

EXPLANATORY STATEMENT for

ASIC Corporations (Amendment) Instrument 2018/213

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes ASIC Corporations (Amendment) Instrument 2018/213 (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 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 AFS licence or credit licence, respectively.

The Principal Instrument provides that a person does not need to hold an AFS 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 defining the eligible products the instrument each of the following:

- (a) a non-cash payment facility issued by an ADI (within the meaning of the Banking Act 1959);
- (b) a home contents insurance product where the sum insured under the product does not exceed \$50,000;
- (c) a personal and domestic property insurance product where the sum insured under the product does not exceed \$50,000;
- (d) a managed investment product in relation to a simple managed investment scheme;

- (e) a quoted security;
- (f) debentures, stocks or bonds issued or proposed to be issued by the Government of the Commonwealth.;

When making the Principal Instrument, ASIC intended to include amongst the conditions that a person relying on the exemption in within the Principal Instrument comply to be permitted to engage with basic deposit products. However, this did not occur.

2. Purpose of the instrument

ASIC has made the Amending Instrument to amend the Principal Instrument to include the basic deposit products as an eligible product.

The effect of this change is that new businesses may test certain financial services related to the provision of basic deposit products from existing authorized deposit taking institutions without a financial services licence for 12 months.

3. Operation of the instrument

Section 4 of, and Schedule 1 to, the Amending Instrument provides that the definition of *eligible product* in the Principal Instrument is amended to include a basic deposit product.

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 in line with approvals from Office of Best Practice of 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 2018/213

ASIC Corporations (Amendment) Instrument 2018/213 (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 a minor amendment to the ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1175 (the Principal Instrument).

The Principal Instrument allows eligible persons to test certain products and services for 12 months without needing to obtain an AFS 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 ensures those using the Principal Instrument are permitted to engage with deposit products.

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