



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

(ASIC Corporations (Business Introduction Services) Instrument 2022/805

This is the Explanatory Statement for *ASIC Corporations (Business Introduction Services) Instrument 2022/805*.

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

Summary

1. ASIC Corporations (Business Introduction Services) Instrument 2022/805 (***Legislative Instrument***) remakes the relief in ASIC Class Order [CO 02/273] for interests in managed investment schemes only until 1 April 2025.
2. *ASIC Corporations (Repeal and Transitional) Instrument 2017/186* preserved the relief provided by [CO 02/273] until 1 April 2022. [*ASIC Corporations \(Amendment\) Instrument 2022/0077*](#) amended *ASIC Corporations (Repeal and Transitional) Instrument 2017/186* to extend its effect until 1 October 2022.
3. The Legislative Instrument provides conditional relief from certain requirements of the *Corporations Act 2001* (the **Act**) for persons involved in a business introduction service with respect to interests in managed investment schemes. Separate relief is provided for each of the following categories:
 - (a) operators of business introduction services;
 - (b) those who propose to issue or sell interests in a registered managed investment scheme through the use of introduction services;
 - (c) persons who endorse or verify information which appears in introduction services; and
 - (d) those who sponsor or publish introduction services.
4. The Legislative Instrument provides relief from the requirements that otherwise apply to a person involved in a business introduction service where they have provided ASIC with a notice of reliance in relation to:
 - (a) fundraising;

-
- (b) the issue, sale and purchase of scheme interests; and
 - (c) the prohibition on advertising and hawking.
5. The Legislative Instrument clarifies that persons involved in business introduction services must comply with the design and distribution obligations where they would otherwise need to comply with the obligations under Part 7.8A of the Act.

Purpose of the instrument

6. The purpose of the Legislative Instrument is to extend the relief in ASIC Class Order [CO 02/273] for interests in managed investment schemes only, until 1 April 2025, and to clarify that the relief in the Legislative Instrument for the offer, issue or recommendation of scheme interests, does not affect a persons' obligations under Pt 7.8A where they would otherwise apply.
7. ASIC has allowed the [CO 02/273] relief in relation to Chapters 6D and 2L of the Act to terminate on 1 October 2022 on the basis that the crowd-sourced funding (CSF) regime facilitates flexible and low-cost access to capital for small to medium sized unlisted companies and from October 2018 for eligible proprietary companies. The CSF regime is not available to managed investment schemes operators.
8. ASIC has extended the relief for interests in managed investment schemes which have less than 20 members and are seeking to raise funds of up to \$5 million. ASIC considers that the relief continues to be useful for managed investment schemes as these entities recover from the impact of the COVID-19 pandemic.
9. It is a requirement that any person seeking to rely on the relief must give ASIC notice in writing of their intention to do this.

Consultation

10. ASIC engaged in public consultation in 2021 with respect to the proposal to remake the relief in Consultation Paper 357 *Remaking relief for business introduction services: ASIC Instrument 2017/186 (CP 367)*.
11. The Office of Best Practice Regulation received ASIC's certification that Instrument 2017/186 operated effectively and efficiently and therefore a Regulation Impact Statement was not required to make *ASIC Corporations (Amendment) Instrument 2022/0077* which provided that after six months, the relief for securities would be allowed to sunset. The Office of Best Practice was also advised that the instrument would be remade effective 1 October 2022 for interests in managed investment schemes only until 1 April 2025.

Operation of the instrument

12. The Legislative Instrument commences the later of 1 October 2022 and the day after it is registered on the Federal Register of Legislation.

