



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1175

About this compilation

Compilation No. 3

This is a compilation of *ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1175* as in force on 26 July 2017. It includes any commenced amendment affecting the legislative instrument to that date.

This compilation was prepared by the Australian Securities and Investments Commission.

The notes at the end of this compilation (the *endnotes*) include information about amending instruments and the amendment history of each amended provision.

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1175*.

3 Authority

This instrument is made under paragraph 926A(2)(a) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

approved external dispute resolution scheme means an external dispute resolution scheme specified in ASIC Class Order [CO 09/340].

control has the same meaning in relation to an eligible person as it does in paragraph 7.6.04(2)(b) of the Regulations in relation to a financial services licensee.

controller, in relation to an eligible person, means a person (either alone or together with associates of the person) who controls the eligible person.

eligible person means a person who is not any of the following:

- (a) a financial services licensee;
- (b) a related body corporate of a financial services licensee;
- (c) an authorised representative authorised to provide financial services in relation to an eligible product;
- (d) a foreign company that is not registered under Part 5B.2 of the Act.

eligible product means each of the following:

- (a) a non-cash payment facility issued by an ADI (within the meaning of the *Banking Act 1959*);
- (b) a home contents insurance product where the sum insured under the product does not exceed \$50,000;
- (c) a personal and domestic property insurance product where the sum insured under the product does not exceed \$50,000;

- (d) a managed investment product in relation to a simple managed investment scheme;
- (e) a quoted security;
- (f) debentures, stocks or bonds issued or proposed to be issued by the Government of the Commonwealth.

home contents insurance product has the meaning given by regulation 7.1.13 of the Regulations.

makes non-cash payments has the meaning given by section 763D of the Act.

non-cash payment facility means a facility through which, or through the acquisition of which, a person makes non-cash payments.

personal and domestic property insurance product has the meaning given by regulation 7.1.17 of the Regulations.

Regulations means the *Corporations Regulations 2001*.

simple managed investment scheme has the meaning given by regulation 1.0.02 of the Regulations.

testing period: see subsection 6(2).

testing service: see subsection 5(1).

value means:

- (a) in relation to a non-cash payment facility, the maximum amount of money that may stand to the credit of the holder of the facility in respect of the facility; and
- (b) in relation to a general insurance product, the sum insured under the product; and
- (b) in relation to an eligible product that is not a general insurance product or a non-cash payment facility, an amount calculated in accordance with subregulations 7.1.19(3) and (4) of the Regulations.

Part 2—Exemption

5 Licensing exemption for testing services

- (1) An eligible person does not have to comply with subsection 911A(1) of the Act for the provision of any of the following financial services (**testing services**):

- (a) providing financial product advice in relation to an eligible product;
- (b) dealing in an eligible product (other than by way of issuing or varying the eligible product).

Note: *ASIC Corporations (Miscellaneous Technical Relief) Instrument 2015/1115* provides relief from subsections 911A(1) and 911B(1) of the Act to a person who provides financial services on behalf of a person who does not need an Australian financial services licence because of an exemption made under section 926A of the Act.

- (2) The exemption in subsection (1) does not apply to a person if ASIC has given a notice in writing to the person that the person may not rely on the exemption and has not withdrawn that notice.

6 Where exemption is available

- (1) The exemption in subsection 5(1) is available to an eligible person for the provision of a testing service where:

- (a) the person has given ASIC notice in writing that they are an eligible person who wishes to rely on the exemption in subsection 5(1), together with the following information:
 - (i) the name, address and contact details of the person;
 - (ii) the website address (if any) of the person;
 - (iii) if the person is a natural person:
 - (A) the date of birth of the person; and
 - (B) whether the person is or has been declared bankrupt or insolvent under administration; and
 - (C) whether the person has been the subject of any findings or judgment in relation to fraud, misrepresentation or dishonesty in any administrative, civil or criminal proceedings in any country, or is currently party to any proceedings that may result in the person being the subject of such findings or judgment; and

- (D) certified copies of a bankruptcy check and a national criminal history check for the person that are no more than 12 months old;
- (iv) if the person is a body corporate, the following information:
 - (A) the ABN, ACN or ARBN of the person;

