

EXPLANATORY STATEMENT for ASIC Corporations (Amendment and Repeal) Instrument 2016/895

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes the *ASIC Corporations (Amendment and Repeal) Instrument 2016/895* (the **amending instrument**) under paragraph 926A(2)(a) of the *Corporations Act 2001* (the **Act**).

Subsection 926A(2) of the Act provides that ASIC may, among other things, exempt a class of persons from all or specified provisions from Part 7.6 of the Act other than Divisions 4 and 8. Subsection 926A(4) provides that an exemption is a legislative instrument if the exemption is expressed to apply to a class of persons.

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 03/911] exempts bodies entitled to the self-dealing exemption under subsection 766C(4) of the Act from the requirement to hold an AFS licence when providing general product advice in offer documents to wholesale clients. 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 amending *ASIC Corporations (Financial Product Advice—Exempt Documents) Instrument 2016/356* (the **amended instrument**) to include the relief.

2. Purpose of the instrument

The purpose of the amending instrument is to:

- (a) ensure that entities relying on the exemption in subsection 766C(4) of the Act are not otherwise required to hold an AFS licence in order to provide offer documents to wholesale clients because such documents are often considered to contain general advice; and

(b) discontinue ASIC Class Order [CO 03/911], which will be superseded by the amended instrument.

3. Operation of the legislative instrument

The amending instrument exempts entities to which subsection 766C(4) of the Act applies from having to comply with the requirement in subsection 911A(1) of the Act to hold an Australian financial services licence for the provision to wholesale clients of general advice that relates to securities, debentures, stocks or bonds of the entity and is contained in a document offering those securities, debentures, stocks or bonds for issue.

The amending instrument also repeals ASIC Class Order [CO 03/911]. Entities to which subsection 766C(4) of the Act applies can now rely on the amended instrument.

4. Consultation

The relief given in the amending 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 amending instrument.

The Office of Best Practice Regulation advised that a Regulatory Impact Statement is not required in order to make the amending instrument.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Amendment and Repeal) Instrument 2016/895

The following legislative instrument 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*:

- *ASIC Corporations (Amendment and Repeal) Instrument 2016/895.*

Overview

ASIC Corporations (Amendment and Repeal) Instrument 2016/895 ensures that entities relying on the exemption in subsection 766C(4) of the *Corporations Act 2001* are not otherwise required to hold an AFS licence in order to provide offer documents to wholesale clients because such documents are often considered to contain general advice. The instrument also discontinues ASIC Class Order [CO 03/826], being the instrument that gave effect to ASIC's previous policy, and which will be superseded by *ASIC Corporations (Financial Product Advice—Exempt Documents) Instrument 2016/356*.

Human rights implications

The legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

The legislative instrument is compatible with human rights as it does not raise any human rights issues.

Australian Securities and Investments Commission