

EXPLANATORY STATEMENT for
ASIC Corporations (Amendment) Instrument 2016/1246

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes ASIC Corporations (Amendment) Instrument 2016/1246 (the Amending Instrument) under section 926A(2)(a) of the *Corporations Act 2001* (Corporations Act). Paragraph 926A(2)(a) provides that ASIC may exempt a person, or class of persons, from all or specified provisions in Part 7.6 of that Act (except Divisions 4 and 8).

Under subsection 33(3) of the *Acts Interpretations Act 1901* (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, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions to repeal, rescind, revoke, amend or vary any such instrument.

1. Background

On 14 December 2016 ASIC made ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1175 (the Principal Instrument) and ASIC Credit (Concept Validation Licensing Exemption) Instrument 2016/1176, which allow eligible businesses to test certain products and services for 12 months without needing to obtain an AFS licence or credit licence, respectively.

The Principal Instrument allows provides that a person does not need to hold an AFS licence to:

- a. provide financial product advice in relation to an eligible product;
- b. deal in an eligible product (other than by way of issuing or varying the eligible product).

Eligible product is defined in the Principal Instrument as:

- non-cash payment facilities issued by an ADI (within the meaning of the *Banking Act 1959*);
- home contents insurance product or personal and domestic property insurance products (with the meaning of the *Corporations Regulations 2001*) where the sum insured under those products does not exceed \$50,000;
- managed investment products in relation to a simple managed investment scheme (with the meaning of the *Corporations Regulations 2001*); and

- quoted securities.

The value of the eligible products (other than the insurance products listed above) must be below \$10,000: see subsection 6(3) of the Principal Instrument.

When making the Principal Instrument, ASIC intended to include debentures, stocks or bonds issued or proposed to be issued by the Government of the Commonwealth. However, this did not occur.

2. Purpose of the instrument

ASIC has made the Amending Instrument to amend the Principal Instrument to include debentures, stocks or bonds issued or proposed to be issued by the Government of the Commonwealth within the meaning of ‘eligible product’ in that instrument.

The effect of this change is that new businesses may test certain financial services relating to Government-issues debentures, stocks or bonds without a financial services licence for 12 months.

3. Operation of the instrument

Section 4 of, and Schedule 1 to, the Amending Instrument provides that the definition of eligible product in the Principal Instrument is amended to include debentures, stocks or bonds issued or proposed to be issued by the Government of the Commonwealth.

4. Consultation

ASIC did not undertake a formal consultation process on the Amending Instrument on the basis that it makes a minor amendment to reflect the intended effect of the Principal Instrument.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Amendment) Instrument 2016/1246

ASIC Corporations (Amendment) Instrument 2016/1246 (Amending 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

The purpose of the Amending Instrument is to make a minor amendment to the ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1175 (the Principal Instrument).

The Principal Instrument allows eligible persons to test certain products and services for 12 months without needing to obtain an AFS licence. The intention of the Principal instrument is to promote innovation in financial services by facilitating unlicensed testing of certain types of services while maintaining many of the normal protections that apply to consumers.

The Amending Instrument includes debentures, stocks or bonds issued or proposed to be issued by the Government of the Commonwealth as a class of product in relation to which specified services can be tested under the Principal Instrument.

Human rights implications

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

Conclusion

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

Australian Securities and Investments Commission