

EXPLANATORY STATEMENT for

ASIC CORPORATIONS (REPEAL) INSTRUMENT 2016/774

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes ASIC Corporations (Repeal) Instrument 2016/774 under paragraph 601QA(1)(a) of the *Corporations Act 2001* (the **Act**).

This legislative instrument repeals ASIC Class Order [CO 02/226] *Managed investment schemes: No issue required disclosure*.

Paragraph 601QA(1)(a) of the Act provides that ASIC may exempt a person, a class of persons or all persons from a provision of Chapter 5C of the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the relevant power 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

ASIC has recently reviewed ASIC Class Order [CO 02/226] which provides an alternative to subsection 601ED(2) of the Act to permit certain managed investment schemes to be unregistered. ASIC has decided to cease to provide the relief in [CO 02/226] as that relief is considered to be unnecessary.

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. [CO 02/226] was scheduled to expire on 1 April 2017, under the sunsetting provisions of the **LA**.

ASIC's review of the policy underlying this class order, and subsequent consultation which garnered no feedback, has provided an opportunity to deal with the class order's imminent expiry and to repeal the instrument rather than let it sunset.

2. Purpose of the instrument

The purpose of ASIC Corporations (Repeal) Instrument 2016/774 is to repeal ASIC Class Order [CO 02/226] *Managed investment schemes: No issue required disclosure*.

3. Operation of the instrument

ASIC Corporations (Repeal) Instrument 2016/774 repeals [CO 02/226].

4. Consultation

On 30 May 2016 ASIC released CP 259 *Repealing ASIC class order on managed investment schemes: No issue required disclosure* [CO 02/226] (CP 259) seeking feedback on our proposal to repeal [CO 02/226] as we consider it is no longer required and does not form a useful and necessary part of the legislative framework. The consultation period ended on 28 June 2016.

ASIC received no submissions in response to CP 259.

Following the consultation, ASIC decided to proceed to repeal [CO 02/226].

Statement of Compatibility with Human Rights

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

ASIC Corporations (Repeal) Instrument 2016/774

ASIC Corporations (Repeal) Instrument 2016/774 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

ASIC Corporations (Repeal) Instrument 2016/774 repeals ASIC Class Order [CO 02/226]. The purpose of [CO 02/226] was to address the unintended consequence of a managed investment scheme being required to be registered where it contains only members not requiring regulated disclosure (i.e. wholesale members).

[CO 02/226] is being repealed because it has limited operation. In most cases, by the time all retail members withdraw from the managed investment scheme, the scheme is probably already registered, and so the relief is unnecessary.

We consider that any residual need for the relief provided by this class order is more appropriately given on a case-by-case basis by application

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.