
EXPLANATORY STATEMENT for
ASIC Corporations (Amendment) Instrument 2018/697

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes ASIC Corporations (Amendment) Instrument 2018/697 (**Amending Instrument**) under subsections 341A(1), 601QA(1), 655A(1), 926A(2), 1020F(1), and s1217(1) of the *Corporations Act 2001* (the **Act**).

Subsection 341A(1) provides that ASIC may make an order in respect of a specified class of notified foreign passport funds relieving any of the following from all or specified requirements of Part 2M.3:

- (a) notified foreign passport funds;
- (b) the operators of notified foreign passport funds;
- (c) the directors of the operators of notified foreign passport funds.

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

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

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 specific provisions were omitted, modified or varied.

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

Subsection 1217(1) of the Act provides that ASIC may exempt an entity from a provision of Chapter 8A, or declare that Chapter 8A applies to an entity as if specified provisions were omitted, modified or varied as specified in the declaration.

Subsections 341A(1) and 1217(1) are inserted into the Act by the Corporations Amendment (Asia Region Funds Passport) Act 2018. To the extent this instrument is

enabled by those subsections, the maker relies on section 4 of the Acts Interpretation Act 1901 to make this instrument before those enabling provisions have commenced.

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 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.

The Amending Instrument amends the following 11 instruments:

- ASIC Class Order [CO 12/749]
- ASIC Class Order [CO 13/521]
- ASIC Class Order [CO 13/656]
- ASIC Class Order [CO 14/1252]
- ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251
- ASIC Corporations (Sale Offers That Do Not Need Disclosure) Instrument 2016/80
- ASIC Corporations (Uncontactable members) Instrument 2016/187
- ASIC Corporations (Managed Discretionary Accounts) Instrument 2016/968
- ASIC Corporations (Application Form Requirements) Instrument 2017/241
- ASIC Corporations (Disclosure Relief – Offers to Associates) Instrument 2017/737
- ASIC Corporations (Wholesale Equity Scheme Trustees) Instrument 2017/849

(collectively **Relevant Instruments**)

The Amending Instrument also amends ASIC Class Order [CO 09/552] and ASIC Class Order [CO 13/1410].

1. Background

Asia Region Funds Passport

The framework for the Asia Region Funds Passport (**Passport**) is expected to commence in Australia in September 2018, as provided for by the *Corporations Act 2001* as amended by the *Corporations Amendment (Asia Region Funds Passport) Act 2018* (**Passport Act**), the Corporations Regulations 2001 as amended by the Corporations Amendment (Asia Region Funds Passport) Regulations 2018, and the Corporations (Passport) Rules 2018 (**Australian Passport Rules**).

The Passport provides a multilateral framework that allows eligible funds to be more easily marketed across participating countries by reducing differing or duplicative regulatory requirements. Funds that access the Passport arrangements are referred to as **passport funds**. Relevantly, the following are types of passport funds:

- **Australian passport fund**: a registered scheme that is also registered as a passport fund in Australia under Part 8A.3 of the Passport Act;
- **foreign passport fund**: regulated collective investment schemes (**CISs**) (see section 56 of the Australian Passport Rules) and sub-funds of regulated CISs that are registered as passport funds by participating economies other than Australia;

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- **notified foreign passport fund:** a foreign passport fund that has submitted a notice to offer interests in Australia in accordance with section 1213 of the Passport Act that has not been rejected within the prescribed period.

The country in which a passport fund is first registered, approved or authorised is the **home economy**, and a country into which the fund is then ‘passport’ is a **host economy**.

ASIC facilitation of the Passport

To facilitate the implementation and operation of the Passport in Australia, ASIC has exercised its powers to modify, or create exemptions from, the requirements of certain provisions of the Act. Broadly, the Amending Instrument:

- (a) extends existing ASIC instruments to cover notified foreign passport funds;
- (b) excludes foreign members of an Australian passport fund in a host economy from certain relief we give from the requirement to treat members of the same class equally; and
- (c) grants relief to facilitate the modification of the constitution of a registered scheme for consistency with certain requirements in the Australian Passport Rules.

Extension of existing ASIC instruments

The Relevant Instruments modify, and provide exemptions from, the Act in relation to registered schemes. A copy of each of the Relevant Instruments and its accompanying explanatory statement can be found on the Federal Register of Legislation, which can be accessed at <http://www.legislation.gov.au>.