-
13. Paragraph 5(1) provides that an operator conducting an introduction service, does not have to comply with:
 - (a) Part 7.9 of the Act; and
 - (b) subsection 992A of the Act.
 14. The exemption in paragraph 5(1) does not affect the operator's obligations under Part 7.8A of the Act (design and distribution obligations).
 15. Paragraph 5(2) provides that the exemption in paragraph 5(1) applies where the operator satisfies the circumstances listed in subparagraphs 5(2)(a)-(m).
 16. Subsection 5(2)(a) requires the operator gives ASIC a reliance notice as defined in Section 4 of the Legislative Instrument.
 17. Subparagraph 5(2)(b) requires that neither the operator nor any associate of the operator has a pecuniary interest in the outcome of any investment decision other than charging an introduction fee or commission for providing the introduction service.
 18. To ensure prospective investors are made aware of the risks of the investment, subparagraph 5(c)(i)-(v) requires that the following prominent statements are contained in each publication:
 - (i) investment in new business carries high risk and is highly speculative and that any prospective investors are advised to seek the appropriate professional advice before investing;
 - (ii) the information in the publication was prepared by or on behalf of the issuer or seller of the scheme interests and neither the operator or publisher (if any) has independently reviewed the information in the publication;
 - (iii) it is not intended that the information in the publication about the proposed investment and scheme interest is the only information relied upon to make the investment decision. The information in the publication is not a replacement for a Product Disclosure Statement or any other disclosure that may be required to make an investment decision under the Act. Detailed information, for example, financial statements; a business plan; information about ownership of intellectual or industrial property; or expert opinions including valuations or auditors' reports, may be needed to make an investment decision.
 - (iv) no established market exists for the trading of any scheme interests that may be offered; and
 - (v) the publication is subject to the Legislative Instrument.

-
19. Subparagraph 5(2)(d) provides that unless the publication is available only on subscription, it must not contain the name or any distinguishing trademark or logo of the person who issued, arranged the issue of, or made available for sale the interests, or the issuer of the scheme interests which may be sold as a result of the offer made.
 20. Subparagraph 5(2)(e) provides that when the publication is available only on subscription, the publication may contain the name and distinguishing trademark or logo of a person described in subparagraph 5(2)(d), if the person entitled to receive the publication acknowledges to the operator that the person is aware of the limitations regarding information provided in publications referred to in subparagraph 5(2)(c), and it contains the information in subparagraph 5(2)(c)(iii) which refers to the limitation of the information provided, and that the prospective investor is strongly advised to take appropriate professional advice before accepting the offer for issue or sale of any scheme interests.
 21. Subparagraph 5(2)(f) provides that if the publication is made available to a person who is not a subscriber, the operator must provide that person with a notice containing the statement that the information contained in the publication about the proposed business opportunity and the scheme interests is not intended to be the only information on which the decision should be made and is not a substitute for a Product Disclosure Statement, or any other notice that may be required under the Act, as it applied to the investment, and that detailed information may be needed to make an investment decision, for example: financial statements, a business plan; information about ownership of intellectual or industrial property; or expert opinions including valuations or auditors reports and that the prospective investor was strongly advised to take appropriate professional advice before accepting an offer for the issue or sale of scheme interests.
 22. Subparagraph 5(2)(g) provides that the operator must not at any meeting publish any information about an offer made by an issuer or seller without first obtaining the prior written authorisation of the issuer or seller.
 23. Subparagraph 5(2)(h) provides that the publication must not contain any application for scheme interests.
 24. Subparagraphs 5(2)(i), (i)-(ii) states that the publication must not include any advertisement or statement that directly or indirectly refers to or is reasonably likely to induce people to apply for the scheme interests under an offer or intended offer of scheme interests for more than \$5 million in total in relation to any one managed investment scheme.
 25. Subparagraph 5(2)(j) requires that a publication or any statement at a meeting, must not state that the introduction service has been endorsed or approved by ASIC.
 26. Subparagraph 5(2)(k) requires that at every meeting, operators must not issue or permit the issue of any application form for scheme interests.

