
EXPLANATORY STATEMENT for
ASIC Corporations (Credit Union Member Shares) Instrument 2017/616 and
ASIC Corporations (Repeal) Instrument 2017/621

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes *ASIC Corporations (Credit Union Member Shares) Instrument 2017/616* (**the New Instrument**) under paragraphs 926A(2)(a), 951B(1)(a) and 1020F(1)(a) of the *Corporations Act 2001* (**Act**).

Paragraph 926A(2)(a) of the Act provides that ASIC may exempt a person or class of persons from all or specified provisions to which section 926A of the Act applies.

Paragraph 951B(1)(a) provides that ASIC may exempt a person or a class of persons from all or specified provisions of Part 7.7 of the Act.

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

ASIC also makes *ASIC Corporations (Repeal) Instrument 2017/621* (**the Repeal Instrument**) under paragraphs 911A(2)(l), 951B(1)(a) and 1020F(1)(a) of the Act.

Paragraph 911A(2)(l) provides that a person is exempt from the requirement to hold an Australian financial services (AFS) licence for a financial service they provide in circumstances where the provision of the service is covered by an exemption specified by ASIC in writing and published in the Gazette.

1. Background

Before 1 July 1999 credit unions (and other specific types of financial institutions) were registered and regulated under the Financial Institutions Codes of each State and Territory.

On 1 July 1999 the laws governing the registration and regulation of credit unions as financial institutions were transferred to the then Corporations Law. These financial institutions are referred to as “transferring financial institutions” in Schedule 4 to the Act.

Chapter 7 (“Financial services and markets”) of the Act prescribes a licensing regime for persons who provide financial services and also regimes for financial services and product disclosure. Transferring financial institutions, including credit unions, were subject to these requirements because their issue of “member shares” to successful applicants for membership was considered to amount to the provision of financial services.

A “member share” for the purposes of the Act has the characteristics set out in subregulation 12.8.03(2) of the *Corporations Regulations 2001* (**the Regulations**), namely:

- (a) it is not an ED (“enhanced disclosure”) security; and
- (b) it has a fixed value; and
- (c) it is held by a single person, or 2 or more persons jointly; and
- (d) it entitles the holder, or joint holders, to use services provided by the financial institution ; and
- (e) it is not transferable or transmissible, or is only transferable or transmissible to a person or body specified in the rules or constitution of the financial institution in circumstances stated in the rules or constitution.

Under Division 2 of Part 2 of Schedule 4 to the Act, any withdrawable shares of a transferring financial institution on issue immediately before 1 July 1999 were deemed to become a type of redeemable preference share, and any provisions in the Act (including relevant provisions in Chapter 7) that apply to redeemable preference shares also apply to member shares that were deemed to be redeemable preference shares. Any member shares issued on or after 1 July 1999 are also classified as such. As redeemable preference shares are a type of financial product under Chapter 7 of the Act, the credit union, as issuer of member shares, is required to comply with the licensing and disclosure obligations.

ASIC Class Order [CO 02/1176] gives a series of exemptions, in relation to the offer, issue and redemption of member shares, to transferring financial institutions that were permitted on 1 July 1999 to use the expression “credit union”, “credit society” or “credit co-operative” under section 66 of the *Banking Act 1959*.

ASIC provided the exemptions because of the unique nature of member shares and the circumstances in which they are offered and issued to successful applicants for membership. When a person becomes a member of a credit union, a single member share is issued to that person for a nominal price, and the member share entitles the person to use the services of the credit union and generally to vote on member resolutions. Member shares are withdrawable upon cessation of a person’s membership of a credit union, in which case the nominal price paid for the member share is generally repaid. In these circumstances, ASIC considered that

the application of certain provisions in Chapter 7 of the Act to member shares would be disproportionately burdensome.

The exemptions apply also to transferring financial institutions that previously operated as credit unions but have since obtained approval to operate as a mutual bank from the Australian Prudential Regulation Authority.

[CO 02/1176] will sunset on 1 April 2018.