As a notified foreign passport fund may offer interests in Australia without becoming a registered scheme, the Relevant Instruments will not apply. It is consistent with the Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport entered by Australia on 28 April 2016 that where Australia is regulating a notified foreign passport fund as a host economy, generally additional obligations should not apply to those that apply to a registered scheme. To help ensure this, we have modified the Relevant Instruments so that they apply to notified foreign passport funds in the same or a similar manner as they apply to managed investment schemes.

Relief to facilitate modification of scheme constitutions

Section 4 of the Australian Passport Rules requires the operator of a passport fund to ensure that the fund has a compliant constituent document at all times. For an Australian passport fund, the constituent document is the constitution of the registered scheme. To be compliant under subsection 4(3) of the Australian Passport Rules, the constitution must provide for:

- (a) a member to seek remedy, including through compensation, against the Australian passport fund and its operator; and

(b) the agreed forum where:

- (i) a member may commence proceedings against the Australian passport fund or its operator; and
- (ii) the Australian passport fund or its operator may commence proceedings against a member.

This is the only content that the Australian Passport Rules require to be in the constitution of an Australian passport fund.

Subsection 601GC(1) of the Act provides that the constitution of a registered scheme may be modified, or repealed and replaced with a new constitution either:

- (a) by special resolution of the members of the scheme; or
- (b) by the responsible entity if the responsible entity reasonably considers the change will not adversely affect members' rights.

Without relief, the responsible entity of a registered scheme that will seek registration as an Australian passport fund will need to comply with s601GC when modifying the constitution to be compliant under section 4 of the Australian Passport Rules. In addition, a responsible entity may also consider that, to ensure compliance with the Australian Passport Rules while the registered scheme is a passport fund (or where the scheme is deregistered as a passport fund but the Australian Passport Rules continue to apply to the scheme), it is necessary to modify the constitution to ensure that the constitution specifies a right of withdrawal, and set out procedures for making and dealing with withdrawal requests, that are consistent with the Australian Passport Rules. In these circumstances, the responsible entity may need to incur the costs of holding a members' meeting to allow members to consider and vote on the relevant changes where there is uncertainty as to which changes require member approval under s601GC(1)(a).

Equal treatment relief

The Amending Instrument also excludes foreign members of an Australian passport fund in a host economy from those members that may be able to be treated differently from other members of the same class of member under relief we give in [CO 13/656]. The rationale for this equal treatment relief will not generally apply to excluding foreign members in a host economy of an Australian passport fund where there is likely to be a greater number of foreign members and it would not be likely to be burdensome to extend to those members an offer of interests that is made to Australian members.

Amendment of [CO 13/1410]

The Amending Instrument also modifies [CO 13/1410] to align the requirements for providers of custodial or depository services, with requirements applying to responsible entities, and MDA providers and IDPS operators as defined in [CO 13/1410]. The amendment reduces the regulatory burden by removing requirements to meet custodial standards from a custodial provider when it outsources custody of the relevant financial products or beneficial interests in financial products.

The provider of the custodial or depository services is still required to ensure that the holder of the financial products or beneficial interest in financial products held under the arrangement for the provision of the custodial or depository service meets the custodial standards.

2. Purpose of the Amending Instrument

The primary purpose of the Amending Instrument is to facilitate the implementation and operation of the Passport in Australia. The Amending Instrument does this by:

- (a) extending the Relevant Instruments so that they apply to notified foreign passport funds in the same or similar manner as they apply to registered schemes;
- (b) excluding foreign members of an Australian passport fund in a host economy from certain equal treatment relief in [CO 13/656]; and
- (c) granting relief to facilitate the modification of the constitution of a registered scheme to ensure that it is consistent with section 4 of the Australian Passport Rules and that provisions relating to withdrawal are consistent with Division 7.1 of the Australian Passport Rules.

The Amending Instrument also aligns the requirements for providers of custodial or depository services, with requirements applying to responsible entities, MDA providers and IDPS operators by modifying [CO 13/1410]. The Amending Instrument also amends [CO 14/1252] to reinstate reference to superannuation products unintentionally omitted in an amendment to paragraph 204(7)(a) of Schedule 10 to the Corporations Regulations 2001 made by the Corporations Amendment (Asia Region Funds Passport) Regulations 2018.

3. Operation of the instrument

Commencement

Section 2 of the Amending Instrument provides that the instrument commences on the later of the day after it is registered on the Federal Register of Legislation or the day of commencement of Schedule 1 to the Passport Act. This aligns the commencement of the Amending Instrument with the commencement of the Passport framework in Australia.

