



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2024/276

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2024/276*

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

Summary

1. This legislative instrument amends ASIC Class Order [CO 14/1262] (*principal class order*) to extend the interim conditional relief which allows term deposits of up to five years that are only breakable on 31 days' notice (*31-day notice term deposits*) to be given concessional regulatory treatment as basic deposit products under the *Corporations Act 2001* (the *Act*)

Purpose of the instrument

2. The principal class order applies to
 - (a) 31-day notice term deposits entered into on or before 30 June 2024; and
 - (b) 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 The principal class order was originally made in 2014 for an interim period of 18 months to give Government the opportunity to consider legislative reform to clarify the meaning of basic deposit product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. The principal class order was subsequently extended until 30 June 2024. There will not be an opportunity for Government to consider any legislative changes before the expiry of the relief under the principal class order.
4. 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 until 31 March 2025.
5. The principal class order is due to sunset under section 50 of the *Legislation Act 2003* on 1 April 2025. It will be reviewed by ASIC prior to sunset.

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.
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:
 - (a) 31-day notice term deposits entered into on or before 31 March 2025; and
 - (b) 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.
9. The legislative instrument also amends the principal class order to deal with recent changes to section references resulting from the definitions amendments in the *Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023*.

Legislative instrument and primary legislation

10. The subject matter and policy implemented by this legislative instrument is more appropriate for a legislative instrument rather than primary legislation because the effect of the instrument is to extend the operation of the principal class order which is itself a legislative instrument.

Duration of the instrument

11. The legislative instrument extends the operation of the principal class order to term deposits entered into between 1 July 2024 and 31 March 2025.
12. The principal class order will automatically sunset on 1 April 2025 in accordance with section 50 of the *Legislation Act 2003*. The amendments made by the legislative instrument will cease to have effect when the principal class order sunsets.

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 994L(2)(c) of the Act provides that ASIC may declare that Part 7.8A of the Act applies in relation to a specified class or persons or a specified class of financial products as if specified provisions were omitted, modified or varied as specified in the declaration.
 16. 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.
 17. 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.
 18. The legislative instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

19. 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 2024/276

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 2024 (i.e. the relief applies to 31-day notice term deposits entered into on or before 30 June 2024, 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).
2. In order to preserve the current treatment of 31-day notice term deposits, 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 31 March 2025. 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

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*.