-
27. Subparagraph 5(2)(l) provides that an operator at every meeting does not make any statement to the effect that the introduction service, the operator or any person associated with the introduction service has been endorsed or approved by ASIC.
28. Subparagraph 5(2) (m) requires that at the commencement of every meeting, the operator must make certain statements, and circulate in writing to each attendee, statements to the effect that:
- (i) a prospective investor should obtain further information from the issuer or seller and conduct further enquiries about the proposed investment and the scheme interests that may be issued, or sold before applying for or buying interests;
 - (ii) requests for further information about a proposed investment and the relevant scheme interests may be made to the issuer or seller;
 - (iii) a prospective investor is strongly advised to obtain appropriate professional advice before accepting an offer for issue or sale of scheme interests including whether the proposed investment is suitable for that person's circumstances;
 - (iv) no contract for the issue or sale of scheme interests discussed at the meeting can be entered into on the day between the issuer and seller and the prospective investor; and
 - (v) any contract for the issue or sale of scheme interests entered into within five days of the meeting with a prospective investor who attended the meeting, is voidable at the option of the prospective investor without penalty or forfeiture during the period of ten business days from the date of the meeting.

Issuer and Seller

29. Paragraph 6(1) provides that an issuer or seller does not have to comply with:
- (a) Part 7.9 of the Act; and
 - (b) subsection 992A of the Act
- in relation to an introduction service.
30. The exemption in paragraph 6(1) does not affect the obligation of the issuer or seller to comply with Part 7.8A of the Act (design and distribution obligations).
31. Paragraph 6(2) provides that in order to rely on the exemptions in paragraph 6(1), the issuers and sellers, as the case may be, must satisfy the circumstances listed in subparagraphs 6(2)(a)-(n).
32. Subparagraph 6(2)(a) provides that an issuer or seller, as the case may be, must give ASIC a reliance notice as defined in section 4 of the Legislative Instrument.

-
33. Subparagraph 6(2)(b) provides that the total amount for which the scheme interest are offered must not exceed \$5 million in relation to any one scheme or schemes which ASIC determines to be closely related schemes under subsection 601ED(3) of the Act.
 34. Subparagraph 6(2)(c) provides that the issuer or seller has not offered scheme interests of the same class in the preceding 12 months to more than 20 persons who are counted as prescribed in subparagraph 6(2)(d) at the time of the offer in the preceding 12 months of the offer.
 35. Subparagraph 6(2)(d) explains that in counting 20 persons for the purposes of subparagraph 6(2)(c), the issuer or seller is to count:
 - (i) a person to whom an offer for scheme interests was made under this instrument or former ASIC Class Order [CO 02/273], and which cannot by acceptance give rise to a contract to issue or sell scheme interests;
 - (ii) persons to whom an offer for scheme interests have been made, and which if accepted would give rise to a contract to issue or sell scheme interests; and
 - (iii) the offer for scheme interests was made to persons which did not need a Product Disclosure Statement other than because of this legislative Instrument, or section 1012E of the Act.
 36. Subparagraph 6(2)(e) provides that an issuer or seller must not make an offer of scheme interests for issue or sale which may by acceptance give rise to a contract with a person who responded an offer for scheme interests made in accordance with this Legislative Instrument or under the former ASIC Class Order [CO 02/273], other than any of the following:
 - (i) an offer of scheme interests which does not require a Product Disclosure Statement, other than because of this Legislative Instrument, or section 1012E of the Act;
 - (ii) an offer for scheme interests which by acceptance, give rise to a contract to issue or sell scheme interests; and
 - (iii) the offer contained in a Product Disclosure Statement lodged with ASIC that relates to scheme interests lodged with ASIC.
 37. Subparagraph 6(2)(f) requires that the issuer or seller does not issue or sell scheme interests in schemes that are determined by ASIC to be closely related schemes under subsection 601ED(3) of the Act, to persons who respond to offers made that other than because of this Legislative Instrument, or section 1012E of the Act, persons who responded to an offer made under subparagraphs 2(d)(i) or (ii) for more than \$5 million as worked out under subparagraph 6(2)(g) in total until one year after the last of those offers was made.
 38. Subparagraph 6(2)(g) describes how the \$5 million under paragraph (2)(f) is to be calculated, providing that amounts paid in relation to issues resulting from

