

ASIC Corporations (Amendment) Instrument 2017/817

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (*ASIC*) makes *ASIC Corporations (Amendment) Instrument 2017/817 (the amendment instrument)* under section 741 of the *Corporations Act 2001 (the Act)*. Paragraph 741(1)(b) provides that ASIC may declare that Chapter 6D of the Act applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

The amendment instrument amends *ASIC Corporations (Consents to Statements) Instrument 2016/72 (the principal instrument)*. 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), provides that 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

The *Corporations Amendment (Crowd-sourced Funding) Act 2017* introduced a new disclosure framework in Part 6D.3A of the Act for crowd-sourced funding (*CSF*) offers by eligible companies.

Under Part 6D.3A of the Act, a CSF offer document for a CSF offer may include statements attributed to, or based on a statement made by another person (e.g. an expert or advisor). However, the company making the CSF offer must not arrange for the CSF offer document to be published on a platform of a CSF intermediary unless:

- (a) the person has consented in writing to the statement being included in the offer document in the form and context in which it is included;
- (b) the offer document states that the person has given this consent; and
- (c) the person has not withdrawn this consent before the company arranges for the offer document to be published on a platform of the intermediary.

The consent requirement for CSF offer documents is similar to the consent requirements that exist for statements included in other fundraising disclosure documents, namely disclosure documents under Chapter 6D of the Act (which does not include CSF offer documents) and product disclosure statements under Part 7.9 of the Act.

The principal instrument provides relief to issuers of fundraising disclosure documents under Chapter 6D and Part 7.9 of the Act (among other documents) from the requirement to obtain consent when citing and quoting certain sources.

The principal instrument provides relief so that consent need not be obtained for the inclusion of the following statements and data in fundraising disclosure documents:

- (a) statements made by officials persons, contained in public official documents or already published in a book, journal or comparable publication;
- (b) historical geological data; and
- (c) trading data.

2. Purpose of the instrument

The purpose of the amendment instrument is to extend the relief in the principal instrument to certain statements and data in CSF offer documents under Part 6D.3A of the Act.

3. Operation of the instrument

The amendment instrument together with the principal instrument modifies the Act to give relief so that consent does not need to be obtained in relation to the following statements and data in a CSF offer document, where certain requirements are met:

- (a) statements made by officials persons, contained in public official documents or already published in a book, journal or comparable publication;
- (b) historical geological data; and
- (c) trading data.

The explanatory statement to the principal instrument contains a detailed explanation of the specific requirements of the relief.

4. Consultation

On 22 June 2017, ASIC released CP 288 *Crowd-sourced funding: Guide for public companies (CP 288)* seeking feedback on the proposed amendment to the principal instrument, attaching a draft form of the amendment instrument. The consultation period closed on 3 August 2017.

ASIC received 13 submissions in response to CP 288. In particular, five submissions specifically addressed the proposed draft amendment instrument and supported the making of the amendment instrument. Details of the submissions are contained in REP 544 *Response to submissions on CP 288 and CP 289 on crowd-sourced funding* which is available on ASIC's website at www.asic.gov.au.

Notwithstanding ASIC's consultation, *ASIC considers that ASIC Corporations (Amendment) Instrument 2017/817* is of a minor or machinery nature.

Statement of Compatibility with Human Rights

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

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The 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 principal instrument gives relief from the consent requirement for certain statements and data in a bidder's and target's statement under Chapter 6, a fundraising disclosure document under Chapter 6D and a product disclosure statement under Part 7.9 of the *Corporations Act 2001*.

The amendment instrument extends this relief to certain statements and data in an offer document for a crowd-sourced funding offer under Part 6D.3A of the *Corporations Act 2001*.

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.