

EXPLANATORY STATEMENT for
ASIC Corporations (Disclosure Relief—Offers to Associates) Instrument
2017/737

ASIC Corporations (Repeal) Instrument 2017/738

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes the following instruments:

- ASIC Corporations (Disclosure Relief—Offers to Associates) Instrument 2017/737 (**Disclosure Relief Instrument**)
- ASIC Corporations (Repeal) Instrument 2017/738 (**Repeal Instrument**)

under subsections 741(1) and 1020F(1) of the *Corporations Act 2001* (**Corporations Act**).

Subsection 741(1) of the Corporations Act provides that ASIC may exempt a person from a provision of Chapter 6D of the Corporations Act or declare that Chapter 6D applies to a person as if specified provisions were omitted, modified or varied.

Subsection 1020F(1) of the Corporations 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 7.9 of the Corporations Act and may declare that Part 7.9 of the Corporations 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 Corporations 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.

The Disclosure Relief Instrument remakes Class Order [CO 04/899] *Definition of 'senior manager'—modification*, which is due to sunset on 1 October 2017. The Repeal Instrument repeals [CO 04/899].

1. Background

The Disclosure Relief Instrument remakes [CO 04/899] which was created to correct a technical issue in the Corporations Act that arose from the replacement of the term 'executive officer' with the term 'senior manager' under the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004 (CLERP 9)*.

The former definition of executive officer was different to the new definition of senior manager inserted by CLERP 9. Amongst other things, a person could be an executive officer 'whether or not the person is a director of the body' (Corporations Act s 9, prior to CLERP 9) whereas a 'senior manager' in a corporation is a person 'other than a director or secretary' (Corporations Act s 9, unmodified).

The definition of 'senior manager' is relevant to a range of requirements in the Corporations Act, including in relation to external administration, auditors and certain exceptions to disclosure obligations. These exceptions to disclosure obligations are in s708(12) and 1012D(9A) of the Corporations Act and relate to an offer, recommendation, issue or sale of certain securities to a person associated with a body or responsible entity (relevant disclosure exceptions). Without the modification made by [CO 04/899], these exceptions would not apply to issues of relevant financial products to a director or secretary.

[CO 04/899] ensures sections 1012D(9A) and 708(12) of the Act continue to have their pre-CLERP 9 effect. [CO 04/899] gives the term 'senior manager' the same meaning as the former term 'executive officer' when the term senior manager is used in relation to a body in Parts 6D and 7.9 of the Act.

2. Purpose of the instruments

The purpose of the Disclosure Relief Instrument is to continue the relief in [CO 04/899] beyond its sunset date of 1 October 2017 in substantially the same form.

The purpose of the Repeal Instrument is to repeal [CO 04/899].

3. Operation of the instruments

Section 5 of the Disclosure Relief Instrument declares that Ch 6D and Pt 7.9 of the Corporations Act (which contain the relevant disclosure exceptions) apply as if paragraph (a) of the definition of 'senior manager' in s9 were modified to include a director or secretary, preserving the former definition of 'executive officer'. This means the relevant disclosure exceptions continue to have their pre-CLERP 9 effect.

Section 4 of the Repeal Instrument repeals [CO 04/899].

4. Consultation

ASIC consulted with industry stakeholders on its proposal to remake, without significant changes, [CO 04/899].

The feedback received in response to ASIC Consultation Paper 285 *Remaking ASIC class order on disclosure relief for an offer to a director or secretary*: [CO 04/899] supported the proposal to issue a new instrument to continue the effect of the relief granted under [CO 04/899]

Statement of Compatibility with Human Rights

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

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ASIC Corporations (Disclosure Relief—Offers to Associates) Instrument 2017/737 and ASIC Corporations (Repeal) Instrument 2017/738 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

ASIC Corporations (Disclosure Relief—Offers to Associates) Instrument 2017/737 continues the effect of ASIC Class Order [CO 04/899] *Definition of 'senior manager'—modification* by providing relief to ensure that certain disclosure exceptions are available when securities are offered, recommended, issued or sold to a director or secretary of a body

The purpose of ASIC Corporations (Repeal) Instrument 2017/738 is to repeal ASIC Class Order [CO 04/899] *Definition of 'senior manager'—modification*.

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