

# EXPLANATORY STATEMENT for

## ASIC Corporations (Amendment) Instrument 2017/243

Prepared by the Australian Securities and Investments Commission

### *Corporations Act 2001*

The Australian Securities and Investments Commission (**ASIC**) makes ASIC Corporations (Amendment) Instrument 2017/243 (the **amending instrument**) under subsection 926A(2) of the *Corporations Act 2001* (the **Act**). This subsection of the Act provides that ASIC may declare that provisions in Part 7.6 (other than Divisions 4 and 8) of the Act apply in relation to a person or financial product, or a class of persons or financial products, as if the provision or provisions were omitted, modified or varied as specified in the declaration.

The amending instrument amends the version of ASIC Class Order [CO 14/1262] *Relief for 31 day notice term deposits* which was amended by *ASIC Corporations (Amendment) Instrument 2016/397* (the **principal class order**). The principal class order was made under subsection 926A(2) 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

ASIC Class Order [CO 14/1262] made on 19 December 2014 (the **original class order**) ensured that 31 day notice term deposits of up to five years were basic deposit products for the purposes of Parts 7.6 (other than Divisions 4 and 8), 7.7 and 7.9 of the Act. There was doubt about whether the modified definition of “basic deposit product” set out in the original class order, would have effect for the purposes of the Financial Adviser Register (the **Register**).

To address this doubt, the original class order was amended and is now in the form of the principal class order. The principal class order replaced the definition of “basic banking product” in section 922C of the Act with a definition identical to that in section 961F of the Act but did not define it by reference to that section.

The *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017* (the **amending act**) amends the regulatory framework for the Register. The amending act changes the sections in which certain terms relevant to the Register are defined, including the definition of “basic banking product” which is referred to in the principal class order. As a result of the amending act, as of the commencement of the amending act, the definition of “basic banking product” for the purposes of the Register resides in section 910A of the Act rather than section 922C.

## 2. Purpose of the instrument

The purpose of the amending instrument is to ensure that the modified definition of “basic deposit product” (that is, modified by the principal class order so that it also covers a 31 day notice term deposit of up to five years) continues to have effect for the purposes of the Register.

### **3. Operation of the instrument**

The amending instrument replaces paragraph 4A in the principal class order.

The new paragraph 4A refers to section 910A of the Act because the definition of “basic banking product” in section 922C of the Act that is referred to in the principal class order is repealed as of the commencement of the amending act, and replaced with the definition in section 910A of the Act.

Like the definition in the principal class order at the time it was registered, the definition of “basic banking product” inserted at paragraph 4A by the amending instrument is in identical terms to that in section 961F of the Act. The only difference between the definition in the principal class order and the definition in the amending instrument is that the amending instrument does not include a reference to first home saver accounts because that term was removed from the definition of “basic banking product” in section 961F of the Act as of 1 July 2015 by the *Tax and Superannuation Laws Amendment (2015 Measures No. 1) Act 2015*.

The definition of a “basic banking product” for the purposes of the Register is:

- a basic deposit product;
- a facility for making non-cash payments that is related to a basic deposit product;
- a facility for providing traveller’s cheques;
- any other product prescribed by regulations.

### **4. Consultation**

ASIC did not consult before making the amending instrument because the amendments made by the amending instrument are merely technical in nature. They do not alter any of the requirements associated with the Register.

## Statement of Compatibility with Human Rights

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

### ASIC Corporations (Amendment) Instrument 2017/243

ASIC Corporations (Amendment) Instrument 2017/243 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 *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017* (the **amending act**) amends the regulatory framework under the *Corporations Act 2001* (the **Act**) for the Financial Adviser Register (the **Register**).

Individuals that provide personal advice on simple products (for example, products that satisfy the definition of “basic deposit product”), and who do not also provide personal advice on products that are more complex, are not required to be included on the Register.

ASIC Class Order [CO 14/1262] *Relief for 31 day notice term deposits* expands the scope of the meaning of “basic deposit product” for the purposes of the Register.

This amending instrument amends the class order to ensure that the expanded scope of the meaning of “basic deposit product” that existed prior to the commencement of the amending act, will continue following the introduction of the amending act.

#### 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.