Note: A foreign company that is not registered under Part 5B.2 of the Act is not an eligible person.
 - (B) the identity of each director and controller (if any) of the person;
 - (C) for each director and controller who is a natural person, the information referred to in subparagraph (a)(iii) in relation to the director or controller;
 - (D) the identity of a natural person who is a contact person in relation to the notice and information, together with contact details for that person;
- (v) a description of the financial services the person proposes to provide during the testing period;
- (vi) whether there is any person, other than an employee or director of the eligible person or a related body corporate, who will be responsible for significant day-to-day decisions about the ongoing provision of the testing services and, if so, their identity and a description of their role;
- (vii) the arrangements (including a description of systems) by which the person will comply with the conditions in subsections 7(3) and 7(4); and
- (b) following the provision of the testing service:
 - (i) the person will have provided testing services in reliance on the exemption to no more than 100 people as retail clients; and
 - (ii) the value of all eligible products in relation to which testing services have been provided in reliance on the exemption will not exceed \$5,000,000 (the value for each product being determined as at the time the testing service relating to the product was provided).

Exemption available for a single 12 month period

- (2) The exemption in subsection 5(1) is available to an eligible person for the period (**testing period**) of 12 months starting 14 days after the person gives ASIC a notice referred to in paragraph (1)(a). A person may only give one notice.

Individual client limits for retail clients

- (3) If a testing service:
- (a) relates to an eligible product that is not a general insurance product; and
 - (b) is provided to a person as a retail client;

the exemption in subsection 5(1) is only available if the value of the product at the time the service is provided does not exceed \$10,000.

Note: A limit of \$50,000 applies for general insurance products: see definition of *eligible product*.

7 Conditions

- (1) Before an eligible person relying on the exemption in subsection 5(1) provides a testing service to a person as a retail client, the eligible person must give the retail client the following information:
- (a) their name and contact details;
 - (b) information about the kinds of testing services that they provide, and the kinds of eligible products to which those services relate;
 - (c) information about any remuneration (including commission) they receive in relation to the testing services;
 - (d) information about any associations or relationships between them, their related bodies corporate and the issuers of any financial products that might reasonably be capable of influencing them in providing the testing services;
 - (e) information about the dispute resolution systems that cover complaints by persons to whom they provide testing services, and how those systems may be accessed.
- (2) Before an eligible person relying on the exemption in subsection 5(1) provides a testing service to a person (*client*), the eligible person must clearly and prominently disclose to the client that:
- (a) the eligible person does not hold an Australian financial services licence; and
 - (b) the service is being tested under an exemption provided by ASIC; and
 - (c) some of the normal protections associated with receiving financial services from a financial services licensee will not apply.
- (3) An eligible person relying on the exemption in subsection 5(1) must:

- (a) maintain an internal dispute resolution procedure that:
 - (i) complies with standards and requirements made or approved by ASIC for the purposes of subparagraph 912A(2)(a)(i) of the Act; and
 - (ii) covers complaints against the person made by retail clients in connection with the provision of testing services; and
- (b) be a member of an approved external dispute resolution scheme that covers complaints against the person made by retail clients in connection with the provision of testing services; and
- (c) have arrangements for compensating retail clients for loss or damage suffered because of a contravention of the Act or the conditions in this instrument by the person or its representatives that:
 - (i) include holding professional indemnity insurance cover that is adequate having regard to the matters identified in paragraphs 7.6.02AAA(1)(a) and (b) of the Regulations as if the person were a financial services licensee; or
 - (ii) are otherwise adequate arrangements having regard to those matters.
- (4) An eligible person must remain a member of an approved external dispute resolution scheme for 12 months after the end of their testing period.
- (5) An eligible person relying on the exemption in subsection 5(1) who provides personal advice to a person as a retail client must comply with:
 - (a) Division 3 of Part 7.7 of the Act as if they were a financial services licensee for the purposes of that Division; and
 - (b) Division 2 of Part 7.7A of the Act as if they were a provider for the purposes of that Division.

Endnotes

Endnote 1—Instrument history

Instrument number	Date of FRL registration	Date of commencement	Application, saving or transitional provisions
2016/1175	19/12/2016 (<i>see</i> F2016L01991)	20/12/2016	
2016/1246	23/12/2016 (<i>see</i> F2016L02036)	24/12/2016	-
2017/580	3/7/2017 (<i>see</i> F2017L00871)	4/7/2017	-
2017/684	25/7/2017 (<i>see</i> F2017L00951)	26/7/2017	-

Endnote 2—Amendment history

ad. = added or inserted am. = amended LA = *Legislation Act 2003* rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Section 2	rep. s48D LA
Section 4	am. 2016/1246
Subsection 5(1) (note)	am. 2017/580
Subsection 7(5)	rs. 2017/684