpler products) are included on the Register.

3. Operation of the instrument

The amending instrument inserts a new paragraph 4A into the principal class order.

The amendment omits the existing definition of “basic banking product” in section 922C of the Act and substitutes a new definition. The new definition is identical to the definition of “basic banking product” in section 961F of the Act but does not define it by reference to that section.

The new definition of a “basic banking product” for the purposes of the Register is:

- a basic deposit product;
- a facility for making non-cash payments that is related to a basic deposit product;
- a First Home Savers Account (FHSA) product of a kind mentioned in subparagraph (c)(i) of the meaning of a FHSA in section 8 of the *First Home Saver Accounts Act 2008*;
- a facility for providing traveller’s cheques;
- any other product prescribed by regulations.

The principal class order expires 18 months from its commencement, meaning the amending instrument also will expire at that time.

4. Consultation

The amendments made by the amending instrument are minor and machinery in nature. The concerns relating to whether the principal class order applied for the purpose of the Register arose in late February 2015, being less than three weeks until financial services licensees were required to commence providing information to ASIC on their advice providers (the first phase of information is required to be provided to ASIC between 8 March 2015 and 30 March 2015). As a result, ASIC did not consult publicly on a draft of the amending instrument.

ASIC did, however, conduct targeted consultation to obtain information about the impact of the uncertainty. ASIC consulted with the Australian Bankers' Association, the Customer Owned Banking Association, one major bank and the Department of the Treasury.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Amendment No. 1) Instrument 2015

ASIC Corporations (Amendment No. 1) Instrument 2015 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

The Corporations Amendment (Register of Relevant Providers) Regulation 2015 introduced the regulatory framework under the *Corporations Act 2001* (the *Act*) for a Financial Adviser Register (the *Register*). The Register will be a public register of individuals that provide personal advice on more complex products to retail clients.

Individuals that provide personal advice on simple products (for example, products that satisfy the definition of “basic deposit product”), and who do not also provide personal advice on products that are more complex, are not required to be included on the Register.

ASIC Class Order [CO 14/1262] *Relief for 31 day notice term deposits* expands the scope of the meaning of “basic deposit product” for the purposes of Part 7.6 of the Act. The class order was made before the enactment of the provisions of the Register. Following the enactment of the provisions of the Register, there is now doubt as to whether that expanded definition will have effect for the purposes of the Register.

This amending instrument amends the class order to remove that doubt.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.