

**EXPLANATORY STATEMENT for
ASIC Corporations (Exchange-Traded Derivatives: Multiple Issuers)
Instrument 2016/883**

and

ASIC Corporations (Repeal) Instrument 2016/885

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 1020F(1) of the *Corporations Act 2001* (the **Act**):

- (a) *ASIC Corporations (Exchange-Traded Derivatives: Multiple Issuers) Instrument 2016/883* (the **principal instrument**);
- (b) *ASIC Corporations (Repeal) Instrument 2016/885* (the **repeal instrument**).

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 06/682] provides, among other things, that where more than one Australian financial services (AFS) licensee is involved in arranging for a derivative to be entered into or acquired on a financial market, only the market participant need prepare a Product Disclosure Statement (PDS), or a Short-Form PDS, for the derivative. It also limits certain information requirements for the PDS or Short-Form PDS under the Act. Lastly, the instrument imposes an obligation on the AFS licensees which, by the operation of the instrument, do not have to prepare a PDS or Short-Form PDS, to provide any information

which has not been provided to the client, but which would otherwise be required to be given to the client under subsection 1013D(1). 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 instruments by making the principal instrument.

2. Purpose of the legislative instruments

The purpose of the principal instrument is to address concerns that, where financial services are affected by subsection 761E(6) of the Act, strict compliance with the requirements for preparation of a PDS could result in duplication of information and confusion for retail clients.

The purpose of the repeal instrument is to discontinue ASIC Class Order [CO 06/682], which will be superseded by the principal instrument.

3. Operation of the legislative instruments

The principal instrument provides that for a derivative that:

- (a) is entered into or acquired on a financial market; and
- (b) in relation to which both a financial services licensee who is not a market participant (the **intermediary licensee**) and another financial services licensee who is a market participant are taken to be the issuer under section 761E(6),

a PDS will only be required to be prepared by the market participant.

In addition, under the principal instrument the intermediary licensee is required to ensure that the client is given, in writing, the statements and information which the client has not already been given that would have been required by subsection 1013D(1) but for the operation of the instrument at or before the time when the intermediary licensee offers to issue, offers to arrange for the issue of, or makes a recommendation to acquire, the derivative to the client, or the derivative is issued under such an offer or as a result of such a recommendation.

The repeal instrument repeals ASIC Class Order [CO 06/682]. Derivative issuers can now rely on 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 Derivatives: Multiple Issuers) Instrument 2016/883 ASIC Corporations (Repeal) Instrument 2016/885

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 Derivatives: Multiple Issuers) Instrument 2016/883*;
- *ASIC Corporations (Repeal) Instrument 2016/885*.

Overview

ASIC Corporations (Exchange-Traded Derivatives: Multiple Issuers) Instrument 2016/883 provides, among other things, that where more than one Australian financial services licensee is involved in arranging for a derivative to be entered into or acquired on financial market, only the market participant need prepare a Product Disclosure Statement (**PDS**), or a Short-Form PDS, for the derivative. It also limits certain information requirements for the PDS or Short-Form PDS under the Act. Lastly, the instrument imposes an obligation on the AFS licensees which, by the operation of the instrument, do not have to prepare a PDS or Short-Form PDS, to provide any information which has not been provided to the client, but which would otherwise be required to be given to the client under subsection 1013D(1).

ASIC Corporations (Repeal) Instrument 2016/885 discontinues ASIC Class Order [CO 06/682], being the instrument that gave effect to ASIC's previous policy, and which will be superseded by *ASIC Corporations (Exchange-Traded Derivatives: Multiple Issuers) Instrument 2016/883*.

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