2. Purpose of the instruments

The purpose of the Repeal Instrument is to repeal [CO 02/1176]. The purpose of the New Instrument is to preserve the effect of [CO 02/1176].

3. Operation of the New Instrument

A credit union (or a mutual bank that was previously entitled to describe itself as a credit union) (referred to in the Instrument as an ‘Eligible Company’) does not have to comply with the requirements to:

- hold an AFS licence for the provision of financial product advice to a member or prospective member of the Eligible Company in relation to the issue of member shares; and
- comply with Divisions 2, 3 and 4 of Part 7.7 of the Act for the provision of financial services by providing financial product advice to a member or prospective member of the Eligible Company in relation to the issue of member shares;

The above exemptions apply where the aggregate amount paid or to be paid by the member or prospective member for all member shares then held by the member and all member shares proposed for issue to the member or prospective member does not exceed \$50.

An Eligible Company also does not have to comply with section 1017F of the Act for the confirmation of a transaction that is an issue of member shares or the redemption of member shares. This specific exemption is made on the condition that the Eligible Company includes in each periodic statement it gives under section 1017D of the Act, to a holder of member shares, the following information:

- the number of shares held by the holder; or
- the amount paid by the holder for member shares.

Following public consultation held between 25 May 2017 and 23 June 2017, we reached the view that [CO 02/1176] is operating effectively and efficiently, and continues to form a useful

part of the legislative framework. To preserve its effect beyond the sunset date of 1 April 2018, the New Instrument largely continues the relief given in [CO 02/1176].

The only material changes we have made are:

- to clarify that the periodic statement (in which the company relying on the exemption must include details of the number of shares held by the holder and the amount paid for those shares), referred to in the condition of the New Instrument is the periodic statement required by section 1017D of the Act; and
- remove a redundant AFS licensing exemption for institutions that issue and redeem their own member shares (which we consider is redundant due to the existence of section 766C of the Act).

4. Consultation

ASIC consulted publicly on its proposal to remake the exemptions in [CO 02/1176] via Consultation Paper 283 *Remaking ASIC class order of credit union member shares: [CO 02/1176]*. We received one response. The submission was supportive.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Credit Union Member Shares) Instrument 2017/616 and ASIC Corporations (Repeal) Instrument 2017/621

ASIC Corporations (Credit Union Member Shares) Instrument 2017/616 (the New Instrument) and *ASIC Corporations (Repeal) Instrument 2017/621* (the Repeal Instrument) are 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 New Instrument gives a series of exemptions, in relation to the offer, issue and redemption of member shares, to transferring financial institutions that were on 1 July 1999 permitted to use the expression “credit union”, “credit society” or “credit co-operative” under section 66 of the *Banking Act 1959*. It exempts credit unions (and ex-credit unions now operating as mutual banks) that are transferring financial institutions, from the requirement to hold an Australian financial services (AFS) licence, the financial services disclosure requirements in Part 7.7 of the Act and the requirement to confirm transactions under section 1017F of the Act in relation to the offer, issue and redemption of member shares (as defined in regulation 12.8.03 of the *Corporations Regulations 2001*).

‘Transferring financial institutions’ are specified types of financial institutions (defined in Schedule 4 to the *Corporations Act 2001*), that transferred on 1 July 1999 from State and Territory based regulation to regulation by the Commonwealth under the then Corporations Law. These institutions have previously had the benefit of exemptions in relation to member shares under Class Order [CO 02/1176] *Credit union member shares*.

The purpose of the Repeal Instrument is to repeal Class Order [CO 02/1176] *Credit union member shares*, which will sunset on 1 April 2018 pursuant to the *Legislation Act 2003*.

The purpose of the New Instrument is to preserve the effect of [CO 02/1176].

Human rights implications

These legislative instruments do not engage any of the applicable rights or freedoms.

Conclusion

These legislative instruments are compatible with human rights as they do not raise any human rights issues.

Australian Securities and Investments Commission