**EXPLANATORY STATEMENT for
ASIC Corporations (Repeal) Instrument 2017/796**

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (ASIC) makes the *ASIC Corporations (Repeal) Instrument 2017/796* (the Instrument) under paragraphs 911A(2)(l), 992B(1)(a) and 1020F(1)(a) and of the *Corporations Act 2001* (the Act).

The Instrument repeals ASIC Class Orders [CO 03/1048] and [CO 04/239].

Paragraph 911A(2)(l) of the Act provides that ASIC may exempt a person from the requirement to hold an Australian financial services licence for a financial service they provide. This is done by granting an exemption in writing and publishing it in the Gazette.

Paragraph 992B(1)(a) of the 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 7.8 of the Act.

Subsection 1020F(1)(a) of the Act provides that ASIC may exempt a person or 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 bylaws), 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**

[CO 03/1048] was issued to permit the provision of financial product advice on a mortgage offset account and for arranging for another person to apply for, acquire, vary or dispose of a mortgage offset account without an AFS licence so long as the person is a member of an ASIC-approved external dispute resolution (EDR) scheme. As a result, persons who advise or deal in relation to mortgage offset accounts do not need to obtain an AFS licence solely for these purposes.

[CO 04/239] was issued to exempt persons providing, or advising on, debt factoring arrangements that are derivatives from the requirement to hold an AFS licence, and from the product disclosure and hawking provisions of Chapter 7 of the Corporations Act. ASIC considered that these requirements were not intended to apply to factoring arrangements.

Under the *Legislation Act 2003* (Legislation Act), legislative instruments cease automatically, or ‘sunset’, after 10 years, unless action is taken to exempt or preserve them. To preserve its effect, a legislative instrument must be remade before its sunset date.

[CO 03/1048] and [CO 04/239] are both scheduled to sunset on 1 October 2017. ASIC has decided to preserve the effect of [CO 03/1048] and [CO 04/239] through following instruments:

1. *ASIC Corporations (Factoring Arrangements) Instrument 2017/794; and*
2. *ASIC Corporations (Mortgage Offset Accounts) Instrument 2017/795*.
3. **Purpose of the instrument**

The purpose of the *ASIC Corporations (Repeal) Instrument 2017/796* is to repeal [CO 03/1048] and [CO 04/239] now that new legislative instruments preserving their effect have been made.

1. **Operation of the instrument**

Clause 4 provides that each of the instruments set out in Schedule 1 are amended or repealed as set out in that Schedule. Schedule 1 provides that [CO 03/1048] and [CO 04/239] are repealed in full.

### **Consultation**

ASIC released a public consultation paper on its proposal to remake [CO 03/1048] and [CO 04/239] on 7 June 2017 (Consultation Paper 286 *Remaking ASIC class orders on mortgage offset accounts and factoring arrangements*). The consultation period closed on 6 July 2017. No submissions were received.

**Statement of Compatibility with Human Rights**

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

**ASIC Corporations (Repeal) Instrument 2017/796**

*ASIC Corporations (Repeal) Instrument 2017/796* 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**

*ASIC Corporations (Repeal) Instrument 2017/796* repeals two legislative instruments that have been remade to preserve their effect beyond their sunsetting dates.

**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.

**Australian Securities and Investments Commission**