

# ASIC Corporations (Amendment) Instrument 2015/617

## EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (*ASIC*) makes *ASIC Corporations (Amendment) Instrument 2015/617* (the **amending instrument**) under sections 341 and 601QA of the *Corporations Act 2001* (the *Act*).

Chapter 2M of the Act relates to the financial reporting and audit requirements imposed on certain companies, registered schemes and disclosing entities. Section 341 of the Act provides that ASIC may relieve any of these entities from all or specified requirements of Part 2M.3 of the Act. To make an order under section 341, ASIC must be satisfied that complying with the relevant requirements of Part 2M.3 of the Act would make the financial report or other reports misleading, or be inappropriate in the circumstances or impose unreasonable burdens.

Chapter 5C of the Act relates to, among other things, the winding up of registered schemes. Section 601QA of the Act also provides that ASIC may declare that Chapter 5C applies to a person as if specified provisions were modified as specified in the declaration.

Under subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005), the power to make an instrument is to be construed as including a power exercisable in a like manner and subject to the like conditions (if any) to amend the instrument.

### 1. Background

*ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251* (the **principal instrument**) grants various exemptions to externally-administered bodies.

The principal instrument exempts registered schemes being wound up from, among other things, all current and future financial reporting obligations under Part 2M.3, and section 601HG (audit of compliance plan) of the Act.

Registered schemes that are being wound up and relying on the exemption must comply with alternative reporting obligations under section 601NFA of the Act as notionally inserted by the principal instrument. Section 601NFA of the Act requires the responsible entity or person appointed by the Court to take responsibility for winding up the registered scheme to make available to members a report which includes information about the progress and status of the winding up of the scheme. The alternative reporting requirements under section 601NFA is intended to ensure that scheme members receive important information about the winding up at regular cycles (the **relevant period**) both during and on completion of the winding up similar to that available to creditors and members of an externally-administered company.

## **2. Purpose of the instrument**

The purpose of the amending instrument is to make two amendments.

First, to extend the exemption for registered schemes being wound up so that it is consistent with the exemption granted to companies being wound up, in relation to past financial years.

Second, to remove an unintended consequence that arises from the definition of *relevant period* in relation to the alternative reporting requirements under section 601NFA of the Act for registered schemes being wound up.

## **3. Operation of the instrument**

The amending instrument amends:

- (a) section 7 of the instrument so that it grants relief from continuing obligations arising from past financial years or half-years in relation to financial reporting obligations under Part 2M.3, and compliance plan audit obligations under section 601HG of the Act, but without affecting the liability of the responsible entity for past conduct; and
- (b) section 13 of the instrument, in particular the definition of *relevant period*, so as to give effect to the intended policy of ensuring that scheme members were given reports about the winding up at least every 12 months, rather than allow the responsible entity or appointed person to determine that the reporting cycle could be for periods that are greater than 12 months (e.g. 2 years) which would have defeated the purpose of keeping scheme members regularly informed during the winding up.

## **4. Consultation**

ASIC did not engage in consultation before making the amending instrument as the amendment made by it is of a minor nature.

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ASIC Corporations (Amendment) Instrument 2015/617

The legislative 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*.

#### Overview of the instrument

*ASIC Corporations (Amendment) Instrument 2015/617* (the **amending instrument**) amends *ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251* (the **principal instrument**).

The principal instrument grants exemptions from the financial reporting obligations imposed by Chapter 2M of the Act to companies and registered schemes that are being wound up.

The amending instrument:

- (a) extends the relief to registered schemes being wound up so that it covers continuing obligations arising from past financial years or half-years in relation to financial reporting obligations under Part 2M.3, and compliance plan audit obligations under section 601HG of the Act, but without affecting the liability of the responsible entity of the registered scheme for past conduct;
- (b) clarifies the operation of the alternative reporting requirements that apply to registered schemes being wound up to ensure that scheme members receive important information about the winding up at regular 12 month periods during the winding up.

#### Human rights implications

The amending instrument does not engage any of the applicable rights or freedoms.

#### Conclusion

The amending instrument is compatible with human rights as it does not raise any human rights issues.