Amendments

Section 4 of the Amending Instrument provides that each instrument that is specified in a Schedule of the Amending Instrument is amended as set out in the Schedule. The Amending Instrument contains one schedule, which amends 13 ASIC instruments.

1. ASIC Class Order [CO 09/522] (Changing scheme constitutions)

The Amending Instrument amends paragraph 4 by inserting notional subsection 601GC(1AAD).

Subsection 601GC(1AAD) allows the responsible entity of a registered scheme to modify the constitution of the scheme to the extent that the responsible entity reasonably considers necessary to ensure that the constitution:

- (a) is consistent with section 4 of the Australian Passport Rules; or
- (b) specifies a right of withdrawal and contains provisions for making and dealing with withdrawal requests that are consistent with Division 7.1 of Part 7 of the Australian Passport Rules.

A responsible entity can rely on the relief in notional s601GC(1AAD) to make modifications to the constitution of a registered scheme prior to the scheme being registered as an Australian passport fund. However, the relief only allows modifications to be made that have effect where the Australian Passport Rules apply in relation to the scheme. The Australian Passport Rules will apply where the scheme is an Australian passport fund, or where it is deregistered as a passport fund but has members who became members after the scheme became an Australian passport fund, or on the expectation that the scheme would become an Australian passport fund (other than any member that is, or has been, the operator of the scheme, or is a related party of an entity that is, or has been, the operator of the scheme).

2. ASIC Class Order [CO 12/749] (Relief from the shorter PDS regime)

The Amending Instrument amends paragraph 5 by inserting into the definition of ‘interposed entity’ in notional subregulation 7.9.11S(8) a new item (ab) for ‘a notified foreign passport fund’.

This amendment has the effect of excluding a notified foreign passport fund from the types of entities that are interposed entities (a term used in the definition of ‘hedge fund’ in [CO 12/749]), in the same way as a registered scheme is excluded.

3. ASIC Class Order [CO 13/521] (Takeover bids)

The Amending Instrument amends subparagraph 5(b) by inserting new notional paragraph s636(1)(gb), which is drafted equivalently to existing s636(1)(ga) (which relates to managed investment products) for foreign passport fund products. Paragraph 636(1)(gb) includes a reference to the additional content requirements for the PDS of a foreign passport fund under s1013GA.

This amendment has the effect of requiring that a bidder that offers foreign passport fund products as consideration under a bid must also disclose PDS information in the bidder’s statement if the bidder is the operator of the fund, controls the operator of the fund, or if the operator of the fund agrees to the bidder offering, or authorises, arranges for or permits the bidder to offer the foreign passport fund products.

The Amending Instrument also amends subparagraph 5(d) by inserting in notional s636(3)(d)(ii) the words “notified foreign passport fund” after “scheme”.

This amendment has the effect of allowing a bidder’s statement to include or be accompanied by a statement without the requirements in s636(3)(a) to (c) being met where the statement was made in a document lodged with the operator of a prescribed financial market by a listed notified foreign passport fund.

4. ASIC Class Order [CO 13/656] (Equality of treatment impacting on the acquisition of interests)

The Amending Instrument amends subparagraph 4(a) by omitting the words “Australia and New Zealand” and substituting “Australia, New Zealand and, in the case of an Australian passport fund, each host economy of the fund”.

This amendment has the effect of excluding members of an Australian passport fund in a host economy of the fund from the types of foreign members that may be excluded in certain circumstances from treatment of other members of the same class under the relief in [CO 13/656].

5. ASIC Class Order [CO 13/1410]

The Amending Instrument modifies paragraph 4 by omitting from s912AAC(7) the words ‘The financial services licensee must’, and substituting the words “If the financial services licensee holds custodial property, it must:”.

The Amending Instrument also modifies section 4 by omitting from notional s912AAC(9) the words “were the licensee” and substituting “were the licensee and those subsections applied to the licensee”.

These amendments have the effect of removing the requirement for a provider of custodial or depository services to meet the custodial standards in s912AAC(7) when it outsources custody of the relevant financial products or beneficial interest in financial products. The provider of the custodial or depository services is still required to ensure that the holder of the financial products or beneficial interest in financial products held under the arrangement for the provision of the custodial or depository service meets the custodial standards.

6. ASIC Class Order [CO 14/1252]

The Amending Instrument amends paragraph 4 by omitting the words “managed investment and superannuation products” and substituting “managed investment products, foreign passport fund products, and superannuation products”.

