
EXPLANATORY STATEMENT for

ASIC Corporations (Amendment) Instrument 2016/1158

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes *ASIC Corporations (Amendment) Instrument 2016/1158* under subsections 341(1), 601QA(1), 741(1), 926A(2), 992B(1) and 1020F(1) of the *Corporations Act 2001* (the **Act**).

Subsection 341(1) of the Act provides that ASIC may relieve a registered scheme or a disclosing entity from all or specified requirements of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4) of the Act.

Paragraph 601QA(1)(a) of the Act provides that ASIC may exempt a person from all or specified provisions of Chapter 5C of the Act.

Paragraph 741(1)(a) of the Act provides that ASIC may exempt a person from a provision of Chapter 6D of the Act.

Paragraph 741(1)(b) of the Act provides that ASIC may declare that Chapter 6D of the Act applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

Subsection 926A(2) of the Act provides that ASIC may exempt a person or class of persons from all or specified provisions of Part 7.6 (other than Divisions 4 and 8) of the Act.

Paragraph 992B(1)(a) of the Act provides that ASIC may exempt a person or class of persons from all or specified provisions of Part 7.8 of the Act.

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

1. Background

Australian financial services (**AFS**) licensees providing financial services to retail clients have an obligation to have a dispute resolution system in place consisting of:

- (a) internal dispute resolution procedures; and
- (b) membership of one or more external dispute resolution schemes (sections 912A(1)(g) and 912A(2) of the Act).

As AFS licensees, this obligation extends to an operator of a platform, product issuers and licensed dealer groups if they provide financial services to retail clients. ASIC considers that it is appropriate that retail clients for whom financial products are held

through an investor directed portfolio service (IDPS) or IDPS-like scheme (together, referred to as platforms) have the same rights of complaint as they would have had if they had acquired the financial products directly.

In March 2012, ASIC published a consultation paper setting out its proposals and supporting rationale for reviewing its regulatory approach to platforms: see Consultation Paper 176 *Review of ASIC policy on platforms: Update to RG 148 (CP 176)*. A summary of key submissions made in response to CP 176 and ASIC's consideration of those responses can be found in Report 351 *Response to submissions on CP 176 Review of ASIC policy on platforms: Update to RG 148*. In CP 176, ASIC proposed that platform clients should have access to a product issuer's internal and external dispute resolution system when they have concerns about investments made through platforms: see proposal F5(a) in CP 176.

ASIC did not proceed in 2013 with applying a restriction on acquisitions because it sought to confirm that existing ASIC-approved dispute resolution schemes would be able to address such complaints under their terms of reference. It was subsequently confirmed that this was the case.

2. Purpose of the instrument

Access to dispute resolution for platform clients

The purpose of *ASIC Corporations (Amendment) Instrument 2016/1158* is to implement changes to Class Order [CO 13/763] *Investor directed portfolio services ([CO 13/763])* and Class Order [CO 13/762] *Investor directed portfolio services provided through a registered managed investment scheme ([CO 13/762])* to require an AFS licensee operating a platform to ensure retail clients have the same rights of complaint as they would have had if they had acquired the financial products directly.

Clarifying the definitions in [CO 13/763] and [CO 13/762]

Following consultation with several stakeholders, ASIC was made aware of a lack of clarity on whether certain types of arrangements are intended to be covered by the definition of an 'IDPS' in [CO 13/763]. *ASIC Corporations (Amendment) Instrument 2016/1158* amends the definition of an 'IDPS' in [CO 13/763] to clarify the types of arrangements intended to be covered, by adding a new limb that excludes an arrangement under which material terms of any rights that may be acquired on behalf of a client are negotiated, or substantially determined.

Similarly, ASIC was made aware of a lack of clarity on the schemes that are technically not covered by the definition of an 'IDPS-like scheme' in [CO 13/762], but which otherwise satisfy the criteria in the definition. *ASIC Corporations (Amendment) Instrument 2016/1158* amends this definition of an 'IDPS-like scheme' in [CO 13/762] so that the definition extends to a scheme that substantially meets the requirements of (a) and (b) of the definition as well as to a scheme that has a constitution with provisions that effect these requirements.

