

EXPLANATORY STATEMENT

ASIC Corporations (Amendment) Instrument 2018/1028

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes the *ASIC Corporations (Amendment) Instrument 2018/1028* (the **amending instrument**) under subsections 992B(1) and 1020F(1) of the *Corporations Act 2001* (the **Act**).

Subsections 992B(1) and 1020F(1) of the Act respectively provide that ASIC may exempt a person or class of persons from all or specified provisions of Part 7.8 and 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 an instrument, the power is construed as including a power exercisable in the like manner to amend the instrument.

1. Background

- 1.1 ASIC Class Order [CO 13/763] (the **principal instrument**) implements ASIC's policy in relation to investor directed portfolio services (IDPSs). An IDPS is a kind of 'platform' which provides custodial, transactional and reporting services where the investor makes the investment decisions. An IDPS operator must hold an Australian financial services licence authorising it to operate an IDPS.
- 1.2 An IDPS is a managed investment scheme. ASIC's policy is to exempt IDPS operators from the requirement to register the IDPS under Chapter 5C and from Division 8 of Part 7.8 (the hawking prohibition) and Part 7.9 (which deals with, among other things, financial product disclosure) of the Act in relation to a financial product that is an interest in the IDPS scheme arising out of participation in the IDPS.
- 1.3 In lieu of the requirement to give a Product Disclosure Statement for the financial product that is an interest in the IDPS scheme, an IDPS operator is required to give an IDPS Guide. The IDPS Guide must include all information that a person would reasonably require to make a decision, as a retail client, whether to become a client of the IDPS.
- 1.4 ASIC made amendments to the principal instrument in December 2016. The amendments were made by the *ASIC Corporations (Amendment) Instrument 2016/1158*. At that time, ASIC inadvertently removed the exemption granted to IDPS operators from Division 8 of Part 7.8, and Part 7.9, in relation to a financial product that is an interest in a managed investment scheme arising out of participation in the IDPS.

2. Purpose of the instrument

- 2.1 The purpose of the instrument is to reinstate the exemptions previously granted to IPDS operators from Division 8 of Part 7.8, and Part 7.9, in relation to a financial product that is an interest in a managed investment scheme arising out of participation in the IDPS.

3. Operation of the instrument

- 3.1 The amending instrument amends the principal instrument by omitting subparagraph 4(b) of the principal instrument and substituting a new subparagraph 4(b) which includes the exemptions that were inadvertently removed in December 2016.
- 3.2 The amendments do not affect the obligations that are otherwise imposed on IDPS operators under ASIC's policy for regulating IDPSs.

4. Consultation

- 4.1 ASIC did not engage in consultation before making the amending instrument. ASIC did not consider that consultation was necessary because the amendments merely reinstates an aspect of ASIC's long-standing policy on IDPSs.

Statement of Compatibility with Human Rights

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

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ASIC Corporations (Amendment) Instrument 2018/1028 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 2018/1028 (the **amending instrument**) amends ASIC Class Order [CO 13/763] (the **principal instrument**).*

The principal instrument implements ASIC's policy in relation to investor directed portfolio services (IDPSs). An IDPS is a kind of 'platform' which provides custodial, transactional and reporting services where the investor makes the investment decisions.

The purpose of the amending instrument is to reinstate some exemptions granted to IDPS operators, which were inadvertently removed following amendments made in 2016.

ASIC's policy is to exempt operators from Division 8 of Part 7.8 (the hawking prohibition) and Part 7.9 (which deals with, among others, financial product disclosure) of the Act in relation to a financial product that is an interest in the IDPS scheme arising out of participation in the IDPS. These exemptions have now been reinstated.

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.