The Amending Instrument amends section 5CB by omitting from notional s1017D(3)(3AA) the words “managed investment product” and substituting ‘managed investment product or a foreign passport fund product’. It also amends section 5CB by omitting notional s1017D(3AA)(b) and substituting a modified paragraph (b) which provides that if the issuer has published a notice on its website that, in respect of the scheme or fund to which the product relates, it will provide the relevant

periodic statement within a specified period ending at least one month and less than six months after the end of the reporting period—within that specified period..

The Amending Instrument replaces all references in paragraph 6 to “managed investment product” with “collective investment product”.

The Amending Instrument also in effect inserts the words ‘or notified foreign passport fund’ after the all references to ‘registered scheme’ in paragraph 6.

In sub-subparagraph 6(a)(v), the Amending Instrument omits the words “superannuation entity or registered scheme” and substitutes “superannuation entity, registered scheme, or notified foreign passport fund” in notional clause 101B.

In sub-subparagraph 6(bd), the Amending Instrument omits the words “responsible entity” and substitutes “responsible entity or the operator of a notified foreign passport fund” in notional clause 104A. The Amending Instrument also removes a duplicate comma from notional clause 104A.

The amendments made by the Amending Instrument have the effect of extending the fees and costs disclosure requirements which apply to managed investment products so that they also apply to foreign passport fund products in the same way.

The Amending Instrument also inserts a new subparagraph 6(da) into the instrument which omits the words “collective investment product” and substitutes “collective investment product or superannuation product” in paragraph 204(7)(a). This amendment has the effect of reinstating a provision in relation to superannuation products that was unintentionally omitted by the Corporations Amendment (Asia Region Funds Passport) Regulations 2018.

7. ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251

The Amending Instrument amends section 4 by inserting a definition of “notified foreign passport fund insolvency resolution” being a resolution to the effect that, for a period of at least 12 months, the assets have been insufficient to meet the debts incurred in operating the fund as and when they were due and payable.

The Amending Instrument inserts a new section 7A, which is drafted equivalently to section 7 (which relates to registered schemes being wound up) for notified foreign passport funds being wound up. In replicating section 7, section 7A exempts insolvent notified foreign passport funds from all current and future financial reporting obligations under Part 2M.3 in certain circumstances. The exemption is modified for notified foreign passport funds by:

- requiring that the operator has lodged a notice under subsection 12(5) of the Australian Passport Rules in the approved form that the winding up of the fund has commenced, instead of a notice lodged under regulation 5C.9.01 as required for registered schemes;

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- not replicating provisions concerning persons appointed under s601NF(1) of the Act, as there is no equivalent in the Act for notified foreign passport funds; and
 - not replicating relief from compliance plan audit obligations under s601HG, as there is no equivalent obligation for notified foreign passport funds under the Act.

Complying with the financial reporting obligations in Part 2M.3 of the Act will impose unreasonable burdens on a notified foreign passport fund where it is clear that the assets of the fund are insufficient to meet the debts of the operator of the fund incurred in that capacity as and when they were due and payable. There are no users of the financial reports who require the information for the purposes of making decisions about the allocation of their resources as if the fund were a going concern.

The Amending Instrument also inserts a new section 13A, which is drafted equivalently to section 13 (which relates to registered schemes being wound up) for notified foreign passport funds being wound up. Section 13A inserts notional s1213MA. Insolvent notified foreign passport funds that are relying on the exemption in section 7A and have lodged a notified foreign passport fund insolvency resolution must comply with s1213MA.

Section 1213MA requires the operator of a notified foreign passport fund to make available to members a report at regular intervals which includes the following information unless the disclosure of that information would be prejudicial to the winding up:

- (a) information about the progress and status of the winding up of the fund, including details (as applicable) of:
 - (i) the actions taken during the period;
 - (ii) the actions required to complete the winding up;
 - (iii) the actions proposed to be taken in the next 12 months; and
 - (iv) the expected time to complete the winding up; and
- (b) financial information about receipts and payments for the fund during the period; and
- (c) the following information as at the end of the period:
 - (i) the value of assets of the fund; and
 - (ii) any potential return to fund members.

Section 1213MA also requires the operator of a notified foreign passport fund to have adequate arrangements in place to answer, within a reasonable period of time and without charge, any reasonable questions asked by a member of the fund about the winding up.

