



**ASIC**

Australian Securities & Investments Commission

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## **ASIC Corporations (Amendment) Instrument 2016/103**

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I, Stephen Yen PSM, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Dated 16 February 2016

Stephen Yen

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## **Part 1—Preliminary**

### **1 Name of legislative instrument**

This instrument is the *ASIC Corporations (Amendment) Instrument 2016/103*.

### **2 Commencement**

This instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Note: The register may be accessed at [www.comlaw.gov.au](http://www.comlaw.gov.au).

### **3 Authority**

This instrument is made under paragraphs 951B(1)(c) and 1020F(1)(c) of the *Corporations Act 2001*.

### **4 Schedules**

Each instrument that is specified in the Schedule to this instrument is amended as set out in the applicable items in the Schedule.

### **5 Interpretation**

In this instrument:

*Act* means the *Corporations Act 2001*.

## Schedule 1—Amendment

### ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647

**1 Subsection 5(1) (sub-subparagraph (b)(ii)(B) of the notional definition of *nominated electronic means* in section 761A of the Act)**

Omit the sub-subparagraph, substitute:

- (B) an election referred to in sub-subparagraph (A) will apply to relevant communications made after the election; and
- (C) if the receiving person makes the election within 7 days after the providing person has given the notice, the election will also apply to any relevant communications made in the period between the notice being given and the election being made, provided that the notice need not include such a statement if the providing person has no reasonable grounds for believing that it will make a notification referred to in paragraph (a) in the period of 7 days from the time it gives the notice;

**2 Subsection 5(1) (at the end of paragraph (d) of the notional definition of *nominated electronic means* in section 761A of the Act)**

Add:

- ; or (iv) if the providing person is a trustee of a standard employer-sponsored fund (*relevant fund*) within the meaning of the *Superannuation Industry (Supervision) Act 1993*—by sending the notice to an electronic address provided to the providing person or another trustee of a standard employer-sponsored fund by the receiving person’s employer (as at the time the address was provided) if the following are satisfied:
  - (A) section 1015C, 1017B, 1017D or 1017DA applies to the giving of the relevant communication;
  - (B) the employer contributes, or has contributed, to the relevant fund for the benefit of the receiving person in the absence of there being a chosen fund (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) for the receiving person;
  - (C) the employer provided the electronic address as part of providing contact details for the receiving person;
  - (D) the notice is accompanied by a statement that, if requested, the providing person will send the notice and

other communications to another electronic or postal address nominated by the receiving person;

- (E) the receiving person has not requested that the providing person send the notice to another electronic or postal address;
- (F) the providing person has no reasonable grounds for believing that the electronic address is not a current electronic address for the receiving person.

### 3 Paragraph 5(9)(a) (notional subsections 1015C(4A) and (4B) of the Act)

(1) In notional subsection (4A):

- (a) omit “(within the meaning of the *Superannuation Industry (Supervision) Act 1993*)”, substitute “(**relevant fund**) within the meaning of the *Superannuation Industry (Supervision) Act 1993*”; and
- (b) after “electronic address provided”, insert “to the regulated person or another trustee of a standard employer-sponsored fund”.

(2) In notional paragraph (4A)(a), omit “the fund”, substitute “the relevant fund”.

(3) In notional paragraph (4A)(b), omit “in relation to the person’s membership of the fund”.

(4) Omit notional subsection (4B), substitute:

(4B) If, within 14 days after sending:

- (a) a Statement to a person at an electronic address in accordance with subsection (4A); or
- (b) a notice to a person at an electronic address in accordance with subparagraph (d)(iv) of the definition of **nominated electronic means** in section 761A in the course of making a Statement available to the person by a nominated electronic means;

a trustee of a standard employer-sponsored fund has reasonable grounds for believing that the electronic address is not a current electronic address for the person, the trustee must give the Statement to the person:

- (c) within 14 days after having the reasonable grounds; and
- (d) in accordance with this section.

