

**EXPLANATORY STATEMENT for**  
**ASIC CORPORATIONS (SUBSTITUTED SUPPLEMENTARY  
DISCLOSURE DOCUMENTS) INSTRUMENT 2016/78**

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (**ASIC**) makes ASIC Corporations (Substituted Supplementary Disclosure Documents) Instrument 2016/78 under section 741 of the *Corporations Act 2001* (the **Act**).

Section 741 of the Act provides that ASIC may exempt – either unconditionally or subject to specified conditions – all persons, specified persons or a specified class of persons from all or specified provisions of Chapter 6D of the Act, or ASIC may declare that Chapter 6D applies to all persons, specified persons or a specified class of persons, as if specified provisions were omitted, modified or varied as specified in the declaration. Such an exemption or declaration may relate to all securities, specified securities or a specified class of securities and or any other matter generally or as specified.

## **1. Background**

Chapter 6D of the Act establishes the statutory regime applying to fundraising through the offer of securities for issue or sale in Australia. It addresses the circumstances in which a person offering securities for issue or sale must lodge a disclosure document with ASIC and the relevant form, content and procedural requirements applying to that disclosure document. Chapter 6D also sets out certain prohibited conduct in relation to fundraising activity and outlines the circumstances in and extent to which persons may be liable for defective disclosure documents. Chapter 6D also provides certain statutory remedies for investors.

The statutory regime applying to fundraising through the offer of securities for issue or sale was substantially rewritten in March 2000 by the *Corporate Law Economic Reform Program Act 1999* (the **CLERP Act**). The CLERP Act amended the *Corporations Law* (the **Law**) by repealing Part 7.12—which previously contained the fundraising provisions—and inserting new Chapter 6D. Chapter 6D of the Law was retained in substantially the same form with the enactment of the Act in 2001.

Since the implementation of the CLERP Act, ASIC has made a number of exemptions from, and modifications to, the fundraising provisions in Chapter 6D with a view to addressing certain technical issues and anomalies in relation to their operation. One of these class orders is ASIC Class Order [CO 00/190] *Substituting and consolidating supplementary disclosure documents*.

ASIC has recently reviewed the policy underlying Class Order [CO 00/190] as part of a wider review of class orders relating to the fundraising provisions in Chapter 6D and considers that the relief in this class order is still both necessary and appropriate. Accordingly, ASIC has

decided to reissue the relief underlying Class Order [CO 00/190] in ASIC Corporations (Substituted Supplementary Disclosure Documents) Instrument 2016/78.

The *Legislation Act 2003* (the *LA*) provides for the periodic expiry of legislative instruments ('sunsetting') to ensure that they are kept up to date and only remain in force for as long as they are needed. Class Order [CO 00/190], being a legislative instrument was scheduled to eventually expire under the sunsetting provisions of the LA.

ASIC's review of the policy underlying Class Order [CO 00/190] — and subsequent decision to reissue the relief — has provided an opportunity to deal with this imminent expiry and ensure that the relevant relief will continue to be available.

Under ASIC Corporations (Repeal) Instrument 2016/171, ASIC has repealed Class Order [CO 00/190] effective from the date that ASIC Corporations (Substituted Supplementary Disclosure Documents) Instrument 2016/78 commences.

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

ASIC Corporations (Substituted Supplementary Disclosure Documents) Instrument 2016/78 addresses the practical ramifications arising when multiple supplementary documents are lodged under paragraph 719(2)(d) of the Act. It enables an issuer to provide the original disclosure document and the most recent supplementary document to investors. The most recent supplementary document must, however, disclose all of the substantive information contained in any previous supplementary documents. The relief facilitates a consolidated supplementary disclosure regime.

The relief (where relied upon) operates to avoid a situation whereby an issuer's disclosure document is comprised of the original disclosure document and multiple supplementary documents. Such an outcome would not be consistent with the principle of clear, concise and effective disclosure. The conditions of the relief ensure, however, that investor protections are not compromised.

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

ASIC Corporations (Substituted Supplementary Disclosure Documents) Instrument 2016/78 modifies paragraph 719(2)(d) of the Act to facilitate the consolidation of supplementary disclosure documents (in circumstances where an issuer lodges more than one supplementary disclosure document).

Paragraphs 719(2)(a)-(c) of the Act prescribe content requirements for supplementary disclosure documents. Paragraph 719(2)(d) of the Act provides that a supplementary disclosure document must include a statement that it is to be read together with the disclosure document it supplements and any previous supplementary documents.

ASIC Corporations (Substituted Supplementary Disclosure Documents) Instrument 2016/78 provides issuers with the option to prepare and lodge a consolidated supplementary disclosure document in circumstances where multiple supplementary disclosure documents are required, provided the substituted supplementary document lodged with ASIC contains all the

substantive information in all previous supplementary documents lodged with ASIC in relation to the offer, except to the extent the substituted supplementary document corrects deficiencies in or updates that information or provides additional information.

#### **4. Consultation**

On 17 September 2015 ASIC released CP 239 *Disclosure documents: Update to ASIC instruments and guidance (CP 239)* seeking feedback on proposals to update and consolidate a number of regulatory guides relating to Chapter 6D of the Act. CP 239 also sought feedback on proposals to reissue the legislative instruments associated with ASIC's updated guidance (including Class Order [CO 00/190]) and to make legislative instruments addressing some discrete policy issues. The consultation period closed on 27 November 2015.

ASIC received four submissions in response to CP 239. Details of the submissions are contained in REP 473 *Response to submissions on CP 239 Disclosure documents: updates to ASIC instruments and guidance* which is available on ASIC's website at [www.asic.gov.au](http://www.asic.gov.au).

Notwithstanding ASIC's consultation, ASIC considers that ASIC Corporations (Substituted Supplementary Disclosure Documents) Instrument 2016/78 is of a minor or machinery nature and does not substantially alter existing arrangements.

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

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

### **ASIC Corporations (Substituted Supplementary Disclosure Documents) Instrument 2016/78**

ASIC Corporations (Substituted Supplementary Disclosure Documents) Instrument 2016/78 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 legislative instrument addresses the practical ramifications arising when multiple supplementary disclosure documents are lodged under paragraph 719(2)(d) of the *Corporations Act 2001*. The legislative instrument provides a conditional exemption from paragraph 719(2)(d) by allowing supplementary documents to be consolidated (in circumstances where an issuer lodges more than one supplementary document).

#### **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**