8. ASIC Corporations (Sale Offers That Do Not Need Disclosure) Instrument 2016/80

The Amending Instrument omits subsection 5(3) and substitutes a replacement which includes the words “or interests in a notified foreign passport fund” after references to “interests in a managed investment scheme”.

This amendment has the effect of extending to notified foreign passport funds the on-sale provision relief currently provided in relation to managed investment schemes so that persons who are issued interests in a notified foreign passport fund under disclosure exemptions of certain categories can sell within 12 months of issue without being required to provide disclosure.

9. ASIC Corporations (Uncontactable members) Instrument 2016/187

The Amending Instrument amends section 4 by omitting the definition of ‘relevant entity’ and substituting a replacement definition of ‘a company, registered scheme, notified foreign passport fund or disclosing entity’.

The Amending Instrument amends section 5 by inserting the words “or 314A(1) (as applicable)” (being a reference to the annual financial reporting obligations for notified foreign passport funds) after the reference to s314(1) (being the existing financial reporting obligations for companies, registered schemes and disclosing entities). The Amending Instrument omits paragraph 5(a) of the instrument and substitutes a replacement paragraph that in addition to continuing the effect of the paragraph for members of a company, registered scheme or disclosing entity in sub-paragraph 5(a)(i), extends that paragraph by adding sub-paragraph 5(a)(ii) which applies in relation to a member of a notified foreign passport fund that has made an election referred to in paragraph 314A(3)(a) and has in accordance with paragraph 314A(3)(c) elected to receive a copy of the reports as a hard copy.

The Amending Instrument amends section 6 by omitting the condition and substituting a condition which retains the effect of the condition in relation to companies, registered schemes and disclosing entities, and extends it to apply it in relation to notified foreign passport funds.

These amendments have the effect of relieving notified foreign passport funds from the requirement to send hard copy financial and auditor reports to members if members are ‘uncontactable’ as described in the instrument. This is an extension of the relief available in relation to uncontactable members of a registered scheme. The wording of the condition in section 6 as it relates to notified foreign passport funds reflects that a notified foreign passport fund is not required under s314A to provide directors’ reports and is not able to elect to provide concise reports.

10. ASIC Corporations (Managed Discretionary Accounts) Instrument 2016/968

The Amending Instrument amends section 15 by omitting the words “registered scheme” from notional s912AEC(22)(a) and substituting “registered scheme or a notified foreign passport fund”.

This amendment has the effect of allowing the client portfolio assets of a person who entered in a MDA contract to include interests in a managed investment scheme that is a notified foreign passport fund, in the same way as it may include interests in a managed investment scheme that is a registered scheme.

11. ASIC Corporations (Application Form Requirements) Instrument 2017/241

Exemption in relation to applications to switch products

The Amending Instrument amends section 4 by omitting the definition of ‘member approved switch arrangement’ and substituting a definition which retains the effect of the definition in relation to a registered scheme, and extends it so that it also applies in relation to a notified foreign passport fund in the same way.

The Amending Instrument also amends section 4 by omitting the definition of ‘voluntary switch arrangement’ and substituting a definition which retains the effect of the definition in relation to a registered scheme, and extends it so that it also applies in relation to a notified foreign passport fund in the same way.

The Amending Instrument also amends section 4 by omitting the definition of ‘switch’ and substituting a definition which continues the effect of the definition in relation to a registered scheme and extends it so that it also applies in relation to a notified foreign passport fund.

The Amending Instrument inserts after section 5 a new section 5A which sets out the terms of an exemption from s1016A of the Act for the operator of a notified foreign passport fund in relation to the issue of an interest in the fund that is made in accordance with a ‘voluntary switch arrangement’ or a ‘member approved switch arrangement’. The circumstances in which this exemption is available is set out in subsection 5A(2).

These amendments have the effect of exempting operators of notified foreign passport funds from the application form requirements in relation to members that ‘switch’ between funds operated by the same operator or its related bodies corporate. The exemption is only available in certain circumstances, including that the operator has taken reasonable steps to ensure that it gave a PDS and information about the switch to the member at the appropriate time. This exemption is on substantially the same terms as the existing exemption available to operators of registered schemes under section 5.

Inclusion of applicant’s date of birth in application form

The Amending Instrument amends section 10 by inserting the words “and a foreign passport fund product” after the words “managed investment product”.

This amendment has the effect of allowing the application form for a foreign passport fund product to include either an applicant’s date of birth or a statement that the applicant is at least 18 years of age, as is the case for application forms for managed investment products.

