

EXPLANATORY STATEMENT for

ASIC Corporations (Repeal) Instrument 2016/1048

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes ASIC Corporations (Repeal) Instrument 2016/1048 (the **Repeal Instrument**).

The Repeal Instrument repeals ASIC Class Order [CO 98/67] *Charitable investment schemes – continuous disclosure* ([CO 98/67]). The Repeal Instrument is made under section 111AT of the Corporations Act 2001 (Act).

Section 111AT of the Act provides that ASIC may exempt a person from all or specified *disclosing entity provisions*, as defined in section 111AR 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

[CO 98/67] was issued on 10 July 1998 and exempts each person who has been exempted by ASIC from compliance with Chapter 5C of the Corporations Law (later remade as the Act) in relation to securities issued or proposed to be issued by a charitable body or the trustee of a charitable body from all disclosing entity provisions so far as they relate to those securities.

Charitable investment fundraisers that raise investment funds through the issue of debentures (other than way by of certain limited offers) or through the issue of interests in managed investment schemes were previously provided with conditional exemptions from certain managed investment, debenture, fundraising and licensing provisions in the Act under ASIC Class Order [CO 02/184] *Charitable investment schemes – fundraising* (now repealed).

In September 2016, following extensive consultation under Consultation Paper 207 *Charitable investment fundraisers* (CP 207), ASIC updated the regulatory framework for charitable investment fundraisers by making:

- (a) ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813 (the *Charitable Investment Fundraising Instrument*);
 - (b) ASIC Corporations (Repeal) Instrument 2016/810 to repeal [CO 02/184];
 - (c) ASIC Instrument [16-0941] to revoke ASIC Instrument 04/0024; and
- by issuing a new version of Regulatory Guide 87 *Charitable investment fundraising and school enrolment deposits* (RG 87).

As part of its review of the exemptions that applied to charitable investment fundraisers, ASIC identified that [CO 98/67] is no longer required and does not form a necessary and useful part of the legislative framework.

[CO 98/67] is due to expire on 1 October 2017. ASIC has reviewed the operation of [CO 98/67], and as a result of that review, made the Repeal Instrument, which repeals [CO 98/67] before its statutory sunset in 2017.

2. Purpose of the instruments

The purpose of the Repeal Instrument is to discontinue relief from the disclosing entity provisions provided by [CO 98/67] as it is not required.

Our view is that [CO 98/67] is unnecessary because the disclosing entity provisions do not apply to charitable investment fundraisers unless they meet the definition of a disclosing entity in section 111AC of the Act.

Charitable investment fundraisers are not disclosing entities for the purposes of section 111AC because the effect of the *Charitable Investment Fundraising Instrument* is that securities issued by charitable investment fundraisers do not meet the definition of ED securities in either section 111AF or section 111AI of the Act.

The Instrument operates from the day after it is registered under the *Legislation Act 2003*.

3. Operation of the instruments

The Repeal Instrument repeals [CO 98/67].

4. Consultation

As part of ASIC's update to the regulatory framework for charitable investment fundraisers, we conducted the following public consultation:

- (a) a formal public consultation by issuing CP 207 on 20 May 2013; and
- (b) targeted consultation in 2016 with entities that provided submissions in response to CP 207, including seeking feedback about consultation drafts of RG 87 and the *Charitable Investment Fundraising Instrument*.

ASIC consulted, among other matters, on a proposal to remove all existing exemptions in RG 87 for new charitable investment fundraising – except exemptions from the AFS licensing requirements of the Act for fundraisers that only raise investment funds from associated entities. At that time, RG 87 (before its update) included the exemptions from the disclosing entity provisions provided by [CO 98/67]. We did not receive any responses specifically in relation to [CO 98/67] or to these exemptions.

Details of the submissions to CP 207 are contained in REP 495 *Response to submissions on CP 207 Charitable investment fundraisers* which is available on ASIC's website at www.asic.gov.au.

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

ASIC Corporations (Repeal) Instrument 2016/1048

ASIC Corporations (Repeal) Instrument 2016/1048 (the ***Instrument***) 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 of the legislative instruments

The Instrument repeals ASIC Class Order [CO 98/67] *Charitable investment schemes – continuous disclosure* which relate primarily to the disclosing entity provisions as defined in section 111AR of the Act.

Human rights implications

The Instrument does not engage any of the applicable rights or freedoms.

Conclusion

The Instrument is compatible with human rights as it does not raise any human rights.