
EXPLANATORY STATEMENT for
ASIC Corporations (Disclosure in Dollars) Instrument 2016/767

and

ASIC Corporations (Repeal) Instrument 2016/768

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations (Disclosure in Dollars) Instrument 2016/767* under subsections 951B(1) and 1020F(1) of the *Corporations Act 2001* (the Act).

Subsection 951B(1) of the Act provides that ASIC may exempt a person or a financial product or class of persons or financial products from all or specified provisions of Part 7.7 of the Act; or declare that Part 7.7 of the Act applies in relation to a person or a financial product or class of persons or financial products as if specified provisions were omitted, modified or varied.

Subsection 1020F(1) of the Act provides that ASIC may exempt a person or a financial product or class of persons or financial products from all or specified provisions of Part 7.9 of the Act; or declare that Part 7.9 of the Act applies in relation to a person or a financial product or class of persons or financial products as if specified provisions were omitted, modified or varied.

ASIC makes *ASIC Corporations (Repeal) Instrument 2016/768* under subsections 951B(1) and 1020F(1) of the Act and the following subregulations of the *Corporations Regulations 2001*:

- a) subregulations 7.7.11(2) and (3);
- b) subregulations 7.7.12(2) and (3);
- c) subregulations 7.7.13A(1) and (2);
- d) subregulations 7.9.15B(1) and (2).

Subregulation 7.7.11(2) provides that for paragraph 947B(2)(h) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state the information to be disclosed in accordance with paragraph 947B(2)(d) or subparagraph 947B(2)(e)(i) as an amount in dollars, the information may be set out as a description of the amount as a

percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

Subregulation 7.7.11(3) provides that for paragraph 947B(2)(h) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state the information to be disclosed in accordance with paragraph 947B(2)(d) or subparagraph 947B(2)(e)(i) as an amount in dollars, or to describe the amount as a percentage, the information may be set out as a description of the method of calculating the remuneration, benefits or interests (including worked dollar examples, unless that is inappropriate).

Subregulations 7.7.12(2) provides that for paragraph 947C(2)(i) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state the information to be disclosed in accordance with paragraph 947C(2)(e) or subparagraph 947C(2)(f)(i) as an amount in dollars, the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

Subregulation 7.7.12(3) provides that for paragraph 947C(2)(i) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state the information to be disclosed in accordance with paragraph 947C(2)(e) or subparagraph 947C(2)(f)(i) as an amount in dollars, or to describe the amount as a percentage, the information may be set out as a description of the method of calculating the remuneration, benefits or interests (including worked dollar examples, unless that is inappropriate).

Subregulation 7.7.13A(1) provides that for paragraph 947D(2)(d) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state the information to be disclosed in accordance with paragraph 947D(2)(a) as an amount in dollars, the information may be set out as a description of the amount as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

Subregulation 7.7.13A(2) provides that for paragraph 947D(2)(d) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state the information to be disclosed in accordance with paragraph 947D(2)(a) as an amount in dollars, or to describe the amount as a percentage, the information may be set out as a description of the method of calculating the charge or benefit (including worked dollar examples, unless that is inappropriate).

Subregulation 7.9.15B(1) provides that for paragraph 1013D(1)(m) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state the information to be disclosed in accordance with paragraph 1013D(1)(b), (d) or (e) as an amount in dollars, the information may be set out as a description of the benefit, cost, amount or payment as a percentage of a specified matter (including worked dollar examples, unless that is inappropriate).

Subregulation 7.9.15B(2) provides that for paragraph 1013D(1)(m) of the Act, if ASIC determines that, for a compelling reason, it is not possible to state the information to be disclosed in accordance with paragraph 1013D(1)(b), (d) or (e) as an amount in dollars, or to describe the amount as a percentage, the information may be set out as a description of the method of calculating the benefit, cost, amount or payment (including worked dollar examples, unless that is inappropriate).

