**ASIC Corporations (Foreign Small Scale Offers) Instrument 2015/362**

**Explanatory Statement**

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (***ASIC***) makes ASIC Corporations (Foreign Small Scale offers) Instrument 2015/362 under sections 741 and 1020F of the *Corporations Act 2001* (the ***Act***).

Section 741 provides that ASIC may declare that Chapter 6D of the Act applies to a person as if specified provisions were omitted, modified or varies as specified in the declaration.

Section 1020F 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.

1. **Background**

The Act generally requires a prospectus or a Product Disclosure Statement (***PDS***) for an offer of securities or financial products that is received in Australia (unless an exemption applies). Most of the disclosure exemptions available under the Act require the securities offered to be in a class of securities quoted on an Australian market. There is no specific exemption for offers of securities that are quoted on an approved foreign market.

1. **Purpose of instrument**

ASIC Corporations (Foreign Small Scale offers) Instrument 2015/362 gives conditional relief from the prospectus and PDS requirements for a small number of personal offers by entities that are listed on an approved foreign market.

The relief is similar to the small scale offer exemptions in subsection 708(2) and section 1012E but the securities or interests must be in a class that is quoted on an approved foreign market and there is no monetary limit on the amount raised. An entity may rely on both the relief given in ASIC Corporations (Foreign Small Scale offers) Instrument 2015/362 and the small scale offer exemptions in the Act.

1. **Operation of instrument**

ASIC Corporations (Foreign Small Scale offers) Instrument 2015/362 provides a conditional disclosure exemption for personal offers of securities or interests in a managed investment scheme made by a foreign entity if the entity reasonably believes the offer is made in accordance with foreign regulatory requirements.

 A personal offer is one that

1. may only be accepted by the person to whom it is made; and
2. is made to a person who is likely to be interested in the offer having regard to previous contact between the entity and that person, some professional or other connection or statements by the person indicating interest in offers of that kind.

To qualify for relief, the following conditions must be satisfied:

1. the securities or interests must be in a class that is quoted on an approved foreign market and trading must not be suspended;
2. the number of persons in Australia who are issued securities in reliance on the relief must be no more than 20 in any 12 month period;
3. Australian offerees must be given any disclosure relating to the offer that would have been required to be given to them under the laws of the primary foreign jurisdiction; and
4. the disclosure must be in English and contain a prescribed warning statement.

ASIC Corporations (Foreign Small Scale offers) Instrument 2015/362 does not give any relief from the Act's on-sale restrictions in subsections 707(3) and 1012C(6). This means that a person who received securities or interests under a foreign small scale personal offer without a prospectus or PDS is restricted from selling those securities or interests in Australia within 12 months of receiving them.

1. **Regulatory guidance**

Further guidance on the policy underlying the relief is contained in Section D of Regulatory Guide 72 *Foreign securities: Disclosure relief* (***RG 72***). RG 72 is available on ASIC's website at www.asic.gov.au

1. **Consultation**

The relief given in ASIC Corporations (Foreign Small Scale offers) Instrument 2015/362 was the subject of public consultation in Consultation Paper 225 *Remaking ASIC class orders on offers of foreign securities* (***CP 225***). CP 225 was published in December 2014 and is available on ASIC's website.

**Statement of Compatibility with Human Rights**

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

**ASIC Corporations (Foreign Small Scale offers) Instrument 2015/362**

This 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 legislative instrument**

ASIC Corporations (Foreign Small Scale offers) Instrument 2015/362 gives conditional relief from the prospectus and PDS requirements in the *Corporations Act 2001* for a small number of personal offers by entities that are listed on an approved foreign market.

**Human rights implications**

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

**Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.