12. ASIC Corporations (Disclosure Relief – Offers to Associates) Instrument 2017/737

The Amending Instrument amends section 5 by inserting the words ‘and a foreign passport fund product’ after the words ‘managed investment product’.

This amendment has the effect of making Part 7.9 of the Act apply to foreign passport fund products as if paragraph (a) of the definition of ‘senior manager’ in section 9 of the Act were modified to include a director or secretary. This is the same way that Part 7.9 applies to managed investment products and addresses a technical issue that arose from the replacement of the term ‘executive officer’ with the term ‘senior manager’ under the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004*.

13. ASIC Corporations (Wholesale Equity Scheme Trustees) Instrument 2017/849

The Amending Instrument amends section 4 by inserting into the definition of ‘investment product’ two additional items for:

- (a) a foreign passport fund product (see below); and
- (b) an option to acquire, by way of transfer, a financial product covered by subparagraph 764A(1)(bb)(i) or (ii) of the Act.

This amendment has the effect of including the products referred to in 13(a) and (b) above as types of products that in certain circumstances can be dealt with (other than by issue to a retail client), or in relation to which a custodial or depositary service can be provided, by an eligible trustee of a wholesale equity scheme without the need to hold an AFS licence. The inclusion of the products referred to in 13(a) is equivalent to the inclusion of managed investment products, and the inclusion of the products referred to in 13(b) is equivalent to the inclusion of options of the type in para (e) of the definition of ‘investment product’.

4. Consultation

ASIC undertook consultation with participants in the Australian pilot program for the Passport, as well as with the Financial Services Council. ASIC clarified the operation of relief under [CO 09/522] in response to comments. ASIC’s amendment of [CO 13/656] was also consulted on under ASIC Consultation Paper 296 *Funds management* (CP 296). No submissions were received in response to this proposal in CP 296.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Amendment) Instrument 2018/697

The ASIC Corporations (Amendment) Instrument 2018/697 (the **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

Asia Region Funds Passport

The Asia Region Funds Passport provides a multilateral framework that allows eligible funds to be more easily marketed across participating economies by reducing differing or duplicative regulatory requirements. An Australian registered scheme that registers as a passport fund in Australia is referred to as an **Australian passport fund**. A foreign fund that is registered as a passport fund in another jurisdiction and accesses the Australian market under the Passport is referred to as a **notified foreign passport fund**.

To facilitate the implementation and operation of the Passport in Australia, ASIC has in the Amending Instrument exercised its powers to modify, or create exemptions from, the requirements of certain provisions of the Act. In particular, the Amending Instrument:

- (a) extends the following existing ASIC instruments so that they apply to notified foreign passport funds in the same or a similar way as to managed investment schemes:
 - (i) ASIC Class Order [CO 12/749];
 - (ii) ASIC Class Order [CO 13/521];
 - (iii) ASIC Class Order [CO 14/1252];
 - (iv) ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251;
 - (v) ASIC Corporations (Sale Offers That Do Not Need Disclosure) Instrument 2016/80;
 - (vi) ASIC Corporations (Uncontactable members) Instrument 2016/187;
 - (vii) ASIC Corporations (Managed Discretionary Accounts) Instrument 2016/968;
 - (viii) ASIC Corporations (Application Form Requirements) Instrument 2017/241;
 - (ix) ASIC Corporations (Disclosure Relief – Offers to Associates) Instrument 2017/737; and
 - (x) ASIC Corporations (Wholesale Equity Scheme Trustees) Instrument 2017/849;

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- (b) amends [CO 13/656] to exclude foreign members of an Australian passport fund in a host economy from relief in that instrument that allows members of the same class to be treated differently;
 - (c) amends ASIC Class Order [CO 09/522] to facilitate modifications of the constitution of a registered scheme to ensure compliance with the Corporations (Passport) Rules 2018.

The Amending Instrument also amends [CO 13/1410] to reduce the regulatory burden of compliance with s912AAC(7) by a provider of custodial or depository services who does not hold custodial property. This aligns the requirements applying to providers of custodial or depository services, responsible entities, MDA providers, and IDPS operators as defined in that instrument.

The Amending Instrument also amends [CO 14/1252] to reinstate reference to superannuation products unintentionally omitted in an amendment to paragraph 204(7)(a) of Schedule 10 to the Corporations Regulations 2001 made by the Corporations Amendment (Asia Region Funds Passport) Regulations 2018.

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