



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Investor Directed Portfolio Services Provided Through a Registered Managed Investment Scheme) Instrument 2023/668 and ASIC Corporations (Amendment and Repeal) Instrument 2023/670

This is the Explanatory Statement for *ASIC Corporations (Investor Directed Portfolio Services Provided Through a Registered Managed Investment Scheme) Instrument 2023/668* (the **Instrument**) and the *ASIC Corporations (Amendment and Repeal) Instrument 2023/670* (the **Amendment/Repeal Instrument**).

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

Summary

1. *ASIC Corporations (Investor Directed Portfolio Services Provided Through a Registered Managed Investment Scheme) Instrument 2023/668* maintains the relief previously given under ASIC Class Order [CO 13/762] - *Investor directed portfolio services provided through a registered managed investment scheme* ([\[CO 13/762\]](#)). It modifies provisions of the *Corporations Act 2001* (the **Act**) and provides responsible entities relief from some of the managed investment scheme, fundraising, financial product disclosure and other investor rights provisions in the Act. ASIC requires that the responsible entity of the IDPS-like scheme hold an Australian financial services (**AFS**) licence with an authorisation to operate an IDPS-like scheme, and to comply with the requirements in the Instrument. The modifications and relief are provided because while IDPS-like schemes are registered managed investment schemes, the responsible entities do not make investment decisions, and instead have more limited functions.
2. [CO 13/762] was due to sunset on 1 October 2023. Following consultation, ASIC considered that [CO 13/762] was operating effectively and efficiently to achieve its objectives and continued to form a necessary and useful part of the legislative framework.
3. As a result, [CO 13/762] has been remade in a new legislative instrument, with minor drafting changes to reflect ASIC's current style, format and approach, removing redundant provisions and updating definitions, while preserving the current effect of the Instrument. We have made minor changes also in response to submissions as outlined further below in paragraph 13. In light of there being no significant changes, this Explanatory Statement should be read in conjunction with the [Explanatory Statement for \[CO 13/762\]](#).

-
4. The Amendment/Repeal Instrument repeals [CO 13/762] and ASIC Class Order [CO 13/763] - *Investor directed portfolio services* ([\[CO 13/763\]](#)). These class orders are superseded respectively by the Instrument and *ASIC Corporations (Investor Directed Portfolio Services) Instrument 2023/669* [**LI 2023/669**] upon their commencement. The Amendment/Repeal Instrument also updates cross-references in various other legislative instruments to [CO 13/762] and [CO 13/763]. The Amendment/Repeal Instrument amends these instruments and repeals [CO 13/762] and [CO 13/763] ahead of their automatic repeal on 1 October 2023. Further details about LI 2023/669 are contained in the Explanatory Statement for that instrument.
 5. ASIC makes the Instrument under subsections 341(1), 601QA(1), 741(1), 926A(2), 992B(1) and 1020F(1) of the Act and the Amendment/Repeal Instrument under subsections 341(1), 601QA(1), 655A(1), 673(1), 741(1), 926A(2), 951B(1), 992B(1) and 1020F(1) of the Act and subsection 5A(4) of the *Corporations (Fees) Act 2001*.