**4 Paragraph 5(9)(b) (notional subsections 1017B(3A) and (3B) of the Act)**

- (1) In notional subsection (3A):
  - (a) omit “(within the meaning of the *Superannuation Industry (Supervision) Act 1993*”, substitute “(**relevant fund**) within the meaning of the *Superannuation Industry (Supervision) Act 1993*”; and
  - (b) after “electronic address provided”, insert “to the issuer or another trustee of a standard employer-sponsored fund”.
- (2) In notional paragraph (3A)(a), omit “the fund”, substitute “the relevant fund”.
- (3) In notional paragraph (3A)(b), omit “in relation to the holder’s membership of the fund”.
- (4) Omit notional subsection (3B), substitute:
  - (3B) If, within 14 days after sending:
    - (a) a notice (**first notice**) to a person at an electronic address in accordance with subsection (3A); or
    - (b) a notice (**second notice**) to a person at an electronic address in accordance with subparagraph (d)(iv) of the definition of **nominated electronic means** in section 761A in the course of making a notice (**first notice**) available to the person by a nominated electronic means in accordance with the regulations;  
  
a trustee of a standard employer-sponsored fund has reasonable grounds for believing that the electronic address is not a current electronic address for the person, the trustee must give the first notice to the person:
      - (c) within 14 days after having the reasonable grounds; and
      - (d) in accordance with subsection (3).

**5 Paragraph 5(9)(c) (notional subsections 1017D(6A) and (6B) of the Act)**

- (1) In notional subsection (6A):
  - (a) omit “(within the meaning of the *Superannuation Industry (Supervision) Act 1993*”, substitute “(**relevant fund**) within the meaning of the *Superannuation Industry (Supervision) Act 1993*”; and
  - (b) after “electronic address provided”, insert “to the issuer or another trustee of a standard employer-sponsored fund”.

- (2) In notional paragraph (6A)(a), omit “the fund”, substitute “the relevant fund”.
- (3) In notional paragraph (6A)(b), omit “in relation to the holder’s membership of the fund”.
- (4) Omit notional subsection (6B), substitute:
  - (6B) If, within 14 days after sending:
    - (a) a periodic statement to a person at an electronic address in accordance with subsection (6A); or
    - (b) a notice to a person at an electronic address in accordance with subparagraph (d)(iv) of the definition of ***nominated electronic means*** in section 761A in the course of making a periodic statement available to the person by a nominated electronic means in accordance with the regulations;  
  
a trustee of a standard employer-sponsored fund has reasonable grounds for believing that the electronic address is not a current electronic address for the person, the trustee must give the periodic statement to the person:
    - (c) within 14 days after having the reasonable grounds; and
    - (d) in accordance with subsection (6).

## 6 Paragraph 5(9)(d) (notional subsections 1017DA(3D) and (3E) of the Act)

- (1) In notional subsection (3D):
  - (a) omit “(within the meaning of the *Superannuation Industry (Supervision) Act 1993*)”, substitute “(***relevant fund***) within the meaning of the *Superannuation Industry (Supervision) Act 1993*”; and
  - (b) after “electronic address provided”, insert “to the trustee or another trustee of a standard employer-sponsored fund”.
- (2) In notional paragraph (3D)(a), omit “the fund”, substitute “the relevant fund”.
- (3) In notional paragraph (3D)(b), omit “in relation to the person’s membership of the fund”.
- (4) Omit notional subsection (3E), substitute:
  - (3E) If, within 14 days after sending:
    - (a) information to a person at an electronic address in accordance with subsection (3D); or

- (b) a notice to a person at an electronic address in accordance with subparagraph (d)(iv) of the definition of ***nominated electronic means*** in section 761A in the course of making information available to the person by a nominated electronic means in accordance with the regulations;

a trustee of a standard employer-sponsored fund has reasonable grounds for believing that the electronic address is not a current electronic address for the person, the trustee must provide the information to the person:

- (c) within 14 days after having the reasonable grounds; and
- (d) in accordance with regulations dealing with how the information is to be provided.