

EXPLANATORY STATEMENT for

ASIC Corporations (Top-up Product Disclosure Statements Relief) Instrument 2016/1054

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes *ASIC Corporations (Top-up Product Disclosure Statements Relief) Instrument 2016/1054*, under paragraph 1020F(1)(b) of the *Corporations Act 2001* (the **Corporations Act**).

Paragraph 1020F(1)(b) provides that ASIC may exempt a financial product or a class of financial products from all or specified provisions of Part 7.9 of the Corporations Act.

The instrument remakes ASIC Class Order [CO 02/1072] *Top-up relief for managed investment schemes* which is due to sunset on 1 April 2017 under the *Legislation Act 2003*.

ASIC Class Order [CO 02/1072] is repealed by ASIC Corporations (Repeal) Instrument 2016/1053.

1. Background

This instrument allows members in a managed investment scheme to make additional investments in the same scheme without being given a Product Disclosure Statement (PDS), provided that:

- (a) interests in the same class as the member's current holding are being acquired; and
- (b) the member has previously paid a total of at least \$500,000 for the purchase of interests in the same class.

This relief is consistent with the exemption given in paragraph 708(8)(b) of the Corporations Act in relation to the provision of a prospectus to a sophisticated investor. A sophisticated investor is deemed to have sufficient investing experience and knowledge to weigh the risks and merits of an investment opportunity, and a prospectus may not be necessary.

2. Purpose of the instrument

The purpose of the *ASIC Corporations (Top-up Product Disclosure Statements Relief) Instrument 2016/1054* is to continue the substantive effect of the relief granted by ASIC Class Order [CO 02/1072] *Top-up relief for managed investment schemes*.

3. Operation of the instrument

Exemption for managed investment schemes

Section 5 grants an exemption from sections 1012A, 1012B and 1012C of the Corporations Act, where an offer of an interest is made to a person who holds an interest in the same class for which the person has paid at least \$500,000.

4. Consultation

ASIC consulted with industry stakeholders on its proposal to remake, without significant changes, ASIC Class Order [CO 02/1072].

The feedback received in response to ASIC Consultation Paper CP 255 Remaking ASIC class orders on financial services disclosure requirements supported the proposal to issue a new instrument to continue the effect of the relief granted under ASIC Class Order [CO 02/1072].

Statement of Compatibility with Human Rights

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

ASIC Corporations (Top-up Product Disclosure Statements Relief) Instrument 2016/1054

ASIC Corporations (Top-up Product Disclosure Statements Relief) Instrument
2016/1054 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 (Top-up Product Disclosure Statements Relief) Instrument
2016/1054 continues the effect of ASIC Class Order [CO 02/1072] by providing relief
from the requirement to provide a Product Disclosure Statement in relation to an
issue of interests in a managed investment scheme to an investor who has previously
paid at least \$500,000 for interests in the same class.

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