Purpose of the Instrument

6. The purpose of the Instrument is to provide for ASIC's regulation of IDPS-like schemes, treat platform operators similarly where there is no regulatory basis for different treatment, and promote confident and informed investors, including by ensuring that they receive adequate disclosure and advice about IDPS-like schemes and investments available through them.
7. Since 2002, the platforms sector has changed and grown significantly, and continues to develop, expand and present new challenges. Given this, in 2012-2013 ASIC recognised a need to review and update the regulation of IDPS and IDPS-like schemes.
8. The review of ASIC's regulation of platforms followed a consultation paper published in March 2012, setting out proposals and supporting rationale for reviewing the regulatory approach to platforms: CP 176 Review of ASIC policy on platforms: Update to RG 148 ([CP 176](#)).
9. On 28 June 2013, ASIC released RG 148 *Platforms that are managed investment schemes* ([RG 148](#)) to explain our objectives when regulating platforms, set out the requirements for operating a platform and the disclosure obligations of operators of IDPS and responsible entities of IDPS-like schemes and to provide guidance to people who provide financial product advice on platforms.
10. On 1 July 2013 ASIC made [CO 13/762] *Investor directed portfolio services provided through a registered managed investment scheme*, which replaces ASIC Class Order 02-296 *Investor directed portfolio-like services provided through a registered managed investment scheme*' ([\[CO 02-296\]](#)). The purpose of [CO 13/762] was to update our regulation of IDPS-like schemes to address complexities existing in the regulatory settings and emerging issues, treat platform operators similarly where there is no regulatory basis for different treatment, and promote confident and informed investors, including by ensuring

that they receive adequate disclosure and advice about IDPS-like schemes and investments available through them.

11. The purpose of the Amendment/Repeal Instrument is to repeal [CO 13/762] and [CO 13/763] as these class orders are superseded respectively by the Instrument and LI 2023/669 upon their commencement. It also updates cross-references in various legislative instruments to [CO 13/762] and [CO 13/763].

Consultation

12. On 28 March 2023, ASIC released Consultation Paper 369 *Remaking ASIC class orders on platforms: [CO 13/762] and [CO 13/763] (CP 369)* proposing to continue the relief given by [CO 13/762], without any significant changes. No material amendments were made as ASIC considers [CO 13/762] was operating effectively and efficiently, and continued to form a necessary and useful part of the legislative framework.
13. The consultation period closed on 28 April 2023. ASIC received two submissions in response to CP 369. ASIC has taken these into account and made minor changes to include an additional option for information to be accessible in a secure, digital format and will provide additional guidance in RG 148 *Platforms that are managed investment scheme and nominee and custody services*.
14. Notwithstanding ASIC's general consultation on the re-issue and update of the legislative instrument, ASIC considers that the Instrument is of a minor or machinery nature and does not substantially alter existing arrangements.
15. ASIC has self-certified that it is not required to prepare an Impact Analysis for the Instrument. This is because, following a formal consultation process with affected stakeholders, ASIC has assessed that [CO 13/762] is operating effectively and efficiently.

Operation of the Instrument

16. Section 5 of the Instrument exempts responsible entities and persons involved in the preparation of a Product Disclosure Statement (**PDS**) from fundraising, hawking and some PDS content requirements in the Act. Relief is provided from including in the PDS information about all the investments available through the IDPS-like scheme.
17. Section 6 of the Instrument exempts an IDPS-like scheme from complying with the requirements in subparagraphs 314(1)(a)(i) and (iii) to provide members with the financial report and auditor's report on the financial report if the conditions in Section 6 are met.
18. Section 7 of the Instrument declares that Part 7.9 of the Act applies in relation to a responsible entity of an IDPS-like scheme and each other person involved in the preparation of a PDS for an interest in the scheme by modifying that Part,

which includes inserting notional section 1013DAB into the Act. The notional provision contains several requirements for IDPS-like schemes relating to the areas described in paragraphs 19-25.

19. PDS content requirements, including:
- (a) disclosures regarding any key differences in the rights available to members of the IDPS-like scheme, as opposed to investing directly – at a minimum, the disclosure must cover cooling-off rights, voting rights and withdrawal rights under section 724 and section 1016E of the Act relating to accessible investments;
 - (b) the consequences for members who do not opt in to continuing to receive financial product advice;
 - (c) how and to whom members may make a complaint;
 - (d) how the responsible entity will determine which investments are selected for inclusion on an IDPS-like scheme, including the process applied and the factors considered for selecting investments.
 - (e) whether withdrawal requests are allowed for by the scheme’s constitution and, if so, how a withdrawal request will be dealt with under the constitution where the request relates to an accessible investment which is subject to a minimum holding requirement or giving effect to the request might otherwise adversely affect members other than the requesting member.
 - (f) statements setting out a member’s right to disclosure in relation to accessible investments and that a member will have the right to elect to receive copies of communications sent to holders of accessible investments, including those communications which the holder may elect to receive.
 - (g) statements regarding the availability of policies relating to voting rights, availability of a document specifying the accessible investments for the scheme if the PDS does not specify these investments, and fees and charges payable by a member.
20. Communications
- (a) A responsible entity of an IDPS-like scheme must give to a member on request a copy of all communications that are required by law to be given to the holder of an accessible investment by the responsible entity or a custodian.
 - (b) A responsible entity of an IDPS-like scheme may give documents to a member by giving the document to the member's agent who is associated with the responsible entity.

