

**EXPLANATORY STATEMENT for  
ASIC Corporations (Exchange-Traded Warrants) Instrument 2016/886**

**and**

**ASIC Corporations (Repeal) Instrument 2016/887**

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (**ASIC**) makes the following legislative instruments under subsections 111AT(1) and 1020F(1) of the *Corporations Act 2001* (the **Act**):

- (a) *ASIC Corporations (Exchange Traded Warrants) Instrument 2016/886* (the **principal instrument**);
- (b) *ASIC Corporations (Repeal) Instrument 2016/887* (the **repeal instrument**).

Subsection 111AT(1) of the Act provides that ASIC may, by writing, exempt specified persons from all or specified disclosing entity provisions either generally or as otherwise specified and either unconditionally or subject to specified conditions.

Subsection 1020F(1) of the Act provides that ASIC may, among other things, declare that Part 7.9 of the Act 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 sunseting 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 02/608] ensures transfers of warrants quoted on markets operated by ASX Limited (**ASX**) and Chi-X Australia Pty Ltd (**Chi-X**) as a result of a secondary sale do

not require the provision of a Product Disclosure Statement (**PDS**). ASIC considers that the secondary sales of warrants should not be subject to disclosure requirements which ordinarily apply to the issue of financial products. ASIC considers that the regulatory burden imposed by such a requirement significantly outweighs any regulatory benefit associated with it. This instrument is due to sunset on 1 April 2017.

ASIC Class Order [03/957] exempts issuers of ASX and Chi-X financial market traded instalment warrants over managed investment products, from the PDS requirements in Part 7.9 of the Act. Part 7.9 would otherwise apply because those warrants are considered to be ‘managed investment products’. This instrument also clarifies that where a managed investment warrant might be characterised as an ED security under subsection 111AD(1) of the Act, warrant issuers are exempt from the reporting and continuous disclosure requirements in Chapters 2M and 6CA of the Act, but are subject to the continuous disclosure requirements in Part 7.9 of the Act. ASIC considers that, since the underlying interest in registered managed investment schemes is subject to separate regulation, the relief provided by ASIC Class Order [CO 03/957] prevents the unnecessary duplication of disclosure. ASIC also does not consider that this relief compromises investor protection. This instrument is due to sunset on 1 April 2017.

ASIC has reviewed its policy underlying ASIC Class Orders [CO 02/608] and [03/957]. 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 instruments by making the principal instrument.

## **2. Purpose of the legislative instruments**

The purpose of the principal instrument is to:

- (a) ensure that secondary sales of warrants quoted on ASX and Chi-X are not subject to disclosure requirements ordinarily applying to the issue of financial products; and
- (b) achieve neutrality in the regulation of managed warrants, share warrants and stapled securities by exempting managed investment warrants from additional disclosure requirements.

The purpose of the repeal instrument is to discontinue ASIC Class Orders [CO 02/608] and [CO 03/957], which will be superseded by the principal instrument.

## **3. Operation of the legislative instruments**

The principal instrument provides that warrant issuers that comply with section 1017B of the Act as if subsection 1017B(2) were omitted are exempt from:

- (a) section 1013I of the Act in relation to a PDS or Short-Form PDS;
- (b) section 1015B of the Act in relation to a PDS; and
- (c) section 1017D of the Act

in relation to exchange-traded managed investment warrants of the warrant issuer.

The principal instrument also exempts warrant issuers from the disclosing entity provisions as defined in section 111AR of the Act where the warrant issuer is a disclosing entity only because one or more classes of exchange-traded managed investment warrants of the warrant issuer are ED securities.

In addition, the principal instrument provides that Part 7.9 of the Act applies in relation to an exchange-traded warrant as if item 3 in the table in subsection 761E(3) of the Act were omitted where the exchange-traded warrant is acquired on the financial market in relation to which it has been admitted to trading status or quotation.

The repeal instrument repeals ASIC Class Orders [CO 02/608] and [CO 03/957]. Warrant issuers 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 (Exchange-Traded Warrants) Instrument 2016/886** **ASIC Corporations (Repeal) Instrument 2016/887**

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 (Exchange-Traded Warrants) Instrument 2016/886*;
- *ASIC Corporations (Repeal) Instrument 2016/887*.

#### **Overview**

*ASIC Corporations (Exchange-Traded Warrants) Instrument 2016/886* ensures that secondary sales of warrants quoted on the ASX and Chi-X are not subject to disclosure requirements ordinarily applying to the issue of financial products. It also exempts issuers of ASX and Chi-X financial market traded instalment warrants over managed investment products from such disclosure requirements.

*ASIC Corporations (Repeal) Instrument 2016/887* discontinues ASIC Class Orders [CO 02/608] and [CO 03/957], being the instruments that gave effect to ASIC's previous policy, and which will be superseded by *ASIC Corporations (Exchange-Traded Warrants) Instrument 2016/886*.

#### **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**