

**EXPLANATORY STATEMENT for
ASIC Corporations (Disclosure of Directors' Interests) Instrument 2016/881**

and

ASIC Corporations (Repeal) Instrument 2016/882

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes the following legislative instruments under subsection 205G(6) of the *Corporations Act 2001* (the *Act*):

- (a) *ASIC Corporations (Disclosure of Directors' Interests) Instrument 2016/881* (the **principal instrument**);
- (b) *ASIC Corporations (Repeal) Instrument 2016/882* (the **repeal instrument**).

Subsection 205G(6) of the Act provides that ASIC may make an order in writing relieving a director of the obligation to notify the relevant market operator of an interest in a security or contract. The order may be made in respect of a specified class of companies, directors, securities or contracts.

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

Under the *Legislative Instruments Act 2003*, legislative instruments cease automatically, or 'sunset', after 10 years, unless action is taken to exempt or preserve them. To preserve its effect, a legislative instrument must be remade before the sunset date. The purpose of sunset is to ensure that instruments are kept up to date and only remain in force while they are fit for purpose, necessary and relevant.

ASIC Class Order [CO 01/1519] exempts directors of public companies from complying with subsection 205G(1) of the Act where the relevant listed company has made equivalent disclosure to ASX Limited (**ASX**) in compliance with ASX Listing Rule 3.19A. This instrument is due to sunset on 1 April 2017. ASIC has reviewed its policy underlying the class order. In light of this review and following public consultation, ASIC considers that this class order relief is necessary, fit-for-purpose and relevant. As such ASIC has decided to reissue the relief underlying the instrument by making the principal instrument.

ASIC has decided that the conditions of relief set out in ASIC Class Order [CO 01/1519] are no longer necessary for the purposes of the principal instrument. ASIC considers that:

- (a) a director or a company should no longer be required to retain a ‘substantially faithful hard copy’ of the notice given to ASX in accordance with ASX Listing Rule 3.19A because these notices are publicly released through ASX’s market announcements platform and ASX is required under section 792C of the Act to give ASIC the same information provided in the notice; and
- (b) relevant companies and directors should no longer be required to use ASX Online exclusively when lodging these notices electronically as this condition merely reflects existing requirements imposed by the ASX and therefore there appears to be no benefit that it be imposed by the instrument.

2. Purpose of the legislative instruments

The purpose of the principal instrument is to reduce the regulatory burden on directors of public companies in relation to their disclosure obligations under subsection 205G(1) of the Act when those companies are otherwise complying with the ASX Listing Rules, which require equivalent disclosure. ASIC considers there is no regulatory benefit to requiring dual disclosure.

The purpose of the repeal instrument is to discontinue the existing instrument, which will be superseded by the principal instrument.

3. Operation of the legislative instruments

The principal instrument exempts a director of a public company which is listed on the financial market operated by ASX from complying with subsection 205G(1) of the Act if the director reasonably believes that the company has complied with rule 3.19A of the ASX Listing Rules in relation to the director.

The repeal instrument repeals ASIC Class Order [CO 01/1519]. Directors of public companies which are listed on the financial market operated by ASX can now rely on the principal instrument.

4. Consultation

The relief given in the principal instrument was the subject of Consultation Paper 262 *Remaking and repealing ASIC class orders on markets and securities (CP 262)*. CP 262 was published in July 2016. ASIC did not receive any feedback opposing the making of the principal instrument. The Office of Best Practice Regulation advised that a Regulatory Impact Statement is not required in order to make the principal instrument.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Disclosure of Directors' Interests) Instrument 2016/881 ASIC Corporations (Repeal) Instrument 2016/882

The following legislative instruments 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*:

- *ASIC Corporations (Disclosure of Directors' Interests) Instrument 2016/881*;
- *ASIC Corporations (Repeal) Instrument 2016/882*.

Overview

ASIC Corporations (Disclosure of Directors' Interests) Instrument 2016/881 reduces the regulatory burden on directors of public companies in relation to their disclosure obligations under subsection 205G(1) of the *Corporations Act 2001* when those companies are otherwise complying with the ASX Listing Rules, which require equivalent disclosure.

ASIC Corporations (Repeal) Instrument 2016/882 discontinues ASIC Class Order [CO 01/1519], being the instrument that gave effect to ASIC's previous policy, and which will be superseded by *ASIC Corporations (Disclosure of Directors' Interests) Instrument 2016/881*.

Human rights implications

The legislative instruments do not engage any of the applicable rights or freedoms.

Conclusion

The legislative instruments are compatible with human rights as they do not raise any human rights issues.

Australian Securities and Investments Commission