

EXPLANATORY STATEMENT for

ASIC Corporations (Repeal) Instrument 2016/909

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations (Repeal) Instrument 2016/909* under subsections 341(1), 655A(1), 669(1), 673(1) and 1020F(1) of the *Corporations Act 2001* (the Act).

This legislative instrument repeals the following ASIC class orders:

- ASIC Class Order [CO 00/2449] *ASX Online — relief from paper form lodgment*; and
- ASIC Class Order [CO 02/1296] *ASX managed investment warrants – FSR Act transition*

Section 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 following from all or specified requirements of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4):

Section 655A(1) provides that ASIC may exempt a person from a provision of Chapter 6 or declare that Chapter 6 applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

Section 669(1) provides that ASIC may exempt a person from a provision of Chapter 6A or declare that Chapter 6A applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

Section 673(1) provides that ASIC may exempt a person from a provision of Chapter 6C or declare that Chapter 6C applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

Section 1020F(1) provides that ASIC may

- (a) exempt a person or class of persons from all or specified provisions of Part 7.9; or
- (b) exempt a financial product or a class of financial products from all or specified provisions of Part 7.9; or

- (c) declare that Part 7.9 applies in relation to a person or a financial product, or a class of persons or financial products, as if specified provisions 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

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 sunsetting 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 00/2449] *ASX Online — relief from paper form lodgment*

[CO 00/2449] provides relief from the obligation of bodies listed on ASX to lodge or send documents to ASX in hardcopy form or fax. Under [CO 00/2449], bodies listed on ASX are permitted to lodge documents electronically using ‘ASX Online’, ASX’s electronic lodgement facility.

[CO 00/2449] was intended to remove any doubt about the legal effectiveness of electronic lodgement through ASX Online of documents which are required to be provided under the Act. Since [CO 00/2449] was made, the prevalence of electronic communication has continued to increase. We no longer consider that there is any doubt that the electronic provision of a document is legally effective under the Act, in the absence of a clear intention to the contrary. This is consistent with our approach in Regulatory Guide 107 *Fundraising: Facilitating electronic offers of securities* (RG 107) at RG 107.21.

Since we have formed the view that electronic lodgement with ASX through ASX Online is effective under the Act without the provision of relief we consider that [CO 00/2449] is no longer required.

ASIC Class Order [CO 02/1296] *ASX managed investment warrants – FSR Act transition*

[CO 02/1296] extends the definition of ‘warrant’ in reg 1.0.02(1) of the Corporations Regulations 2001 (Corporations Regulations) to include managed investment warrants.

[CO 02/1296] also relieves managed investment warrant issuers and purchasers from a number of disclosure requirements imposed by Pt 7.9 of the Act following the enactment of the Financial Services Reform Act 2001 (FSR Act). This relief was intended to broadly mirror the transitional relief provided by s1438 of the Act. Section 1438 does not apply to managed investment warrants.

ASIC has decided to repeal [CO 02/1296] because the relief has been rendered unnecessary by either:

- (a) legislative amendment; or
- (b) the expiry of the transitional relief period in [CO 02/1296].

Definition of warrant has been amended to include managed investment warrants

Regulation 1.0.02(1) of the Corporations Regulations was amended by the Corporations Amendment Regulations 2003 (No. 1) 2003 No. 31 to extend the definition of ‘warrant’ to include managed investment warrants. As a result of this amendment, this part of [CO 02/1296] is no longer necessary.

Transitional relief period has expired

The exemptions provided by s1438 of the Act only applied during the period beginning on commencement of the FSR Act and ending on the earlier of the expiry of a two year period after the commencement of the FSR Act or the date specified in a notice lodged with ASIC.

The two year period has since expired and the transitional relief provided by s1438 is no longer in effect. As a result, the extension of this relief to managed investment warrants by [CO 02/1296] is no longer required.

[CO 02/1296] grants relief in respect of managed investment warrants where the offer, recommendation, issue or on-sale of the warrants occurs before the end of the exemption periods provided by s1438. Because this period has since expired, we consider that [CO 02/1296] no longer has any substantive effect.

2. Purpose of the instrument

The purpose of *ASIC Corporations (Repeal) Instrument 2016/909* is to repeal [CO 00/2449] and [CO 02/1296]

3. Operation of the instrument

Paragraph 1 of the Schedule of the instrument repeals [CO 00/2449].

Paragraph 2 of the Schedule of the instrument repeals [CO 02/1296].

4. Consultation

On 24 August 2015, ASIC released Consultation Paper 236 *Remaking ASIC class orders: [CO 02/281] and [CO 02/312]* (CP 236) seeking feedback on our proposal to repeal [CO 00/2449] and [CO 02/1296].

We received four submissions in response to CP 236. All the feedback received supported ASIC's proposal to repeal [CO 00/2449] and [CO 02/1296].

Statement of Compatibility with Human Rights

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

ASIC Corporations (Repeal) Instrument 2016/909

ASIC Corporations (Repeal) Instrument 2016/909 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

This instrument will repeal:

- ASIC Class Order [CO 00/2449] *ASX Online — relief from paper form lodgment*; and
- ASIC Class Order [CO 02/1296] *ASX managed investment warrants – FSR Act transition*

[CO 00/2449] provides relief from the obligation of bodies listed on ASX to lodge or send documents to ASX in hardcopy form or fax. Under [CO 00/2449], bodies listed on ASX are permitted to lodge documents electronically using ‘ASX Online’, ASX’s electronic lodgement facility.

We no longer consider that electronic lodgement with ASX through ASX Online is effective under the Corporations Act without the provision of relief and consider that [CO 00/2449] is no longer required.

[CO 02/1296] extends the definition of ‘warrant’ in reg 1.0.02(1) of the Corporations Regulations 2001 (Corporations Regulations) to include managed investment warrants.

[CO 02/1296] also relieves managed investment warrant issuers and purchasers from a number of disclosure requirements imposed by Pt 7.9 of the Corporations Act following the enactment of the Financial Services Reform Act 2001 (FSR Act). This relief was intended to broadly mirror the transitional relief provided by s1438 of the Corporations Act. Section 1438 does not apply to managed investment warrants.

ASIC has decided to repeal [CO 02/1296] because the relief has been rendered unnecessary by either:

- (a) legislative amendment; or
- (b) the expiry of the transitional relief period in [CO 02/1296].

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.