3. Operation of the instrument

Paragraphs 1 to 9 of Schedule 1 of *ASIC Corporations (Amendment) Instrument 2016/1158* amend [CO 13/762] and paragraphs 10 to 26 of Schedule 1 amends [CO 13/763].

Paragraph 4(e) of Schedule 1 in *ASIC Corporations (Amendment) Instrument 2016/1158* amends [CO 13/762] by replacing notional section 1013DAB(8) with notional section 1013DAB(8) to (8G) and paragraph 14 of Schedule 1 amends [CO 13/763] by replacing notional section 912AD(25) and (26) with notional section 912AD(25) to (26G). For issues or sales after 30 December 2017—platform clients are required to have access to a product issuer’s internal and external dispute resolution system if they have concerns about investments made by retail investors through the platform (see notional sections 1013DAB(8)(b)(ii) and (8G) in [CO 13/762] and notional sections 912AD(26)(b)(ii) and (26G) in [CO 13/763]).

Paragraphs 4(m) and 9 of Schedule 1 in *ASIC Corporations (Amendment) Instrument 2016/1158* amend [CO 13/762] by amending certain definitions in notional section 1013DAB(19) and paragraph 19 of [CO 13/762]. Paragraphs 17 and 26 of Schedule 1 in *ASIC Corporations (Amendment) Instrument 2016/1158* amend [CO 13/763] by amending certain definitions in notional section 912AD(42) of the Act and paragraph 21 of [CO 13/763]. These amendments include amending the definition of 'IDPS-like scheme' in [CO 13/762] and the definition of 'IDPS' in [CO 13/763].

Paragraph 5 of Schedule 1 in *ASIC Corporations (Amendment) Instrument 2016/1158* amends [CO 13/762] by omitting paragraph 8 (which notionally inserts section 912ADB of the Act) and paragraph 19 of Schedule 1 amends [CO 13/762] by omitting notional section 912ADA of the Act. This amendment removes the requirement for an AFS licensee to comply with certain dispute resolution requirements on the basis that it has provided a notice to the platform operator that it will comply.

The remaining paragraphs in Schedule 1 in *ASIC Corporations (Amendment) Instrument 2016/1158* make other minor and machinery amendments to [CO 13/762] and [CO 13/763].

The amendments take effect from the day after *ASIC Corporations (Amendment) Instrument 2016/1158* is registered under the *Legislation Act 2003*, subject to transitional provisions (see notional sections 1013DAB(8)(b)(ii) and (8G) in [CO 13/762] and notional sections 912AD(26)(b)(ii) and (26G) in [CO 13/763]), for certain provisions that will apply from 1 January 2018.

4. Consultation

ASIC consulted with stakeholders through Consultation Paper 264 *Remaking ASIC class order on nominee and custody services and proposed changes to platforms policy (CP 264)* which was issued for comment from 21 July 2016 until 1 September 2016.

CP 264 proposed amendments to ASIC's related policy for IDPS and IDPS-like schemes. Mark-up versions of the updates to [CO 13/763] and [CO 13/762] were attached to CP 264. ASIC received two submissions in response to CP 264, one of which was confidential.

The Office of Best Practice Regulation advised that a Regulation Impact Statement is not required.

Statement of Compatibility with Human Rights

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

ASIC Corporation (Amendment) Instrument 2016/1158

ASIC Corporation (Amendment) Instrument 2016/1158 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

The purpose of *ASIC Corporation (Amendment) Instrument 2016/1158* is to implement changes to Class Order [CO 13/763] *Investor directed portfolio services* and Class Order [CO 13/762] *Investor directed portfolio services provided through a registered managed investment scheme* to impose requirements on an AFS licensee operating a platform to ensure retail clients have the same rights of complaint as they would have had if they had acquired the financial products directly. *ASIC Corporation (Amendment) Instrument 2016/1158* also updates the definition of 'IDPS' and 'IDPS-like scheme' and implements other minor and mechanical amendments.

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