

**EXPLANATORY STATEMENT for**  
**ASIC Corporations (Financial Product Advice – Exempt Documents)**  
**Instrument 2016/356; and ASIC Corporations (Repeal) Instrument**  
**2016/452**

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations (Financial Product Advice—Exempt Documents) Instrument 2016/356* under paragraphs 926A(2)(a) and 951B(1)(a) of the *Corporations Act 2001* (the Act).

Paragraph 926A(2)(a) of the Act provides that ASIC may exempt a person or a financial product or class of persons or financial products from all or specified provisions of Part 7.6 of the Corporations Act (other than Divisions 4 and 8).

Paragraph 951B(1)(a) provides that ASIC may exempt a class of persons from all or specified provisions of Part 7.7 of the Act.

The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations (Repeal) Instrument 2016/452* under paragraph 911A(2)(l) of the Act.

Paragraph 911A(2)(l) of the Act provides that ASIC may exempt a person from the requirement to hold an Australian financial services licence for a financial service they provide. This is done by granting an exemption in writing and publishing it in the *Gazette*.

## **1. Background**

### ***Existing licensing exemption for financial product advice***

A person does not provide a financial service that is financial product advice when they provide an ‘exempt document or statement’ (s766B(1A)). The expression ‘exempt document or statement’ is provided in s766B(9)(b) to include a document or statement of a kind prescribed by reg 7.1.08 of the *Corporations Regulations 2001* (Corporations Regulations). We have given relief for the purposes of reg. 7.1.08(3) of the Corporations Regulations, from the requirement to hold an Australian financial services (AFS) licence, to a person that provides financial product advice in certain documents that contain general advice (e.g.

documents prepared for the purposes of the Act): see ASIC Class Order [CO 03/606] *Financial product advice: Exempt documents*.

Under the *Legislation Act 2003* legislative instruments cease automatically, or ‘sunset’, after 10 years, unless action is taken to exempt or preserve them. ASIC Class Order [CO 03/606] *Financial product advice: Exempt documents* is due to sunset on 1 April 2017. *ASIC Corporations (Financial Product Advice—Exempt Documents) Instrument 2016/356* has been issued to preserve the effect of the relief given by ASIC Class Order [CO 03/606] *Financial product advice: Exempt documents*.

### ***Why licensing exemption required***

The AFS licensing requirements are in Chapter 7 of the Act.

Parts 7.6 to 7.8 of the Act set out the AFS licensing requirements for providers of financial services. Section s911A requires any person who carries on a financial services business in Australia to hold an AFS licence. Under s766A(1), financial services includes providing financial product advice.

Financial product advice is a recommendation or a statement of opinion, or a report of either of these things, that is intended to, or could reasonably be regarded as being intended to, influence a client in making a decision about a particular financial product or class of financial product (or an interest in these): s766B(1).

Under s766B(1A), the giving of an ‘exempt document or statement’ does not constitute the provision of financial product advice.

Under s766B(9), an ‘exempt document or statement’ in s766B(1A) means:

- (a) a document prepared, or a statement given, in accordance with the requirements of Chapter 7, other than:
  - (i) a Statement of Advice; or
  - (ii) a document or statement of a kind prescribed by regulations made for the purposes of s766B(9); or
- (b) any other document or statement of a kind prescribed by regulations made for the purposes of s766B(9).

Under reg 7.1.08(3) of the Corporations Regulations, for the purposes of paragraph (b) of the definition of ‘exempt document or statement’ in s766B(9) of the Act, documents, information and statements that:

- (a) do not contain personal advice; and
- (b) are required by, and prepared as a result of, a requirement under an Australian law; and
- (c) are included in a class of documents, information or statements specified by ASIC in a list published in the *Gazette* for reg 7.1.08(3) of the Corporations Regulations,

are prescribed and so included in the definition of ‘exempt document or statement’.

## **2. Purpose of the instruments**

The purpose of *ASIC Corporations (Financial Product Advice—Exempt Documents) Instrument 2016/356* is to cover:

- (a) unintended situations of providing financial product advice that is general advice; and
- (b) general advice that is contained in an explanatory statement for certain foreign schemes or arrangement, or an offer document, or a document responding to an offer document under a control transaction, that is regulated in the jurisdiction of an approved foreign market. Without relief a person who distributes such a document in Australia would need an AFS licence.