Under subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the relevant powers because of section 5C of the Act), where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws), 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.

1. Background

The dollar disclosure provisions in the Act require various costs, fees, charges, expenses, benefits and interests to be stated as amounts in dollars in statements of advice (SOAs), product disclosure statements (PDSs) and periodic statements (including exit statements), except where ASIC has provided relief.

The dollar disclosure provisions are designed to help consumers better understand information about costs, fees, charges, expenses, benefits and interests by expressly requiring certain information to be presented in dollar terms.

However, there are a number of situations in which ASIC considers that, for compelling reasons, compliance with the law would be impossible, unreasonably burdensome (including within a specified period) or not in the interests of clients in certain circumstances.

We have previously addressed these situations by providing conditional class order relief in relation to the required mode of presentation. These class orders are:

- Class Order [CO 04/1430] *Dollar disclosure: Unknown facts or circumstances;*
- Class Order [CO 04/1431] *Dollar disclosure: Cost of derivatives, foreign exchange contracts, general insurance products and life risk insurance products;*
- Class Order [CO 04/1432] *Dollar disclosure: Interest payable on deposit products;*
- Class Order [CO 04/1433] *Dollar disclosure: Non-monetary benefits and interests;* and
- Class Order [CO 04/1435] *Dollar disclosure: Amounts denominated in a foreign currency.*

Under the *Legislation Act 2003*, legislative instruments cease automatically, or ‘sunset’, after 10 years, unless action is taken to exempt or preserve the instrument. [CO 04/1431] is due to expire on 1 October 2016. [CO 04/1430], [CO 04/1432], [CO 04/1433] and [CO 04/1435] are due to expire on 1 April 2017.

ASIC has reviewed the above class orders and has decided to extend the operation of [CO 04/1431], [CO 04/1433] and [CO 04/1435] by making the *ASIC Corporations (Disclosure in Dollars) Instrument 2016/767*. ASIC has formed the view that these class orders are operating effectively and efficiently, and continue to form a necessary and useful part of the legislative framework.

ASIC has reviewed [CO 04/1430] and [CO 04/1432] and has determined that these class orders have limited use and do not form a necessary and useful part of the regulatory framework. As a result ASIC is repealing [CO 04/1430] and [CO 04/1432] prior to their sunset date so that industry can be certain that ASIC's intention is for the class orders to be repealed.

2. Purpose of the instrument

The purpose of *ASIC Corporations (Disclosure in Dollars) Instrument 2016/767* is to remove the impossible or unreasonable burden of:

- disclosing dollar amounts in a PDS for the costs associated with acquiring derivatives, foreign exchange contracts, warrants, general insurance products or life risk insurance products;
- disclosing dollar amounts in a SOA or PDS in relation to information about non-monetary benefits or interests;
- disclosing an amount denominated in a foreign currency to be stated as an amount in Australian currency in a SOA, PDS or periodic statement.

ASIC Corporations (Disclosure in Dollars) Instrument 2016/767 will continue the relief provided by [CO 04/1431], [CO 04/1433] and [CO 04/1435] in a single new legislative instrument that reflects current drafting practice, without any significant changes.

ASIC Corporations (Repeal) Instrument 2016/768 is made to repeal the relief provided by [CO 04/1431], [CO 04/1433] and [CO 04/1435] and to repeal [CO 04/1430] and [CO 04/1432].

3. Operation of the instrument

Paragraph 5(1) of the *ASIC Corporations (Disclosure in Dollars) Instrument 2016/767* exempts a responsible person for a PDS for a general or life risk insurance product from disclosing in dollar amounts the costs associated with acquiring the financial product, other than information about any excess or deductible (however described) that applies in relation to a claim under such a financial product.

Paragraph 5(2) of the *ASIC Corporations (Disclosure in Dollars) Instrument 2016/767* exempts a responsible person for a PDS for a derivative, foreign exchange contract or warrant from disclosing in dollar amounts the costs associated with acquiring the financial product.