offers of scheme interests which do not require a Product Disclosure Statement, other than because of this instrument or section 1012E of the Act, and amounts paid in response to an offer made in a Product Disclosure Statement dated after the issuer, or seller has ceased to make or published offers, advertisements or publications under subparagraph (2)(d)(i) are not to be counted.

39. Subparagraph 6(2)(h) provides that neither the issuer nor any person who issues, makes available at any meeting any application form for scheme interests of the issuer.
40. Subparagraph 6(2)(i) provides that the issuer or seller is not to issue or sell scheme interests to a person to whom a publication has been made available or who has attended a meeting relating to scheme interests unless the:
 - (i) the issuer has given the person an application form capable by acceptance of giving rise to a contract for issue of the scheme interests for the period of one year after the publication was made available or the meeting was held; or
 - (ii) the seller has issued the person a document offering scheme interests for sale which if accepted could give rise to a contract for sale of the scheme interests for a period of one year after the publication was made available or the meeting was held.
41. Subparagraph 6(2)(j) provides that the issuer or seller must not enter into a contract for issue or sale of scheme interests discussed at the meeting on the day of the meeting held with the prospective investor.
42. Subparagraph 6(2)(k) requires that a contract for the issue or sale of scheme interests must contain provisions to the effect that the contract is voidable at the option of the investor, without penalty or forfeiture during the period of ten business days from the meeting if the investor had attended a meeting where the scheme interests were discussed, and the contract for the issue or sale of scheme interests was entered into during the period of five business days from the date of that meeting.
43. Subparagraph 6(2)(l) requires that an issuer or seller must take all reasonable steps to ensure that all material included in a publication or provided at a meeting does not contain any false, misleading or deceptive statements.
44. Subparagraph 6(2)(m) provides that except as permitted by subparagraph 5(2)(e), the issuer or seller does not publish or cause to be published in any publication, the name or any distinguishing trademark or logo of the issuer or seller.
45. Subparagraph 6(2)(n) provides that where the issuer or seller causes or authorises endorsed material to be included in a publication or referred to at a meeting, the issuer or seller must:
 - (i) first obtain the written consent of the endorser to include or refer to the endorsed material in the publication or at the meeting;

-
- (ii) state in the publication or at the meeting, that the endorser has consented to the inclusion of or reference to the endorsed material and that the consent has not been withdrawn;
 - (iii) include in the publication, and state at the meeting, the information the endorser has provided to the issuer or seller regarding the extent of the enquiries the endorser has made in order to make the endorsement, verification or assessments;
 - (iv) disclose in the publication or by a statement in writing which is provided to each person attending the meeting, as the case may be, information regarding the:
 - (A) nature and extent of the interests of the endorser, including a statement of all amounts paid or agreed to be paid to the endorser, in cash or financial products by any person for the services rendered by the endorser in cash or financial products or by any person for services rendered by the endorser when the offer is made or referred to in the publication or at the meeting and that existed within two years before the publication or at the meeting, in connection with:
 - (I) the promotion, formation or inception, of the offer:
 - (II) any property to be acquired in connection with the promotion, formation or inception; and
 - (III) any services rendered in connection with the promotion or formation or inception
- of the scheme to which the endorsed material relates; and
- (B) where the interest of the endorser consists of being a partner in a firm, the extent and nature and extent of the interest in the firm of the endorser of the matters referred to in subparagraph 6(2)(n)(iv)(A).

