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**EXPLANATORY STATEMENT for**  
**ASIC Corporations (Repeal) Instrument 2018/356**

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (ASIC) makes the *ASIC Corporations (Repeal) Instrument 2018/356* (the Instrument) under paragraphs 741(1)(b), 911A(2)(l) and 1020F(1)(c) and subsection 1075A(1) of the *Corporations Act 2001* (the Act).

The Instrument repeals ASIC Class Order [CO 14/829].

Paragraph 741(1)(b) of the Act 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.

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 1020F(1)(c) of the Act provides that ASIC may declare that Part 7.9 of the Act applies in relation to a person or a financial product, or a class of person or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.

Subsection 1075A(1) provides that ASIC may exempt specified financial products, or a specified class of financial products, from a provision of Part 7.11 of the Act or declare that Part 7.11 of the Act applies to specified financial products, or a specified class of financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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 14/829] was issued to:

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- amend Class Order [CO 02/312], to ensure that a definition in that instrument (relating to CHESSE Depository Interests (CDIs)) was consistent with that in a third instrument, Class Order [CO 14/827] (paragraph 4 of [CO 14/829]); and
  - amend [CO 14/827] by renumbering various paragraphs, to address a drafting error (paragraph 5 of [CO 14/829]).

Paragraph 3 of the [CO 14/829] specifies the following in relation to the commencement of that instrument:

- paragraph 4 was to commence on the date [CO 14/829] was registered under the *Legislative Instruments Act 2003*; and
- paragraph 5 was to commence on the later of:
  - the date of its gazettal;
  - the date of its registration under the *Legislative Instruments Act 2003*;
  - the day after the commencement date of [CO 14/827] ([CO 14/827] commenced on 5 November 2014).

[CO 14/829] was registered on 13 October 2014 and paragraph 4 of [CO 14/829] commenced on that date.

In relation to the commencement of paragraph 5 of [CO 14/829], two of three preconditions were met, in that [CO 14/827] did in fact commence, and [CO 14/829] was registered. However, [CO 14/829] was ultimately not gazetted, so paragraph 5 did not commence.

While paragraph 5 of [CO 14/829] made an attempt to correct the drafting error in [CO 14/827], that amending paragraph itself contained a mis-description. In any event, as noted above, the mis-described amendment in paragraph 5 of Class Order [CO 14/829] did not take effect because that class order was not gazetted. A subsequent instrument, Class Order [CO 14/1106], was made to address the drafting error in [CO 14/827].

Under section 48A of the *Legislative Instruments Act 2003* (as in force at the time [CO 14/829] was made, a legislative instrument that is made on or after the commencement of that section and the only legal effect of which is to amend or repeal one or more other legislative instruments, is automatically repealed. This occurs on the day after the latest occurrence of the commencement of the instrument or of the last of its provisions to commence, or the registration of the instrument. While the sole purpose of [CO 14/829] is to amend other legislative instruments, as not all of its provisions commenced, it was not subject to automatic repeal under section 48 A of the *Legislative Instruments Act 2003*, and remains in force.

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

The purpose of the *ASIC Corporations (Repeal) Instrument 2018/356* is to repeal [CO 14/489], given that:

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- the purpose of paragraph 4 of [CO 14/489] has been achieved in amending [CO 02/312]; and
  - paragraph 5 of [CO 14/489] has been made redundant by a subsequent instrument, [CO 14/1106].

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

Clause 4 of the instrument 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 14/489] is repealed in full.

### **4. Consultation**

ASIC undertook consultation before making [CO 14/829] by issuing Consultation Paper 220 *Fundraising: Facilitating offers of CHESS Depository Interests* (CP 220). ASIC received seven submissions in response to CP 220, all of which were supportive of the proposals set out in that paper. Details of the submissions received are contained in Report 414 *Response to submissions on CP 220 Fundraising: Facilitating offers of CHESS Depository Interests* (REP 414), which is available on ASIC's website [www.asic.gov.au](http://www.asic.gov.au).

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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 (Repeal) Instrument 2018/356**

*ASIC Corporations (Repeal) Instrument 2018/356 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 2018/356* repeals a legislative instrument that is now redundant.

#### **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**