The exemptions in paragraphs 5(1) or 5(2) are only available where the PDS for the financial product specifies any significant factors that will affect the cost of acquiring the product and includes an explanation of the impact of each of those factors on the cost of acquiring the product.

Paragraph 6(1) of the *ASIC Corporations (Disclosure in Dollars) Instrument 2016/767* exempts a providing entity from disclosing in dollar amounts information about non-monetary benefits and non-monetary interests required to be disclosed in a SOA. Non-monetary benefits are benefits that have been or may be received by a client or providing entity in a form other than money. This exemption is only available where the SOA includes information about the nature and extent of the non-monetary benefit or interest, for non-monetary benefits or interests which may be provided or that may arise in the future – the circumstances in which this may occur, and the estimated value of the non-monetary benefit or interest (expressed as an amount in dollars or a range of amounts in dollars) where a retail client would reasonably require such an estimated value for the purposes of deciding whether to act on the advice provided.

Paragraph 6(3) of the *ASIC Corporations (Disclosure in Dollars) Instrument 2016/767* exempts a responsible person for a PDS from disclosing in dollar amounts information concerning non-monetary benefits to be disclosed in the PDS. This exemption is only available where the PDS includes information about the nature and extent of the non-monetary benefit or interest, for non-monetary benefits or interests which may be provided or that may arise in the future – the circumstances in which this may occur, and the estimated value of the non-monetary benefit or interest (expressed as an amount in dollars or a range of amounts in dollars) where a retail client would reasonably require such an estimated value for the purposes of deciding whether to acquire the financial product.

Paragraphs 7(1) and 7(2) of the *ASIC Corporations (Disclosure in Dollars) Instrument 2016/767* exempt a providing entity or responsible person from the requirement to disclose an amount denominated in foreign currency in Australian currency in a SOA, a PDS or a periodic statement.

A person may not rely on an exemption in paragraphs 5 or 6 if ASIC has given the person a notice in writing stating that the person cannot rely on the exemption.

Schedule 1 of *ASIC Corporations (Repeal) Instrument 2016/768* repeals [CO 04/1430], [CO 04/1431], [CO 04/1432], [CO 04/1433] and [CO 04/1435].

4. Consultation

As part of its review of [CO 04/1431], [CO 04/1433] and [CO 04/1435], ASIC released Consultation Paper 253 *Remaking and repealing ASIC class orders on dollar disclosure* (CP 253). A draft of the *ASIC Corporations (Disclosure in Dollars) Instrument 2016/767* was attached to CP 253.

In CP 253, ASIC also proposed to repeal [CO 04/1430] and [CO 04/1432].

ASIC received two submissions in response to CP 253. Neither submission raised any concerns with ASIC's proposals to remake [CO 04/1431] and [CO 04/1433] or to repeal [CO 04/1430] and [CO 04/1432]. However, one submission thought that periodic statements should be excluded from the remake of [CO 04/1435]. We have considered this argument but consider that, on balance, there is still a policy rationale for exempting responsible persons

from displaying amounts denominated in foreign currency in Australian currency for periodic statements and that the relief appears to be operating efficiently and effectively.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Disclosure in Dollars) Instrument 2016/767

and

ASIC Corporations (Repeal) Instrument 2016/768.

ASIC Corporations (Disclosure in Dollars) Instrument 2016/767 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

ASIC Corporations (Disclosure in Dollars) Instrument 2016/767 provides exemptions from the requirements to display in dollar amounts various costs, fees, charges, expenses, benefits and interests in Statements of Advice, Product Disclosure Statements and periodic statements subject to the conditions in the instrument.

The Instrument remakes [CO 04/1431], [CO 04/1433] and [CO 04/1435] in a single new legislative instrument.

The Repeal Instrument repeals [CO 04/1430], [CO 04/1431], [CO 04/1432], [CO 04/1433] and [CO 04/1435].

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.

Grant Moodie, Special Counsel