*ASIC Corporations (Financial Product Advice—Exempt Documents) Instrument 2016/356* will continue the relief provided by ASIC Class Order [CO 03/606] in a new legislative instrument that reflects current drafting practice, without any significant changes.

The purpose of *ASIC Corporations (Repeal) Instrument 2016/452* is to repeal ASIC Class Order [CO 03/606].

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

In *ASIC Corporations (Financial Product Advice—Exempt Documents) Instrument 2016/356*, we have specified the documents, information or statements for the purposes of reg 7.1.08(3) of the Corporations Regulations that are included in the definition of ‘exempt document or statement’ in s766B(9)(b) of the Act.

Paragraph 5 of the instrument exempts a person that provides financial product advice that is general advice in the documents specified in the instrument, from the requirement to hold an AFS licence for the provision of financial product advice, or where the person is a financial services licensee or an authorised representative of such a licensee, from the conduct and disclosure requirements in Divisions 2 and 4 of Part 7.7 of the Act in relation to that advice.

Paragraph 6 of the instrument specifies the documents to which the relief applies as:

- (1) prepared in accordance with the Act or other Act or a disallowable legislative instrument made under an Act and not:
  - (a) an exempt document or statement as defined in subsection 766B(9); or
  - (b) a document or statement of the kind referred to in paragraphs (a)(i) or (ii) of that definition;
  - (c) a recommendation or statement of opinion made by an outside expert or a report of such a recommendation or statement of opinion as referred to in subsection 766B(1B); or;

- (2) explanatory statements for certain foreign schemes of arrangement; or
- (3) documents provided in relation to a transaction involving the acquisition of control or potential control of, or the acquisition of a substantial interest in, an issuer of securities or a managed investment scheme that is regulated in the jurisdiction of an approved foreign market.

Schedule 1 of *ASIC Corporations (Repeal) Instrument 2016/452* repeals ASIC Class [CO 03/606].

#### **4. Consultation**

As part of its review of ASIC Class Order [CO 03/606] ASIC released Consultation Paper 251 *Remaking ASIC class order on financial product advice: Exempt documents [CO 03/606]* (CP 251), which was issued on 16 February 2016 and was open for comment to 18 March 2016. ASIC received two submissions in response to CP 251 in support of the proposals.

The Office of Best Practice Regulation has assessed that a Regulatory Impact Statement is not required in order to make *ASIC Corporations (Financial Product Advice—Exempt Documents) Instrument 2016/356*.

## Statement of Compatibility with Human Rights

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

### **ASIC Corporations (Financial Product Advice – Exempt Documents) Instrument 2016/356 ASIC Corporations (Repeal) Instrument 2016/452**

*ASIC Corporations (Financial Product Advice – Exempt Documents) Instrument 2016/356 and ASIC Corporations (Repeal) Instrument 2016/452 are 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**

In *ASIC Corporations (Financial Product Advice—Exempt Documents) Instrument 2016/356*, we have specified the documents, information or statements for the purposes of reg 7.1.08(3) of the Corporations Regulations that are included in the definition of ‘exempt document or statement’ in s766B(9)(b) of the Act.

A person that provides financial product advice that is general advice in the documents specified in *ASIC Corporations (Financial Product Advice—Exempt Documents) Instrument 2016/356*, is exempt from the requirement to hold an AFS licence for the provision of financial product advice, or where the person is a financial services licensee or an authorised representative of such a licensee, from the conduct and disclosure requirements in Divisions 2 and 4 of Part 7.7 of the Act in relation to that advice.

*ASIC Corporations (Financial Product Advice—Exempt Documents) Instrument 2016/356* will continue the relief provided by ASIC Class Order [CO 03/606] in a new legislative instrument that reflects current drafting practice, without any significant changes.

The purpose of *ASIC Corporations (Repeal) Instrument 2016/452* is to repeal ASIC Class Order [CO 03/606] which is due to sunset on 1 April 2017.

#### **Human rights implications**

Neither legislative instrument engages any of the applicable rights or freedoms.

#### **Conclusion**

Both legislative instruments are compatible with human rights as it does not raise any human rights issues.