

# ASIC Corporations (Effect of Licensing Exemptions) Instrument 2015/1115

## EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (*ASIC*) makes *ASIC Corporations (Effect of Licensing Exemptions) Instrument 2015/1115* under subsection 926A(2) of the *Corporations Act 2001* (the *Act*).

Part 7.6 of the Act contains a licensing framework for persons who carry on a financial services business in this jurisdiction. Subsection 926A(2) of the Act provides that ASIC may exempt a class of persons from Part 7.6 of the Act (other than Divisions 4 and 8). The subsection also provides that ASIC may, among other things, declare that Part 7.6 of the Act (other than Divisions 4 and 8) applies in relation to a class of persons as if specified provisions were modified or varied as specified in the declaration.

### 1. Background

Subsection 911A(1) of the Act provides that a person who carries on a financial services business in this jurisdiction must hold an Australian financial services licence covering the provision of the financial services.

ASIC has two independent sources of power in Part 7.6 of the Act to grant an exemption to a person or a class of persons from the requirement to hold an Australian financial services licence covering the provision of financial services. The sources of power are:

- (a) paragraphs 911A(2)(h) and (l) of the Act; and
- (b) subsection 926A(2) of the Act.

Subsection 911B(1) of the Act provides that a person (the *provider*) must only provide a financial service in this jurisdiction on behalf of another person (the *principal*) who carries on a financial services business in certain circumstances.

Under paragraph 911B(1)(e), one such circumstance is where, if the principal (rather than the provider) provided the service, the principal would not need an Australian financial services licence because the provision of the financial service would be exempt under subsection 911A(2) of the Act. This would cover licensing exemptions granted by ASIC under paragraphs 911A(2)(h) and (l) of the Act but would not cover licensing exemptions granted by ASIC under subsection 926A(2) of the Act. ASIC considers that to be an anomaly.

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

The purpose of the instrument is to ensure that subsection 911B(1) of the Act operates in the same way for any licensing exemption granted by ASIC, irrespective of the source of power used by ASIC to grant the exemption.

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

The instrument inserts a new notional paragraph 911B(1)(da) into the Act which applies in relation to licensing exemptions granted by ASIC under subsection 926A(2) of the Act. This reproduces the same effect of paragraph 911B(1)(e) in relation to licensing exemptions granted by ASIC under paragraph 911A(2)(h) or (l) of the Act.

## **4. Consultation**

ASIC did not engage in consultation before making the instrument as the effect of the instrument is of a minor or machinery nature.

## **Statement of Compatibility with Human Rights**

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

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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 has two independent sources of power in the *Corporations Act 2001* (the *Act*) to grant an exemption to a person from the requirement to hold an Australian financial services licence covering the provision of financial services.

Under the Act, a person must only provide a financial service in this jurisdiction on behalf of another person who carries on a financial services business in certain circumstances. One such circumstance is where the person on whose behalf the financial service is provided is exempt from the licensing requirement because of an ASIC exemption under a particular head of power. That circumstance does not apply where the ASIC exemption was made under the other head of power. ASIC considers that to be an anomaly.

The instrument removes the anomaly to ensure the Act operates in the same way for any licensing exemption granted by ASIC, irrespective of the source of power used by ASIC.

#### **Human rights implications**

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

#### **Conclusion**

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