
EXPLANATORY STATEMENT for
ASIC Corporations (AFSL Audit Opinion) Instrument 2015/586

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations (AFSL Audit Opinion) Instrument 2015/586* under section 992B of the *Corporations Act 2001 (the Act)*. Section 992B provides that ASIC may declare that Part 7.8 of the Act applies to a person or a financial product, or a class of persons or financial products, as if specified provisions of Part 7.8 were omitted, modified or varied as specified in the declaration.

1. Background

Regulation 7.8.13 of the *Corporations Regulations 2001* specifies the information and matters required to be included in an auditor's report to be lodged with ASIC by an Australian financial services licensee (*licensee*) in accordance with subsection 989B(3) of the Act.

Subparagraph 7.8.13(2)(a)(i) of regulation 7.8.13 requires that the auditor's report to include a statement of the auditor's opinion on the effectiveness of the internal controls used by the licensee to comply with Divisions 2, 3, 4, 5 and 6 of Part 7.8 of the Act.

ASIC Form FS 71 *Australian financial service licensee audit report*, sets out, among other things, the form in which the auditor's report is to be prepared. When considering revisions to that form, ASIC noted that Division 4A of Part 7.8 had been inserted into the Act in 2009 but that a consequential amendment to regulation 7.8.13 had not been made. This was an oversight at the time. A consequential amendment to regulation 7.8.13 would have included Division 4A of part 7.8 in subparagraph 7.8.13(2)(a)(i) of regulation 7.8.13 along with the existing Divisions 2, 3, 4, 5 and 6.

2. Purpose of the instrument

The instrument makes the consequential amendment to regulation 7.8.13 that was missed when Division 4A was inserted in Part 7.8 of the Act. The instrument ensures that a licensee provide ASIC with an auditor's opinion on the effectiveness of the internal controls used by the licensee to comply with Division 4A as is required for Divisions 2, 3, 4, 5 and 6 of Part 7.8 of the Act.

3. Operation of the instrument

Section 7 of the instrument declares that Part 7.8 of the Act applies in relation to a licensee as if regulation 7.8.13 of the *Corporations Regulations 2001* were modified or varied by, in subparagraph 7.8.13(2)(a)(i), after "4," inserting "4A,".

Section 8 of the instrument specifies that the declaration in section 7 applies in relation to financial years ending on or after 30 June 2015.

4. Consultation

Limited consultation was undertaken with the 'Big 6' accounting firms on a draft revised Form FS71, which had been prepared as though the instrument had been issued – that is the auditor's opinion on internal controls required under section 989B(3) of the Act, as specified in regulation 7.8.13, included control over Division 4A. No comments were received about this change.

Wider consultation was not undertaken as the change effected by the instrument reflects the intention of the legislation and is minor and technical in nature.

Statement of Compatibility with Human Rights

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

ASIC Corporations (AFSL Audit Opinion) Instrument 2015/0586

ASIC Corporations (AFSL Audit Opinion) Instrument 2015/0586 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 instrument addresses a consequential amendment to regulation 7.8.13 of the *Corporations Regulations 2001* missed as an oversight when Division 4A of Part 7.8 of the *Corporations Act 2001* was introduced. The instrument requires that the auditor's report required to be provided to ASIC by Australian financial services licensees under section 989B(3) of the *Corporations Act 2001* to include an opinion about the licensees internal controls used by the licensee to comply with Division 4A along with the Divisions 2, 3, 4, 5 and 6 of Part 7.8 as currently specified in the regulation.

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.

Australian Securities and Investments Commission