



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2023/142

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2023/142*.

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

Summary

1. *ASIC Corporations (Amendment) Instrument 2023/142* (the **amending instrument**) makes minor and technical amendments to the following instruments (**financial reporting relief instruments**) which provide various financial reporting relief:
 - (a) *ASIC Corporations (Post Balance Date Reporting) Instrument 201/842 (LI 2015/842)*;
 - (b) *ASIC Corporations (Disclosing Entities) Instrument 2016/190 (LI 2016/190)*; and
 - (c) *ASIC Corporations (Rounding in Financial/Directors' Reports) Instrument 2016/191 (LI 2016/191)*.
2. The financial reporting relief in LI 2015/842, LI 2016/190 and LI 2016/191 is extended so that it also applies in relation to a sub-fund of a retail corporate collective investment vehicle (**CCIV**). The financial reporting relief in LI 2015/842 and LI 2016/191 is extended so that it also covers registrable superannuation entities (**RSEs**).

LI 2015/842 allows a relevant entity to explain the financial effect of acquisitions and disposals of entities and businesses after the end of the relevant period, in the notes to the financial statements and consolidated financial statements.

LI 2016/190 relieves an entity that ceases to be a disclosing entity from complying with disclosure requirements that only apply to disclosing entities. It also relieves an entity that has a first financial year of 8 months or less from preparing a financial report for a half-year within that financial year.

LI 2016/191 allows rounding of amounts in financial reports.

CCIVs are similar to registered schemes but in a structure more easily understood by foreign investors. Part 2M.3 of the Act applies to a retail CCIV, but not to a wholesale CCIV. A retail CCIV in relation to its sub-fund is newly subjected to the financial reporting and audit requirements of Part 2M.3 of the Act, which apply to companies, registered schemes and disclosing entities.

For the purposes of Chapter 2M of the Act, an RSE includes regulated superannuation funds, approved deposit funds and pooled superannuation trusts, but does not include self-managed superannuation funds, exempt public sector superannuation schemes, excluded approved deposit funds or small APRA funds.

3. ASIC will continue to monitor the appropriateness of the financial reporting relief instruments having regard to the feedback from relevant stakeholders.

Purpose of the instrument

4. The purpose of the amending instrument is to make minor and technical amendments to the financial reporting relief instruments as discussed above.
5. The name of LI 2015/842 is also corrected so that it is changed to *ASIC Corporations (Post Balance Date Reporting) Instrument 2015/842*.
6. The amending instrument does not affect the duration of the financial reporting relief instruments. The extension of relief to include a sub-fund of a retail CCIV and RSE is consistent with the relief provided to other entities.

Consultation

7. Given that the amending instrument aligns the financial reporting relief for retail CCIV and RSE with that which currently applies to companies, registered schemes and disclosing entities, and did not change the duration of the financial reporting relief instruments, ASIC did not consider it necessary to engage in consultation before making the amending instrument.

Operation of the instrument

8. The amending instrument makes minor and technical amendments to instruments as follows:
 - (a) *ASIC Corporations (Post Balance Date Reporting) Instrument 201/842* is amended to extend the financial reporting relief provided under the instrument so that it also covers an RSE and a retail CCIV in relation to its sub-fund. In addition, the name of the instrument is corrected;
 - (b) *ASIC Corporations (Disclosing Entities) Instrument 2016/190* is amended to extend the financial reporting relief provided under the instrument so that it also covers a retail CCIV in relation to its sub-fund, and

- (c) *ASIC Corporations (Rounding in Financial/Directors' Reports) Instrument 2016/191* is amended to extend the financial reporting relief provided under the instrument so that it also covers an RSE and a retail CCIV in relation to its sub-fund.

- 9. The amending instrument commences on the day after it is registered on the Federal Register of Legislation.

Legislative instrument and primary legislation

- 10. The subject matter and policy implemented by the amending instrument are more appropriate for a legislative instrument rather than primary legislation because: The matters contained in the amending instrument and the principal instruments are appropriately used to deal with specific, technical and machinery issues. As a consequence, if the matters in the amending instrument and the principal instruments were to be inserted into the primary legislation, they would insert, into an already complex statutory framework, a set of provisions that are highly specific in nature and may become redundant over time.

Duration of the instrument

- 11. The amendments made by the amending instrument do not affect the duration of the financial reporting relief instruments.

Legislative authority

- 12. The amending instrument is made under subsections 341(1) and 992B(1) of the Act.
- 13. Subsection 341(1) of the Act provides that ASIC may make an order in writing in respect of a specified class of companies, registered schemes, RSEs or disclosing entities, relieving any of the directors, the companies, registered schemes, RSEs or disclosing entities themselves, or the auditors of the companies, registered schemes, RSEs, disclosing entities, a person or class of persons from all or specified requirements of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4) of the Act. Section 1232 of the Act applies Chapter 2M of the Act to retail CCIVs subject to certain modifications.
- 14. To make an order under subsection 341(1), ASIC must be satisfied that complying with the relevant requirements of Parts 2M.2, 2M.3 and 2M.4 of the Act would:
 - (a) make the financial report or other reports misleading;
 - (b) be inappropriate in the circumstances; or
 - (c) impose unreasonable burdens.

ASIC considers that complying with the relevant requirements of Parts 2M.2, 2M.3 and 2M.4 would impose unreasonable burdens on RSE and retail CCIV in

relation to its sub-fund, on the basis that the expected costs are out of proportion to the expected benefits. The relief will also:

- (a) ensure consistency and fairness in the legislative approach on financial reporting across the regulated population. It would be inappropriate to exclude RSE and retail CCIV in relation to its sub-fund from the relief, given that companies, registered schemes and disclosing entities are already subject to relief; and
 - (b) (for LI 2015/842) provide meaningful presentation of financial information in the financial report.
15. Subsection 992B(1) of the Act provides (among other matters) that ASIC may exempt a person or class of persons from all or specified provisions of Part 7.8 of the Act. The provisions of Part 7.8 include provisions imposing financial reporting requirements on financial services licensees.
16. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make any instrument, the power is to be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to amend any such instrument.
17. The amending 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*.

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Overview

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2. The amending instrument makes minor and technical amendments to instruments as follows:
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 - (c) LI2016/191 is amended to extend the financial reporting relief provided under the instrument so that it also covers an RSE and a retail CCIV in relation to its sub-fund.

Assessment of human rights implications

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

Conclusion

4. 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*.