

## **EXPLANATORY STATEMENT for ASIC Corporations (Amendment and Repeal) Instrument 2015/843**

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 2015/843* under subsections 341(1), 741(1) and 1020F(1) of the *Corporations Act 2001* (the Corporations Act).

Subsection 341(1) provides that ASIC may make an order in writing in respect of a specified class of companies, registered schemes or disclosing entities, relieving any of the directors, the companies, registered schemes or disclosing entities themselves, or the auditors of the companies, registered schemes or disclosing entities from all or specified requirements of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4) of the Corporations Act.

Subsection 741(1) provides that ASIC may exempt a person from a provision of Chapter 6D of the Corporations Act or declare that Chapter 6D applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

Subsection 1020F(1) provides that ASIC may exempt a person or a financial product or class of financial products from all or specified provisions of Part 7.9 of the Corporations Act or declare that Part 7.9 applies to a person, financial product or class of financial products as if specified provisions were omitted, modified or varied as specified in the declaration.

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.

*ASIC Corporations (Amendment and Repeal) Instrument 2015/843:*

- (a) revokes Class Order [CO 05/638] *Anomalies preventing certain large proprietary companies from being grandfathered*, Class Order [CO 05/639] *Application of accounting standards by non-reporting entities*, Class Order [CO 05/642] *Combining financial reports of stapled security issuers*, Class Order [CO 05/644] *Disclosing post balance date acquisitions and disposals* and Class Order [CO 06/441] *Including different registered scheme financial reports in a single document*; and
- (b) makes consequential amendments to Class Order [CO 01/1455] *Continuously quoted securities*, Class Order [CO 04/672] *Extension of on-sales exemptions*, Class Order [CO 07/571] *Disclosure exemption for rights issues* and Class Order [CO 09/425] *Share and interest purchase plans*.

## 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 05/638], [CO05/639], [CO 05/642] and [CO 04/644] are due to sunset on 1 October 2015 and [CO 06/441] is due to sunset on 1 October 2016. ASIC has reviewed its policy underlying the relief. In light of this review and following public consultation, ASIC considers that the class order relief is necessary, fit-for-purpose and relevant.

As such, ASIC has decided to:

- (a) reissue the relief underlying [CO 05/638] in a new legislative instrument, *ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/840*;
- (b) reissue the relief underlying [CO 05/639] in a new legislative instrument, *ASIC Corporations (Non-Reporting Entities) Instrument 2015/841*;
- (c) reissue the relief underlying [CO 05/642] in a new legislative instrument, *ASIC Corporations (Stapled Group Reports) Instrument 2015/838*;
- (d) reissue the relief underlying [CO 05/644] in a new legislative instrument, *ASIC Corporations (Post Balance Date Reporting) Instrument 2015/842*; and
- (e) reissue the relief underlying [CO 06/441] in a new legislative instrument, *ASIC Corporations (Related Scheme Reports) Instrument 2015/839*.

## 2. Purpose of the instrument

In light of the relief in [CO 05/638], [CO 05/639], [CO 05/642], [CO 05/644] and [CO 06/441] being remade in new legislative instruments, the purpose of *ASIC Corporations (Amendment and Repeal) Instrument 2015/843* is to revoke [CO 05/638], [CO 05/639], [CO 05/642], [CO 05/644] and [CO 06/441] and to make consequential amendments to [CO 01/1455], [CO 04/672], [CO 07/571] and [CO 09/425].

## 3. Operation of the instrument

*ASIC Corporations (Amendment and Repeal) Instrument 2015/843* revokes [CO 05/638], [CO 05/639], [CO 05/642], [CO 05/644] and [CO 06/441] and makes consequential amendments to [CO 01/1455], [CO 04/672], [CO 07/571] and [CO 09/425]. It also includes transitional provisions relating to the consequential amendments.

## 4. Consultation

ASIC has consulted with stakeholders through Consultation Paper 233 which was issued on 16 June 2015 and was open for comment to 17 August 2015.

ASIC has assessed that a Regulatory Impact Statement is not necessary for this instrument as it is operating effectively and efficiently, as informed by the consultation process, and is being remade without significant changes.

## **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 2015/843**

*ASIC Corporations (Amendment and Repeal) Instrument 2015/843 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**

This instrument revokes certain sunset class orders which have been remade as new legislative instruments and makes consequential amendments to class orders which refer to the revoked instruments.

#### **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**