



**ASIC**  
Australian Securities &  
Investments Commission

# Explanatory Statement

## *ASIC Corporations (Amendment) Instrument 2019/698*

This is the Explanatory Statement for ASIC Corporations (Amendment) Instrument 2019/698.

The Explanatory Statement is approved by the Australian Securities and Investments Commission (*ASIC*).

### Summary

1. ASIC Class Order [CO 14/1262] (*principal class order*) provides interim conditional relief to enable 31-day notice term deposits of up to five years to be treated as basic deposit products under the *Corporations Act 2001 (the Act)*. The principal class order commenced on 22 December 2014, and provides relief for:
  - 31-day notice term deposits entered into on or before until 30 June 2019; and
  - 31-day notice term deposits that are entered into as a result of rolling over a term deposit that has the benefit of the relief.

The relief does not apply other term deposits entered into after 30 June 2019.

The principal class order was intended to give Government the opportunity to consider legislative reform regarding the meaning of basic deposit product under the Act, as it applies to 31-day notice term deposits.

The Government has indicated that there will not be an opportunity for any legislative changes to be made before the expiry of the principal class order.

### Purpose of the instrument

2. In order to preserve the current treatment of 31-day notice term deposits as an interim measure, the *ASIC Corporations (Amendment) Instrument 2019/698* extends the relief given by the principal class order to:
  - 31-day notice term deposits entered into on or before 30 June 2021; and
  - 31-day notice term deposits that are entered into as a result of rolling over such term deposits.

The substituted notional definition of *basic banking product* made by paragraph 4A has been updated to reflect the amendment to the definition of basic banking

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product in section 961F of the Act that was made by *Corporations Amendment (Financial Advice Measures) Act 2016*, No. 22, 2016.

To ensure any products prescribed by the regulations made under paragraph 961F(e) of the Act are incorporated into the notional definition of *basic banking product* made by paragraph 4A, subparagraph 4A(e) is amended to refer to paragraph 961F(e).

The reference to paragraph (da) of the definition of basic deposit product in section 761 has been removed as this paragraph has been repealed.

### **Consultation**

3. ASIC did not undertake a formal consultation process on extending the operation of the principal class order as the extension is a transitional measure of a minor and machinery nature. ASIC has consulted with the Treasury on the matter.

### **Operation of the instrument**

4. The legislative instrument amends sub-subparagraph (c)(i) of the definition of *affected term deposit* in paragraph 6 of the principal class order. The effect of this is to extend the operation of the relief given by the principal class order so that it applies to:
  - 31-day notice term deposits entered into on or before until 30 June 2021; and
  - 31-day notice term deposits that are entered into as a result of rolling over such term deposits.

### **Legislative authority**

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

Paragraph 951B(1)(c) of the Act provides that ASIC may declare that Part 7.7 of the Act 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.

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 persons or 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, 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.

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## Statement of Compatibility with Human Rights

6. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

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

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **ASIC Corporations (Amendment) Instrument 2019/698**

#### Overview

1. The purpose of the legislative instrument is to amend ASIC Class Order [CO 14/1262] (*the principal class order*). The principal class order provides conditional relief to enable 31-day notice term deposits of up to five years to be treated as basic deposit products under the *Corporations Act 2001 (Act)*, until 30 June 2019 (i.e. the relief will apply to 31-day notice term deposits entered into on or before 30 June 2019 and to rollovers of such term deposits). This was intended to give Government the opportunity to consider legislative reform regarding the meaning of basic deposit product under the Act, as it applies to 31-day notice term deposits.

The Government has indicated that there will not be an opportunity for any legislative changes to be made before the expiry of the principal class order.

In order to preserve the current treatment of 31-day notice term deposits as an interim measure, the legislative instrument extends the relief given by the principal class order so that it applies to such term deposits entered into on or before 30 June 2021 (and to rollovers of such term deposits).

#### Assessment of human rights implications

2. This instrument does not engage any of the applicable rights or freedoms.

#### Conclusion

3. This 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*.