

ASIC CORPORATIONS (AMENDMENT AND REPEAL) INSTRUMENT 2015/542

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (*ASIC*) makes ASIC Corporations (Amendment and Repeal) Instrument 2015/542 under subsections 911A(2)(l) and 951B of the *Corporations Act 2001* (the *Act*).

Subsection 911A(2)(l) of the Act provides that a person is exempt from the requirement to hold an Australian financial services (*AFS*) licence for a financial service they provide if the provision of the service is covered by an exemption specified by ASIC in writing and published in the Gazette.

Subsection 951B of the Act provides that ASIC may exempt a person or a class of persons from all or specified provisions of Part 7.7 of the Act.

ASIC Corporations (Amendment and Repeal) Instrument 2015/542:

- (a) amends Class Order [CO 05/1270] *Operation of certain instruments* in order to revoke Class Order [CO 04/1572] *Secondary Services: Financial Services Guide relief for experts* and Class Order [CO 04/1573] *Secondary Services: Financial Services Guide relief for arrangers*; and
- (b) revokes Class Order [CO 05/835] *General advice in advertising* and Class Order [CO 05/1195] *Simplified warning for oral general advice*.

1. Background

Under the *Legislative Instruments Act 2003*, legislative instruments cease automatically, or ‘sunset’, after 10 years, unless action is taken to exempt or preserve them.

To preserve its effect, a legislative instrument, such as a class order, must be remade before the sunset date. The purpose of sunset is to ensure that instruments are kept up to date and only remain in force while they are fit for purpose, necessary and relevant.

[CO 05/835] is due to sunset on 1 October 2015 and [CO 04/1572], [CO 04/1573] and [CO 05/1195] are due to sunset on 1 April 2016. ASIC has reviewed its policy underlying the relief. In light of this review and following public consultation, ASIC considers that this class order relief is necessary, fit-for-purpose and relevant.

As such, ASIC has decided to:

- (a) reissue the relief underlying [CO 04/1572] and [CO 04/1573] in a new legislative instrument, ASIC Corporations (Financial Services Guides) Instrument 2015/541;
- (b) reissue the relief underlying [CO 05/835] in a new legislative instrument, ASIC Corporations (Advertising by Product Issuers) Instrument 2015/539; and
- (c) reissue the relief underlying [CO 05/1195] in a new legislative instrument, ASIC Corporations (General Advice Warning) Instrument 2015/540.

2. Purpose of the legislative instrument

In light of the relief in [CO 04/1572], [CO 04/1573], [CO 05/835] and [CO 05/1195] being remade in new legislative instruments, the purpose of ASIC Corporations (Amendment and Repeal) Instrument 2015/542 is to:

- (a) amend [CO 05/1270] in order to revoke [CO 04/1572] and [CO 04/1573]; and
- (b) revoke [CO 05/835] and [CO 05/1195].

3. Operation of the legislative instrument

ASIC Corporations (Amendment and Repeal) Instrument 2015/542:

- (a) varies the definition of ‘eligible instrument’ in paragraph 6 of [CO 05/1270] by omitting paragraphs (d) and (e) in order to revoke [CO 04/1572] and [CO 04/1573]; and
- (b) revokes [CO 05/835] and [CO 05/1195].

4. Consultation

On 11 December 2014, ASIC released Consultation Paper 226 *Remaking ASIC class orders on secondary services and general advice (CP 226)* seeking feedback on proposals to remake, without significant changes, [CO 04/1572], [CO 04/1573], [CO 05/835] and [CO 05/1195] in new legislative instruments. The consultation period closed on 9 February 2015.

ASIC received two written submissions in response to CP 226 from industry associations. Details of the non-confidential submission received are available on ASIC’s website at www.asic.gov.au.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Amendment and Repeal) Instrument 2015/542

This legislative instrument 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 of the legislative instrument

ASIC Corporations (Amendment and Repeal) Instrument 2015/542:

- (a) varies the definition of ‘eligible instrument’ in paragraph 6 of Class Order [CO 05/1270] *Operation of certain instruments* by omitting paragraphs (d) and (e) in order to revoke Class Order [CO 04/1572] *Secondary Services: Financial Services Guide relief for experts* and Class Order [CO 04/1573] *Secondary Services: Financial Services Guide relief for arrangers*; and
- (b) revokes Class Order [CO 05/835] *General advice in advertising* and Class Order [CO 05/1195] *Simplified warning for oral general advice*.

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.