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**EXPLANATORY STATEMENT for**  
**ASIC Corporations (Amendment) Instrument**

**2017/1119**

**Prepared by the Australian Securities and Investments Commission**

*Corporations Act 2001*

The Australian Securities and Investments Commission (**ASIC**) makes the *ASIC Corporations (Amendment) Instrument 2017/1119* (the **Instrument**) under subsections 283GA(1), 601QA(1), 655A(1), 741(1), 926A(2), 992B(1), 1020F(1) and 1075A(1) of the *Corporations Act 2001* (the **Act**).

Subsection 283GA(1) of the Act provides that ASIC may exempt a person from a provision of Chapter 2L of the Act; or declare that Chapter 2L applies to a person as if specified provisions were omitted, modified or varied.

Subsection 601QA(1) of the Act provides that ASIC may exempt a person from a provision of Chapter 5C of the Act; or declare that Chapter 5C applies to a person as if specified provisions were omitted, modified or varied.

Subsection 655A(1) of the Act provides that ASIC may exempt a person from a provision of Chapter 6 of the Act; or declare that Chapter 6 applies to a person as if specified provisions were omitted, modified or varied.

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

Subsection 926A(2) 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 7.6 of the Act (other than Divisions 4 and 8); or declare that Part 7.6 of the Act (other than Divisions 4 and 8) applies in relation to a person or a financial product or class of persons or financial products as if specified provisions were omitted, modified or varied.

Subsection 992B(1) 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; or declare that Part 7.8 of the Act applies in relation to a person or a financial product or class of persons or financial products as if specified provisions were omitted, modified or varied.

Subsection 1020F(1) 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 7.9 of

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the Act and may declare that Part 7.9 of the Act applies in relation to a person or a class of persons as if specified provisions were omitted, modified or varied.

Subsection 1075A(1) of the Act provides that ASIC may exempt specified financial products or class of financial products from all or specified provisions of Part 7.11 of the Act; or declare that Part 7.11 of the Act applies in relation to specified financial products, or a class of financial products, 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 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.

## **1. Background**

ASIC has a number of ASIC Legislative Instruments in operation. ASIC has identified that some of these have minor errors, including typographical errors and required points of clarification.

## **2. Purpose of the instrument**

The purpose of the Instrument is to make amendments to ASIC instruments to fix identified errors.

## **3. Operation of the instrument**

### **Part 1—Preliminary**

#### Section 1 – Name of the legislative instrument

This section provides that the title of the Instrument is the *ASIC Corporations (Amendment) Instrument 20171119*.

#### Section 2 – Commencement

This section provides that the Instrument commences on the day after it is registered on the Federal Register of Legislation.

#### Section 3 – Authority

This section provides that the Instrument is made under subsections 283GA(1), 601QA(1), 655A(1), 741(1), 926A(2), 992B(1), 1020F(1) and 1075A(1) of the *Corporations Act 2001*.

#### Section 4 – Schedules

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This section provides that each instrument that is specified in a Schedule to the instrument is amended as set out in the applicable items in the Schedule.

### Section 5 – Definitions

Act is defined to mean the *Corporations Act 2001*

### **Schedule 1—Amendments**

#### Item 1 – ASIC Corporations (Securities: NZ FASTER System) Instrument 2016/891

Item 1 modifies the *ASIC Corporations (Securities: NZ FASTER System) Instrument 2016/891* at section 5 to remove a typographical error. A reference to section 1017H is omitted and replaced with section 1071H. This reflects the original intent of the instrument.

#### Items 2—5 – ASIC Corporations (Nominee and Custody Services) Instrument 2016/1156

Items 2—5 modify the *ASIC Corporations (Nominee and Custody Services) Instrument 2016/1156* to remove references to section 912AE and replace them with section 912AH.

The *ASIC Corporations (Nominee and Custody Services) Instrument 2016/1156* inserted section 912AE in the Act. Another ASIC instrument, *ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968* inserts a separate section 912AE. The sections apply in different circumstances. While there is no issue with their operation it is preferable to change the section numbers for ease of reference.

#### Item 6– ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669

Item 6 modifies the *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669*. This modification omits a reference to Part 7.7.

The purpose of *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669* is to amend 14 of ASIC's legislative instruments so they have a single, consistent definition of 'approved foreign market'. The instrument lists the chapters and parts of the Act that apply to any person who purports to rely on an applicable ASIC legislative instrument, Part 7.7 was incorrectly included in the list of chapters and parts.

## **4. Consultation**

ASIC did not consult on the technical amendments as ASIC's view is that none involve a change in policy.

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## **Statement of Compatibility with Human Rights**

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

### **ASIC Corporations (Amendment) Instrument 2017/1119**

*ASIC Corporations (Amendment) Instrument 2017/1119 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 (Amendment) Instrument 2017/1119 amends 3 ASIC legislative instruments to fix technical errors.*

#### **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**