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**EXPLANATORY STATEMENT for**  
**ASIC Corporations (Basic Deposit and General Insurance Product**  
**Distribution) Instrument 2015/682**

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (ASIC) makes the *ASIC Corporations (Basic Deposit and General Insurance Product Distribution) Instrument 2015/682* under paragraph 926A(2)(c) and of the *Corporations Act 2001* (the Act). Paragraph 926A(2)(c) provides that ASIC may declare that Part 7.6 of the Act (other than Divisions 4 and 8) applies in relation to a person or class of persons as if specified provisions were modified.

## **1. Background**

Chapter 7 of the Act enables Australian financial services (AFS) licensees to have other people provide financial services on their behalf including people who they have appointed as their ‘authorised representatives’.

Licensees who appoint authorised representatives are required to notify ASIC of any appointments and changes (such as revocation and variation) of authorised representatives. ASIC maintains a public register of authorised representatives. Authorised representatives are then subject to their own disclosure obligations under Part 7.7 of the Act, including the requirement to provide a Financial Services Guide.

The authorised representative regime applies to all financial services and a wide range of financial products. However, a simpler regime is more appropriate for the distribution of basic deposit products (e.g. bank accounts) and general insurance products because:

- the conduct of the distributor is limited to a very narrow range of ‘financial services’ and is not inherently complex;
- the limited nature of the services provided means that there would be limited benefit to the consumer in being able to check whether the distributor has been appointed as an authorised representative; and
- the distributor can only provide services in relation to simple products that are well understood by consumers.

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The costs involved in meeting the authorised representative requirements, such as notifying ASIC of authorisations changes to the details of representatives, could deter authorised deposit-taking institutions and insurers from appointing authorised representatives to distribute their products. This has potential to restrict access to those products for consumers, particularly affecting consumers in regional or remote areas where it is less likely that the product issuers would have a corporate presence.

ASIC made ASIC Class Order [CO 04/909] ([CO 04/909]) *Agency banking* in 2004 in order to address this problem in relation to basic deposit products. This instrument was prepared in such a way that it addressed the unnecessary regulatory burden while protecting consumers by making licensees responsible for their distributors in the same way that they are responsible for their authorised representatives. The Federal Government released a proposals paper titled *Refinements to Financial Services Regulation* in May 2005 – this paper recommended that ASIC provide similar guidance or relief in relation to general insurance products. This resulted in ASIC making ASIC Class Order [CO 05/1070] ([CO 05/1070]) *General insurance distributors*.

[CO 04/909] sunsets on 1 October 2017 and [CO 05/1070] sunsets on 1 April 2016. ASIC has reviewed the operation of these instruments and, as a result of that review, made the *ASIC Corporations (Distribution of Basic Deposit and General Insurance Products) Instrument 2015/682*.

## **2. Purpose of the instrument**

The purpose of the *ASIC Corporations (Basic Deposit and General Insurance Product Distribution) Instrument 2015/682* is to:

- reduce unnecessary or disproportionately burdensome regulatory requirements in relation to the authorisation of distributors of basic deposit products and general insurance products;
- facilitate use of wider distribution networks to promote access to basic deposit products and general insurance products (particularly in locations where issuers of basic deposit products and general insurance products have a limited corporate presence); and
- ensure that consumers continue to receive the same level of protection when purchasing basic deposit products or general insurance products through distributors that they would receive if they dealt directly with the product issuer.

## **3. Operation of the instrument**

Clause 5 of the instrument modifies sections 910A and 911B of the Act to allow AFS licensees who are authorised to deal in basic deposit products and general insurance products to appoint distributors to deal in these products on their behalf. This avoids the need to appoint the distributors as authorised representatives. As the distributors continue to be

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representatives of the licensee for the purpose of liability provisions, consumers have recourse to the licensee in relation to the distributors' conduct.

The relief removes:

- some of the formal requirements that apply to the appointment and revocation of authorised representatives, including notification to ASIC and maintaining the currency of information about the representative that is contained in ASIC's registers; and
- the need for distributors to provide a Financial Services Guide.

*Who can be appointed as a distributor?*

An AFS licensee, who is authorised to deal in basic deposit products or general insurance products, can appoint any person as a distributor, except:

- a person who is its authorised representative; or
- a person who is prohibited from providing the relevant service by a banning order under Part 7.6 of the Act (sections 920B and 920C of the Act).

The appointment needs to be made in writing.

A distributor that is not an individual can, with the written consent of the AFS licensee, sub-authorise other individuals as distributors. The AFS licensee may give written consent to a distributor to sub-authorise a specified person or a specified class of persons (the membership of which might change from time to time). This facilitates authorisation processes for distributors that have body corporate, partnership and multiple trustee structures in a similar way to the authorised representative sub-authorisation provisions.

A person can act as a distributor of more than one AFS licensee.

*What can a distributor do?*

Distributors operating under the instrument can deal in:

- basic deposit products;
- general insurance products; and
- bundled consumer credit insurance products (i.e. consumer credit insurance products that include a life insurance component).

Distributors operating under the instrument cannot provide financial product advice on behalf of the AFS licensee.

*What obligations are imposed on the AFS licensees?*

An AFS licensee will be responsible for the distributors it appoints in the same way it is responsible for its authorised representatives. The instrument does not alter the licensee's

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obligation to ensure its distributors are adequately trained and supervised, and to take reasonable steps to ensure distributors comply with the financial services law.

To benefit from the proposed relief, the AFS licensee must take reasonable steps to ensure retail clients are given information about:

- the availability of the AFS licensee's dispute resolution system; and
- if a distributor is dealing in insurance products, the capacity in which the distributor is acting and the remuneration received, or to be received, by the distributor.

#### **4. Consultation**

As part of its review of [CO 04/909] and [CO 05/1070], ASIC released Consultation Paper 230 *Remaking ASIC class orders on banking and insurance* (CP 230). A draft of the *ASIC Corporations (Basic Deposit and General Insurance Product Distribution) Instrument 2015/682* was attached to CP 230.

ASIC received 3 submissions in response to CP 230. No submissions received raised any concerns with ASIC's proposal to remake [CO 04/909] and [CO 05/1070] in the form outlined in CP230.

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## **Statement of Compatibility with Human Rights**

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

### **ASIC Corporations (Basic Deposit and General Insurance Product Distribution) Instrument 2015/682**

*ASIC Corporations (Basic Deposit and General Insurance Product Distribution) Instrument 2015/682 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**

*ASIC Corporations (Basic Deposit and General Insurance Product Distribution) Instrument 2015/682* allows Australian financial services (AFS) licensees that are authorised to deal in basic deposit products or general insurance products to appoint distributors to deal in those products on their behalf without needing to appoint those persons as authorised representatives.

The AFS licensees who rely on the instrument will be fully responsible for the services provided by the distributors.

#### **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.

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