

## EXPLANATORY STATEMENT for

### ASIC Corporations (Repeal) Instrument 2016/379

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (**ASIC**) makes ASIC Corporations (Repeal) Instrument 2016/379 (the **Repeal Instrument**).

The Repeal Instrument will have the effect of repealing the following ASIC Class Orders:

- [CO 02/1073] – *Financial Services Guide – dealing in underlying investments by responsible entities ([CO 02/1073])*;
- [CO 02/1074] – *Financial Services Guide – dealing in underlying investments by superannuation trustees ([CO 02/1074])*; and
- [CO 02/1161] – *Limited relief from requirement for dealing authorisation for public offer superannuation entities ([CO 02/1161])*.

The Repeal Instrument is made under paragraph 911A(2)(l) and subsection 951B(1) of the *Corporations Act 2001* (the **Act**).

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

Subsection 951B(1) of the Act provides that ASIC may:

- (a) exempt a person or class of persons from all or specified provisions of Part 7.7 of the Act;
- (b) exempt a financial product or a class of financial products from all or specified provisions of Part 7.7 of the Act; or

- (c) 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 of Part 7.7 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.

## **1. Background**

[CO 02/1073] provides relief to the responsible entity of a registered scheme from section 941A of the Act to the extent that it requires the responsible entity to provide a Financial Services Guide to a member of the registered scheme in relation to any dealing by the responsible entity in a financial product in the course of operating the scheme. Under the *Legislation Act 2003* (the LA), [CO 02/1073] will expire, or sunset, on 1 April 2017.

[CO 02/1074] grants relief to the trustee of a superannuation entity from section 941A of the Act to the extent that it requires the trustee to provide a Financial Services Guide to a member of the superannuation entity in relation to any dealing by the trustee in a financial product in the course of the operation of the superannuation entity. Under the LA, [CO 02/1074] will sunset on 1 April 2017.

Under [CO 02/1161], a trustee of a public offer entity is granted an exemption from the requirement to hold an Australian financial services licence for the provision of a financial service consisting only of dealing by the trustee in a financial product (other than an interest in the public offer entity) in the course of the operation of the public offer entity. Under the LA, [CO 02/1161] will sunset on 1 April 2017.

After considering feedback received in response to ASIC Consultation Paper 244 – *Remaking ASIC Class Orders on dealing in underlying investments (CP 244)*, ASIC will continue the substantive effect of the relief under [CO 02/1073], [CO 02/1074] and [CO 02/1161], subject to some minor and technical changes, in a single legislative instrument: *ASIC Corporations (Superannuation and Schemes: Underlying Investments) Instrument 2016/378*. Accordingly, the three Class Orders serve no purpose and ought to be repealed.

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

The purpose of the Repeal Instrument is to repeal [CO 02/1073], [CO 02/1074] and [CO 02/1161].

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

Paragraph 1 of Schedule 1 of the instrument repeals [CO 02/1161].

Paragraph 2 of Schedule 1 of the instrument repeals [CO 02/1073].

Paragraph 3 of Schedule 1 of the instrument repeals [CO 02/1074].

#### **4. Consultation**

In December 2015, ASIC issued CP 244 in relation to [CO 02/1073], [CO 02/1074] and [CO 02/1161]. After considering the feedback received in response to CP 244, ASIC issued ASIC Corporations (Superannuation and Schemes: Underlying Investments) Instrument 2016/378, which will continue the substantive effect of [CO 02/1073], [CO 02/1074] and [CO 02/1161] in a single legislative instrument. As a result, [CO 02/1073], [CO 02/1074] and [CO 02/1161] no longer serve any purpose. The Repeal Instrument has been issued to cease the effect of the three Class Orders.

## Statement of Compatibility with Human Rights

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

### **ASIC Corporations (Repeal) Instrument 2016/379**

ASIC Corporations (Repeal) Instrument 2016/379 (the **Repeal 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 Repeal Instrument will repeal ASIC Class Order [CO 06/636] - *Superannuation: Delivery of product disclosure for investment strategies ([CO 06/636])*. [CO 06/636] grants relief to the trustee of a superannuation fund to allow the trustee to rely on a modified form of the Product Disclosure Statement (**PDS**) requirements in Part 7.9 of the Act. This relief operates when a superannuation fund gives a member a choice of investment strategy under which an accessible financial product may be acquired. Under the LIA, [CO 06/636] is due to lapse on 1 October 2016. The Repeal Instrument should repeal [CO 06/636] because ASIC will issue a legislative instrument in February 2016 that will continue the substantive effect of [CO 06/636], subject to non-substantive changes.

#### **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.