

Explanatory Statement for

ASIC Corporations (Renounceable Rights Issue Notifications) Instrument

2016/993 and ASIC Corporations (Repeal) Instrument 2016/1005

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes ASIC Corporations (Renounceable Rights Issue Notifications) Instrument 2016/993 and ASIC Corporations (Repeal) Instrument 2016/1005 under paragraphs 741(1)(a) and 1020F(1)(a) of the *Corporations Act 2001* (the *Act*).

Paragraph 741(1)(a) provides that ASIC may exempt a person from a provision of Chapter 6D of the Act. Paragraph 741(2)(b) provides that the exemption may apply to all persons, specified persons or a specified class of persons.

Paragraph 1020F(1)(a) provides that ASIC may exempt a person or a class of persons from all or specified provisions of Part 7.9 of the Act.

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 its sunset date.

ASIC Class Order [CO 02/225] is scheduled to sunset on 1 April 2017. ASIC Corporations (Repeal) Instrument 2016/1005 repeals [CO 02/225] while ASIC Corporations (Renounceable

Rights Issue Notifications) Instrument 2016/993 continues the relief that was given by [CO 02/225] in a new form.

ASIC Corporations (Renounceable Rights Issue Notifications) Instrument 2016/993 provides relief in connection with ‘rights issue notifications’ (i.e. the notification form that members receive in a rights offer informing them of their individual entitlement to acquire a specified number of shares or interests under the offer). The standard form used by listed companies, referred to as an ‘entitlement and acceptance form’, combines the ‘rights issue notification’ with an acceptance form and is provided to members with the offer document or disclosure document, as applicable, for the rights offer.

In a renounceable rights offer, one of the options available to the offeree includes transferring all or part of their entitlement to another person. The transfer of such an entitlement is governed by Division 3 of Part 7.11 of the Act and regulation 7.11.11(2) of the *Corporations Regulations 2001* (the **Regulations**). The latter provides that a sufficient transfer of a ‘Division 3 right’ can be effected by a document duly completed in accordance with specified forms set out in Schedule 2A to the Regulations.

In practice, this is effected by the offeree (i.e. the transferor) sending a completed renunciation and transfer form to the relevant share registry and, if the transferee wishes to take up all or part of the entitlement transferred to them, they must then send their application money together with the entitlement and acceptance form to the registry.

Certain provisions of Chapter 6D and Part 7.9 may require these forms to be included in or accompanied by a disclosure document or Product Disclosure Statement. ASIC Corporations (Renounceable Rights Issue Notifications) Instrument 2016/993 provides disclosure relief to facilitate the sale or transfer of rights by offerees in a renounceable rights offer.

2. Purpose of the instrument

The purpose of ASIC Corporations (Renounceable Rights Issue Notifications) Instrument 2016/993 is to preserve the effect of [CO 02/225], which was scheduled to sunset on 1 April 2017 under the *Legislative Instruments Act 2003*. ASIC considers that the relief in the instrument continues to form a necessary and useful part of the legislative framework.

The instrument re-makes the relief that was provided by [CO 02/225] without significant changes. Minor amendments were made to the conditions of the relief so as to facilitate electronic access to documents and to remove unnecessary references (see Consultation Paper 261: *Remaking and repealing ASIC class orders on rights issue notifications and money market deposits*).

ASIC Corporations (Repeal) Instrument 2016/1005 repeals [CO 02/225] as the relief contained within that class order is now provided by ASIC Corporations (Renounceable Rights Issue Notifications) Instrument 2016/993.

3. Operation of the instrument

ASIC Corporations (Renounceable Rights Issue Notifications) Instrument 2016/993

Chapter 6D disclosure relief

ASIC Corporations (Renounceable Rights Issue Notifications) Instrument 2016/993 provides relief from subsections 721(1), 723(1) and 727(2) of the Act to persons involved in the renunciation and transfer of rights issued under a renounceable rights issue, but only to the extent that those provisions might otherwise require a 'rights renunciation form' to be included in or accompanied by a disclosure document.

For the purposes of the instrument, a rights renunciation form means:

- (a) Form 5, 6, 7 or 8 in Schedule 2A to the Regulations or a form that is substantially similar to one of those Forms; or
- (b) a notification form informing holders of Division 3 assets of their individual entitlement to acquire a specified number of Division 3 assets under a renounceable rights issue.

Part 7.9 disclosure relief

The instrument also provides relief from sections 1012B and 1016A of the Act to responsible entities of listed registered schemes that make offers to issue and issues interests in the scheme under a renounceable rights issue, but only to the extent that those provisions might require:

- (a) a rights renunciation form to be included in or be accompanied by a Product Disclosure Statement; and
- (b) the responsible entity to give a Product Disclosure Statement to a person (a transferee) to whom Division 3 rights are transferred or to a transferee who exercises such rights.

Conditions

In order to rely on the relief in the instrument, the listed body or the responsible entity (as applicable) must:

- (a) have arrangements in place to ensure that during the period that offers under the renounceable rights issue remain open:
 - (i) the disclosure document or Product Disclosure Statement for the renounceable rights issue is made available for inspection at the registered office of the body

or responsible entity or published on a website of the body or responsible entity;

- (ii) if requested by a person (other than an excluded person), the disclosure document or Product Disclosure Statement is given to the person free of charge; and

- (b) announce to each prescribed financial market on which the body or scheme is listed that the arrangements specified in paragraph (a) have been or will be put in place.

ASIC Corporations (Repeal) Instrument 2016/1005

ASIC Corporations (Repeal) Instrument 2016/1005 repeals [CO 02/225].

4. Consultation

ASIC undertook public consultation in relation to its proposal to re-make the relief in [CO 02/225] in Consultation Paper 261: *Remaking and repealing ASIC class orders on rights issue notifications and money market deposits*. ASIC received one submission, which was in support of the proposals outlined in the paper.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Renounceable Rights Issue Notifications) Instrument 2016/993
ASIC Corporations (Repeal) Instrument 2016/1005

ASIC Corporations (Renounceable Rights Issue Notifications) Instrument 2016/993 and ASIC Corporations (Repeal) Instrument 2016/1005 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

ASIC Corporations (Renounceable Rights Issue Notifications) Instrument 2016/993 provides relief from certain provisions of Chapter 6D and Part 7.9 of the *Corporations Act 2001* to facilitate the sale and transfer of rights offered under a renounceable rights issue.

ASIC Corporations (Repeal) Instrument 2016/1005 repeals ASIC Class Order [CO 02/225].

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.

Australian Securities and Investments Commission