

# ASIC Corporations (Amendment) Instrument 2016/397

## EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations (Amendment) Instrument 2016/397* under paragraphs 926A(2)(c), 951B(1)(c) and 1020F(1)(c) of the *Corporations Act 2001* (the *Act*).

Paragraph 926A(2)(c) of the Act provides that ASIC may declare that Part 7.6 (other than Divisions 4 and 8) applies in relation to a person or financial product, or a class of persons or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.

Paragraph 951B(1)(c) of the Act provides that ASIC may declare that Part 7.7 of the Act applies in relation to a person or a financial product, or a class of persons or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.

Paragraph 1020F(1)(c) of the Act provides that ASIC may declare that Part 7.9 of the Act applies in relation to a person or a financial product, or a class of persons or 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*, where an Act confers a power to make, grant or issue any instrument, 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.

### 1. Background

ASIC Class Order [CO 14/1262] (*principal class order*) provides interim conditional relief to enable 31-day notice term deposits of up to five years to be treated as basic deposit products under the Act. The principal class order commenced on 22 December 2014, and provides relief for:

- 31-day notice term deposits entered into on or before until 22 June 2016; and
- 31-day notice term deposits that are entered into as a result of rolling over a term deposit that has the benefit of the relief.

The relief does not apply other term deposit entered into after 22 June 2016.

The principal class order was intended to give Government the opportunity to consider legislative reform regarding the meaning of basic deposit product under the Act, as it applies to 31-day notice term deposits.

The House of Representatives and the Senate were dissolved on 9 May 2016, with an election to be held on 2 July 2016. Consequently, there will not be an opportunity for any legislative changes to be made until after the election.

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

In order to preserve the current treatment of 31-day notice term deposits as an interim measure, the *ASIC Corporations (Amendment) Instrument 2016/397* extends the relief given by the principal class order to:

- 31-day notice term deposits entered into on or before until 30 June 2017; and
- 31-day notice term deposits that are entered into as a result of rolling over such term deposits.

It will be a matter for an incoming government whether or not to amend the definition of basic deposit product under the Act.

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

The legislative instrument amends sub-subparagraph (c)(i) of the definition of *affected term deposit* in paragraph 6 of the principal class order. The effect of this is to extend the operation of the relief given by the principal class order so that it applies to:

- 31-day notice term deposits entered into on or before until 30 June 2017; and
- 31-day notice term deposits that are entered into as a result of rolling over such term deposits.

## **4. Consultation**

ASIC did not undertake a formal consultation process on extending the operation of the principal class order as the extension is a transitional measure of a minor and machinery nature, and was requested by Treasury.

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

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

### **ASIC Corporations (Amendment) Instrument 2016/397**

*ASIC Corporations (Amendment) Instrument 2016/397* (the 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**

The purpose of the legislative instrument is to amend ASIC Class Order [CO 14/1262] (*the principal class order*). The principal class order provides conditional relief to enable 31-day notice term deposits of up to five years to be treated as basic deposit products under the *Corporations Act 2001 (Act)*, for an interim period of 18 months from 22 December 2014 (i.e. the relief will apply to 31-day notice term deposits entered into on or before 22 June 2016 and to rollovers of such term deposits). This was intended to give Government the opportunity to consider legislative reform regarding the meaning of basic deposit product under the Act, as it applies to 31-day notice term deposits.

The House of Representatives and the Senate were dissolved on 9 May 2016, with an election to be held on 2 July 2016. Consequently, there will not be an opportunity for any legislative changes to be made until after the election.

In order to preserve the current treatment of 31-day notice term deposits as an interim measure, the legislative instrument extends the relief given by the principal class order so that it applies to such term deposits entered into on or before 30 June 2017 (and to rollovers of such term deposits). It will be a matter for an incoming government whether or not to amend the definition of basic deposit product under the Act.

#### **Human rights implications**

This class order does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This class order is compatible with human rights as it does not raise any human rights issues.