

EXPLANATORY STATEMENT for

ASIC Corporations (Updated Product Disclosure Statements) Instrument 2016/1055

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes *ASIC Corporations (Updated Product Disclosure Statements) Instrument 2016/1055*, under paragraph 1020F(1)(c) of the *Corporations Act 2001* (**Corporations Act**).

Paragraph 1020F(1)(c) provides that ASIC may declare that Part 7.9 of the Corporations Act applies in relation to a person or financial product as if specified provisions were omitted, modified or varied as specified in the declaration.

The instrument remakes ASIC Class Order [CO 03/237] *Updated information in Product Disclosure Statements* which is due to sunset on 1 April 2017 under the *Legislation Act 2003*.

ASIC Class Order [CO 03/237] is repealed by ASIC Corporations (Repeal) Instrument 2016/1053.

1. Background

This instrument grants relief from the requirement in section 1012J of the Corporations Act for information in a Product Disclosure Statement (**PDS**) to be up to date at the time it is given to investors, so long as:

- a) there is a change to non-materially adverse information in the PDS, from the point of view of an investor;
- b) the investor can obtain the up-to-date information through a facility of a kind contemplated by ASIC Regulatory Guide 155 Debenture prospectuses (RG 155); and
- c) that facility is identified in the PDS.

This instrument enables a product issuer to avoid the expense and inconvenience of preparing successive supplementary PDSs, required by section 1012J, by putting in place a mechanism by which investors may conveniently obtain up-to-date information about matters that change frequently but that is not materially adverse information.

2. Purpose of the instrument

The purpose of *ASIC Corporations (Updated Product Disclosure Statements) Instrument 2016/1055* is to continue the substantive effect of the relief granted by ASIC Class Order [CO 03/237].

3. Operation of the instrument

Declaration in relation to responsible persons and regulated persons

Section 5 provides a declaration that Part 7.9 of the Act applies in relation to responsible persons who prepare a PDS and regulated persons who give a PDS as if section 1012J of the Corporations Act were omitted.

Section 6 sets out the requirements that must be satisfied for the declaration to apply, including:

- (a) the PDS was up to date at the time when it was prepared;
- (b) the updated information includes no materially adverse information; and
- (c) the responsible person ensures the PDS contains certain information and establishes a means by which updated information can be accessed. For clarity, the means by which a person may find out any updated information could include arrangements where the updated information is made available to the person electronically without charge on request.

4. Consultation

ASIC consulted with industry stakeholders on its proposal to remake, without significant changes, ASIC Class Order [CO 03/237].

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 03/237].

Statement of Compatibility with Human Rights

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

ASIC Corporations (Updated Product Disclosure Statements) Instrument 2016/1055

ASIC Corporations (Updated Product Disclosure Statements) Instrument 2016/1055 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 (Updated Product Disclosure Statements) Instrument 2016/1055 continues the effect of ASIC Class Order [CO 03/237] by providing relief from the requirement for a supplementary Product Disclosure Statement in circumstances where there is a mechanism in place under which investors may conveniently obtain up-to-date information about matters that change frequently but that is not materially adverse information.

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