

EXPLANATORY STATEMENT for
ASIC Corporations (Amendment) Instrument 2017/684

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes *ASIC Corporations (Amendment) Instrument 2017/684* (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 **Corporations 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 Australian Financial Services licence or credit licence, respectively.

The Principal Instrument provides that an eligible person does not have to hold an Australian Financial Services 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).

In providing financial product advice, the Principal Instrument states:

- An eligible person relying on the exemption in subsection 5(1) who provides personal advice to a person as a retail client must comply with Division 2 of Part 7.7A of the Act as if they were a provider for the purposes of that Division;

Division 2 of Part 7.7A of the Act imposes obligations on a provider of personal advice to a retail client to act in the best interests of the client.

When making the Principal Instrument, ASIC also intended to include a condition that a person relying on the exemption in the Principal Instrument who provides personal advice to a person as a retail client must comply with the Statement of Advice requirements in Division 3

of Part 7.7 of the Corporations Act as if they were a financial services licensee for the purposes of that Division. However, this did not occur.

2. Purpose of the instrument

ASIC has made the Amending Instrument to amend the Principal Instrument to include a condition requiring an eligible person (as defined in the Principal Instrument) who provides personal advice to a person as a retail client in reliance on the relief to comply with the Statement of Advice requirements.

The effect of this change is that new businesses may test certain financial services related to the provision of financial advice without a financial services licence for 12 months and if this includes personal advice they will be subject to Statement of Advice requirements to the same extent as a financial services licensee.

3. Operation of the instrument

Section 4 of the Amending Instrument and Schedule 1 to the Amending Instrument repeal and replace subsection 7(5) of the Principal Instrument.

The new subsection 7(5) of the Principal Instrument sets out conditions that apply to an eligible person who relies on the exemption in subsection 5(1) of the Principal Instrument and who provides personal advice to a person as a retail client. The eligible person must comply with:

- (a) Division 3 of Part 7.7 of the Corporations Act as if they were a financial services licensee for the purposes of that Division (Division 3 contains the Statement of Advice requirements); and
- (b) Division 2 of Part 7.7A of the Act as if they were a provider for the purposes of that Division (this replicates the condition in the former subsection 7(5) of the Principal Instrument).

4. Consultation

ASIC did not undertake a formal consultation process for the Amending Instrument on the basis that it makes a minor amendment to reflect the intended effect of the Principal Instrument which did have consultation undertaken. This was confirmed with The Office of Best Practice Regulation.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Amendment) Instrument 2017/684

ASIC Corporations (Amendment) Instrument 2017/684 (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 an amendment to the *ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1175* (the **Principal Instrument**).

The Principal Instrument provides relief to allow eligible persons to test certain products and services for 12 months without needing to obtain an Australian Financial Services 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 amends the Principal Instrument to include an additional condition that applies to a person relying on the relief in the Principal Instrument who provides financial product advice that is personal advice. Such a person must comply with the Statement of Advice requirements under the *Corporations Act 2001* that would apply if they held an Australian Financial Services licence.

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