21. Application form

- (a) The application form accompanying the PDS for an IDPS-like scheme must contain a prominent consumer warning acknowledgement, with cross references to the relevant parts of the PDS, and proximate to where the investor signs or submits their acceptance or agreement, which identifies the key areas of difference between acquiring a financial product directly and through an IDPS-like schemes (including any differences in respect of rights) and, if applicable, any adverse effect on the members if they do not opt in to receive financial product advice about using the IDPS-like scheme or investing through it.

22. Policies

- (a) A responsible entity of an IDPS-like scheme must have in place a voting policy that includes information about the responsible entity's voting practices on company and scheme resolutions available to members free of charge on request.
- (b) A responsible entity of an IDPS-like scheme must have in place a policy for members who do not opt in to receive financial product advice, available to members free of charge on request.

23. Dispute resolution

- (a) If a product issuer of accessible financial products gives a notice in writing to the responsible entity of an IDPS-like scheme stating that it will comply with the internal dispute resolution requirements in the Instrument, it must comply with the standards and requirements prescribed in the Instrument.
- (b) A responsible entity of an IDPS-like scheme must take reasonable steps to facilitate resolution of disputes between its members and product issuers of accessible financial products, including informing members whether issuers have internal dispute resolution systems that are available to the members.

24. Breach

- (a) A responsible entity of an IDPS-like scheme must comply with the requirements in the Instrument or will be in breach of the general AFS licensee obligation to comply with the financial services laws. A responsible entity of an IDPS-like scheme must report breaches as required under the Act.

25. Reporting

- (a) A responsible entity of an IDPS-like scheme must comply with quarterly reporting obligations or, alternatively, electronic reporting on a substantially continuous basis.
- (b) A responsible entity of an IDPS-like scheme must provide an annual investor statement and audit report.

26. Definitions

- (a) The Instrument stipulates that an IDPS-like scheme is a registered managed investment scheme, which has a constitution that has provisions to the effect that members may direct that an amount of money be invested in specific investments available through the scheme; and receive capital and income distributions from the scheme determined by reference to amounts received by the responsible entity or custodian corresponding to their interests in the scheme and acquired in accordance with their directions.

27. Section 8 of the Instrument declares that Division 5 of Part 7.9 of the Act applies in relation to the responsible entity of an IDPS-like scheme as if the provisions of that Division were modified or varied, including by inserting notional section 1019BA into the Act. This section provides relief from the requirement to give cooling-off rights under Div 5 of Pt 7.9 of the Act and is provided where the requirements of the Instrument are met.

Where cooling-off rights are exercised, the responsible entity of an IDPS-like scheme must take reasonable steps to realise the investments and repay the investor, after deducting any losses in value to the investments on realisation relative to what was paid for them, and any fees and costs that could be deducted on exercise of cooling-off rights under Div 5 of Pt 7.9 of the Act.

