
EXPLANATORY STATEMENT for ASIC Corporations (Repeal) Instrument 2017/185

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes the *ASIC Corporations (Repeal) Instrument 2017/185* (the Instrument) under subsections 992B(1) and 1020F(1) of the *Corporations Act 2001* (the Act).

The Instrument repeals *ASIC Class Orders [CO 02/246]; [CO 02/286]; and [CO 02/641]*.

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

Subsection 1020F(1) provides that ASIC may exempt a person or class of persons from all or specified provisions of Part 7.9 of the Act and may declare that Part 7.9 of the Act applies in relation to a person or a class of persons as if specified provisions were omitted, modified or varied.

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 02/246] was issued to address concerns that offers of financial products over the internet may give rise to uncertainty about the application of laws in jurisdictions where such offers can be accessed. Accordingly, the purpose of *[CO 02/246]* was to ensure that:

- offers to which the exemption applies are only issued in Australia incidentally to their issue in foreign jurisdictions where those offers can be lawfully made; and
- such offers are not intended to result in applications for investments being made by persons in Australia.

In this way, *[CO 02/246]* was intended for the benefit of foreign offerors that make offers of financial products to persons outside of Australia.

[CO 02/286] was issued by ASIC in 2002 to provide relief to a person in circumstances where they have been exempted from the obligation to provide a PDS under s 1012B(3) of the Act but not from the requirement to provide a PDS under s 1012B(4). [CO 02/286] was issued to correct possible oversights in instruments issued before March 2002 which, while providing relief from s 1012B(3), did not express relief in a way that would provide relief from s 1012B(4).

[CO 02/641] was issued by ASIC in 2002 to ensure that particular financial products only have to comply with one anti-hawking provision. In the absence of this relief, issues of: securities; interests in managed investment schemes; and interests in unregistered managed investment schemes would all be required to comply with multiple hawking regimes. [CO 02/641] ensures certainty of obligation for business.

Under the *Legislation Act 2003*, legislative instruments cease automatically, or ‘sunset’, after 10 years, unless action is taken to exempt or preserve them. To preserve its effect, a legislative instrument must be remade before its sunset date.

[CO 02/246]; [CO 02/286]; and [CO 02/641] are all scheduled to cease on 1 April 2017. ASIC has decided to preserve the effect of [CO 02/246] and [CO 02/641] and those instruments are being made in the following instruments, respectively:

- (a) *ASIC Corporations (Offers over the internet) Instrument 2017/181*; and
- (b) *ASIC Corporations (Securities and Managed Investment Scheme Hawking Relief) Instrument 2017/184*.

ASIC has formed the view that no continuing instruments rely on the relief provided by [CO 02/286]. Accordingly, we are of the view that the instrument should be repealed.

2. Purpose of the instrument

The purpose of the *ASIC Corporations (Repeal) Instrument 2017/185* is to repeal:

- (a) *ASIC Class Order [CO 02/246]*;
- (b) *ASIC Class Order [CO 02/286]*; and
- (c) *ASIC Class Order [CO 02/641]*.

As explained above, [CO 02/246] and [CO 02/641] have been remade. [CO 02/286] is no longer necessary.

3. Operation of the instruments

Clause 4 of the instrument provides that each instrument that is specified in a Schedule to the instrument is repealed as set out in the applicable items in the Schedule concerned.

Schedule 1 repeals [CO 02/246]; [CO 02/286]; and [CO 02/641].

4. Consultation

In November 2016 ASIC released ASIC Consultation Paper 271 Remaking and repealing ASIC class orders on internet offers, hawking and PDS obligations (**CP 271**), which consulted on remaking [CO 02/246] and [CO 02/641] and repealing [CO 02/286]. ASIC did not receive any submissions in response to CP 271.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Repeal) Instrument 2017/185

ASIC Corporations (Repeal) Instrument 2017/185 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 *ASIC Corporations (Repeal) Instrument 2017/185* is to repeal:

- (a) *ASIC Class Order [CO 02/246]*;
- (b) *ASIC Class Order [CO 02/286]*; and
- (c) *ASIC Class Order [CO 02/641]*.

The relief given by *[CO 02/246]* and *[CO 02/641]* will be continued in new legislative instruments that reflect current drafting practice, without any significant changes.

Human rights implications

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

Conclusion

The legislative instrument is compatible with human rights as it does not raise any human rights issues.

Australian Securities and Investments Commission