

## **EXPLANATORY STATEMENT for**

### **ASIC Corporations (Disclosing Entities) Instrument 2016/190**

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations (Disclosing Entities) Instrument 2016/190* under subsection 341(1) of the *Corporations Act 2001* (the Corporations Act).

Subsection 341(1) provides that ASIC may make an order in writing in respect of a specified class of companies, registered schemes or disclosing entities, relieving any of the directors, the companies, registered schemes or disclosing entities themselves, or the auditors of the companies, registered schemes or disclosing entities from all or specified requirements of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4) of the Corporations Act.

#### **1. Background**

Section 302 of the Corporations Act requires a disclosing entity to prepare and lodge with ASIC a half-year financial report, directors' report and auditor's report (half-year reports) unless the entity is not a disclosing entity when lodgement is due.

There is no equivalent provision in the Corporations Act for the lodgement of the financial report, directors' report and auditor's report for a financial year (financial year reports) if an entity ceases to be a disclosing entity before lodgement is due.

There is no apparent reason for an entity that ceases to be a disclosing entity before its full-year reporting deadline to be treated differently to an entity that ceases to be a disclosing entity before its half-year reporting deadline. At the time of reporting, the entity has users that are similar in more ways to other non-disclosing entities than to disclosing entities.

A half year for a disclosing entity is the first six months of a financial year. The initial financial year can be any period up to 18 months from the date of registration or incorporation.

Section 323D of the Corporations Act allows an entity to have a subsequent financial year of less than 12 months in certain circumstances. In some cases, the entity may have a financial

year of between six and 12 months, and may be required to prepare and lodge half-year and financial year reports in quick succession.

It is unnecessarily burdensome for a disclosing entity to prepare reports in quick succession and stakeholders are unlikely to be disadvantaged by not receiving a half-year report in close proximity to a financial year report.

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

*ASIC Corporations (Disclosing Entities) Instrument 2016/190* relieves an entity from reporting as a disclosing entity for a financial year if it ceases to be a disclosing entity before the earlier of the lodgement deadline and the deadline for reporting to members. While the entity would still be required to lodge the financial year reports, the content and lodgement dates of the reports are less onerous than for a disclosing entity.

The instrument also relieves a disclosing entity from the requirement to prepare a half-year report if its first financial year lasts for eight months or less.

Class Order [CO 98/2016] and Class Order [CO 08/15] are repealed by Schedule 2 to the *ASIC Corporations (Amendment and Repeal) Instrument 2016/247*.

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

The instrument provides relief to an entity which is a disclosing entity at the end of its financial year but which ceases to be a disclosing entity before the day 3 months after the end of that financial year or, if the entity is a company required to have an AGM, before 21 days before the date of the next AGM, whichever is earlier.

The entity does not have to comply with the requirements of Chapter 2M of the Corporations Act to the extent those requirements apply to a disclosing entity. The directors must also resolve before the relevant date that there are no reasons to believe the entity may become a disclosing entity before the end of the next financial year.

A disclosing entity must give notice of its intention to rely on *ASIC Corporations (Disclosing Entities) Instrument 2016/190* in respect of its first half-year either to the market operator if listed or to ASIC if unlisted.

The instrument also preserves the relief given by Class Order [CO 14/757]. Under that class order, acts and things that must be done by registered company auditors and authorised audit companies may also be done by auditors whose registration may have been adversely affected by doubts about the legal efficacy of the auditing competency standard issued by CPA Australia and The Institute of Chartered Accountants in Australia which ASIC relied upon to register company auditors and authorised audit companies.

#### **4. Consultation**

ASIC has consulted with stakeholders through Consultation Paper 240 which was issued on 1 October 2015 and was open for comment to 30 October 2015.

The Office of Best Practice Regulation has assessed that a Regulatory Impact Statement is not necessary for this instrument.

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

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

### **ASIC Corporations (Disclosing Entities) Instrument 2016/190**

*ASIC Corporations (Disclosing Entities) Instrument 2016/190 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 objective of the legislative instrument is to reduce the financial reporting obligations of disclosing entities which cease to be disclosing entities before their reporting deadline or which have a short first half-year.

#### **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**