Endorser

- 46. Paragraph 7(1) provides that an endorser does not need to comply with the following in endorsing material for a publication in relation to a business introduction service:
 - (a) Part 7.9 of the Act; and
 - (b) subsection 992A(1) of the Act.
- 47. The exemption does not affect the endorser's obligations, under Part 7.8A of the Act (design and distribution obligations).
- 48. Paragraph 7(2) provides that the exemption in subsection 7(1) applies where the:

-
- (a) endorser gives ASIC reliance notice that complies with the definition in Section 4 of the legislative instrument; and
 - (b) the endorser indicates in any endorsed material the extent of the enquiries the endorser has made in order to make the endorsement, verification or assessment.

Publishers

- 49. Paragraph 8(1) provides that a publisher when publishing a publication in relation to an introduction service, does not have to comply with:
 - (a) Part 7.9 of the Act; and
 - (b) subsection 992A(1) of the Act.
- 50. The exemption in paragraph 8(1) does not affect the publisher's obligations under Part 7.8A of the Act (design and distribution obligations).
- 51. Paragraph 8(2) provides that the exemption in paragraph 8(1) applies where the publisher meets the requirements set out in subparagraphs 8(2)(a),(b), (c) and (d).
- 52. Subparagraph 8(2)(a) provides that the endorser must give ASIC a reliance notice that complies with the definition in Section 4 of the Legislative Instrument.
- 53. Subparagraph 8(2)(b) requires that the publisher satisfies any of the following :
 - (i) the publisher conducts a business of publishing information and the offer, advertisement and statement is received for publication in the ordinary course of business; or
 - (ii) the publisher is involved in the promotion or encouragement of investment in scheme interests on a not-for-profit basis;
 - (iii) the publisher allows its name to be associated with or used in the publication, but not in relation to any particular offer in the publication;
 - (iv) the publisher provides the operator with direct financial assistance for the purpose of the preparation, publishing or distributing the publications.
- 54. Subparagraph 8(2)(c) provides that a publisher must not have any pecuniary interest in the outcome of any investment decision by the users of the introduction service.
- 55. Subparagraph 8(2)(d) provides that the publisher must also be authorised by both the operator, issuer and seller as the case may be, to publish the publication.
- 56. Part 3 of the Legislative Instrument repeals the Legislative Instrument on 1 April 2025.

Incorporation by reference

57. The Legislative Instrument refers to content in ASIC Class Order [CO 02/723], which provided fundraising and disclosure relief to Operators, Issuers, Sellers, Endorsers and Publishers involved in business introduction services, but it is not incorporated by reference within s.14 of the Legislation Act 2003.

Legislative instrument and primary legislation

58. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because:
- (a) The instrument remakes the relief in ASIC Class Order [CO 02/273] only for interests in managed investment schemes until 1 April 2025. The matters contained in the instrument are a specific amendment designed to ensure the application of primary legislation remains flexible, to adapt to market developments for a specific and relatively small subset of the *regulated* population seeking to raise funds in particular circumstances and applies in a way consistent with the intended policy and the enabling provisions in the primary legislation.
59. At this stage ASIC does not intend to extend the relief when it expires in April 2025. ASIC understands that the Government will consider the merits of making future amendments to the primary legislation and regulations as part of the review process for the instrument prior to its expiry date.

Duration of the instrument

60. The relief provided by the Legislative Instrument has effect until 1 April 2025.

Legislative authority

61. ASIC makes this Legislative Instrument under paragraph 992B(1)(a) and 1020F1(a) of the Act.
62. The Legislative Instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

63. 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](#).

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 (Business Introduction Services) Instrument 2022/805

Overview

1. The *ASIC Corporations (Business Introduction Services) Instrument 2022/805* remakes the relief in ASIC Class Order [CO 02/273] continued by the ASIC Corporations (Repeal and Transitional Instrument 2017/186) and extended by six months by ASIC Corporations (Amendment) Instrument 2022/0077 for the offer, issue or recommendation of scheme interests until 1 April 2025 subject to the notification requirements.

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*.