28. Section 9 of the Instrument declares that Chapter 5C of the Act applies in relation to a responsible entity of an IDPS-like scheme as if the provisions of that Chapter were modified or varied. The modifications broadly relate to constitution content requirements and inserting notional section 601KA into the Act regarding members' rights to withdraw from the scheme.
29. Section 10 of the Instrument declares that Chapter 6D of the Act applies to all persons as if Part 6D.2 were modified by inserting notional section 704B. The notional section broadly relates to disclosure for offers made through an IDPS-like scheme.
30. Section 11 of the Instrument declares that Part 7.9 of the Act applies in relation to a responsible entity of a simple managed investment scheme as if regulation 7.9.11S of the *Corporations Regulations 2001* were modified or varied by, in subregulation (4), omitting "managed investment scheme that has a constitution" and substituting "managed investment scheme where, or has a constitution".

-
31. The Instrument will commence on 1 October 2023.
 32. The purpose of the Amendment/Repeal Instrument is to repeal [CO 13/762] and [CO 13/763] ahead of their automatic repeal on 1 October 2023 in accordance with section 50 of the *Legislation Act 2003*. It also updates cross-references in various instruments to [CO 13/762] and [CO 13/763].

Incorporation by reference

33. The Amendment/Repeal Instrument does not incorporate by reference any documents. The Instrument incorporates by reference the following documents:
 - (a) *ASIC Corporations (Investor Directed Portfolio Services) Instrument 2023/669* – which modifies the Act as it applies to a person operating or involved in the operation or promotion of an IDPS, and to a person offering or issuing accessible securities through an IDPS. This document is registered on the Federal Register of Legislative instruments.
 - (b) *ASIC Corporations (Nominee and Custody Services) Instrument 2016/1156* regarding the definition of nominee and custody services.

Retrospective application

34. The Instrument and the Amendment/Repeal Instrument do not have retrospective application.

Legislative instrument and primary legislation

35. The subject matter and policy implemented by the Instrument is more appropriate for a legislative instrument rather than primary legislation because:
 - (a) the modifications made by the Instrument are highly specific amendments designed to ensure the application of primary legislation is consistent with the intended policy and the enabling provisions in the primary legislation;
 - (b) the Instrument preserves the effect of [CO 13/762] that was otherwise due to sunset on 1 October 2023; and
 - (c) following consultation, ASIC considered that [CO 13/762] was operating effectively and efficiently to achieve its objectives and continued to form a necessary and useful part of the legislative framework.

Duration of the instrument

36. ASIC considers that five years is the appropriate duration for the Instrument.

Legislative authority

37. The sources of power to make the Instrument are subsections 341(1), 601QA(1), 741(1), 926A(2), 992B(1) and 1020F(1) of the Act. The sources of power to

make the Amendment/Repeal Instrument are subsections 341(1), 601QA(1), 655A(1), 673(1), 741(1), 926A(2), 951B(1), 992B(1) and 1020F(1) of the Act and subsection 5A(4) of the *Corporations (Fees) Act 2001*.

38. The Instrument and the Amendment/Repeal Instrument are disallowable legislative instruments.

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 (Investor Directed Portfolio Services Provided Through a Registered Managed Investment Scheme) Instrument 2023/668 (the Instrument) and ASIC Corporations (Amendment and Repeal) Instrument 2023/670 (the Amendment/Repeal Instrument)

Overview

1. The Instrument maintains the relief previously given under *ASIC Class Order [CO 13/762] - Investor directed portfolio services provided through a registered managed investment scheme ([CO 13/762])*. It modifies provisions of the *Corporations Act 2001* and provides responsible entities relief from some of the managed investment scheme, fundraising, financial product disclosure and other investor rights provisions.
2. The Amendment/Repeal Instrument repeals [CO 13/762] and [CO 13/763] as these class orders are superseded respectively by the Instrument and LI 2023/669 upon their commencement. It also updates cross-references in various instruments to [CO 13/762] and [CO 13/763]. The Amendment/Repeal Instrument repeals [CO 13/762] and [CO 13/763] ahead of their automatic repeal on 1 October 2023.

Assessment of human rights implications

3. The Instrument and Amendment/Repeal Instrument do not engage any of the applicable rights or freedoms.

Conclusion

4. The Instrument and Amendment/Repeal Instrument are 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*.