



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2021/500

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2021/500* (**legislative instrument**).

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

Summary

1. The legislative instrument amends ASIC Class Order [CO 14/1262] (**principal class order**) to provide interim conditional relief to allow 31-day notice term deposits of up to five years to continue to be treated as basic deposit products under the *Corporations Act 2001* (the **Act**) until the Government has the opportunity to consider amendments to the Act or the Corporations Regulations 2001 (the **Regulations**).

Purpose of the instrument

2. The principal class order provides relief for:
 - 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 a term deposit that has the benefit of the relief.
3. The relief does not apply to other term deposits entered into after 30 June 2021.
4. The principal class order was intended to give Government the opportunity to consider legislative reform to clarify the meaning of basic deposit product under the Act, as it applies to 31-day notice term deposits. There will not be an opportunity for Government to consider any legislative changes before the expiry of the principal class order.
5. 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 to:
 - 31-day notice term deposits entered into on or before 30 June 2024; and

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- 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.

Consultation

6. ASIC did not undertake a public 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.
7. Before the principal class order was made, ASIC consulted with the Australian Banking Association, the Customer Owned Banking Association, Australian Prudential Regulation Authority, individual authorised deposit-taking institutions (ADIs), consumer representative groups, and the Treasury.

Operation of the instrument

8. 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 amendment 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 30 June 2024; 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.

Legislative instrument and primary legislation

9. The matters addressed by this legislative instrument are more appropriately dealt with through delegated legislation, rather than through primary legislation. The legislative instrument will provide Government with an opportunity to consider the extent to which the modifications made by the principal class order should be reflected in amendments to the Act and/or Regulations.
10. ADIs that issue term deposits changed their systems and processes to ensure that they comply with the law as modified by the principal class order several years ago. These changes were also intended to ensure that ADIs correctly calculated their liquidity coverage ratio under APRA-administered prudential standards.
11. Requiring further change to industry compliance – such as by not extending the principal class order – in the current circumstances would add undue cost and complexity for ADIs and their consumers.
12. The legislative instrument extends the operation of the principal class order to term deposits entered into over a 3-year period between 1 July 2021 and 30 June 2024. This duration is appropriate as it provides Government with an opportunity to consider whether amendments to the primary legislation should be made to address the issues that led to the creation of the principal class order. ASIC will engage with Treasury on the potential for legislative amendments and will continue to monitor the operation of the principal class order.

Legislative authority

13. 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.
14. 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.
15. 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.
16. 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.
17. The legislative instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

18. 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 2021/500

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* (the **Act**), until 30 June 2021 (i.e. the relief applies to 31-day notice term deposits entered into on or before 30 June 2021, as well as 31-day notice term deposits entered into as a result of rolling over a term deposit that has the benefit of the relief). 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.
2. There will not be an opportunity for any legislative changes to be made before the expiry of the principal class order.
3. 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 2024. The principal class order will also continue to apply to 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.

Assessment of human rights implications

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

Conclusion

5. 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*.