

**EXPLANATORY STATEMENT for
ASIC Corporations (Repeal and Transitional) Instrument 2017/186**

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes *ASIC Corporations (Repeal and Transitional) Instrument 2017/186* under paragraphs 283GA(1)(a), 741(1)(a), 992B(1)(a) and 1020F(1)(a) of the *Corporations Act 2001 (Act)*.

Paragraph 283GA(1)(a) of the Act provides that ASIC may exempt a person from a provision of Chapter 2L of the Act.

Paragraph 741(1)(a) of the Act provides that ASIC may exempt a person from a provision of Chapter 6D of the Act.

Paragraph 992B(1)(a) of the Act provides that ASIC may exempt a person or class of persons from all or specified provisions of Part 7.8 of the Act.

Paragraph 1020F(1)(a) of the Act provides that ASIC may exempt a person or class of persons from all or specified provisions of Part 7.9 of the Act.

This instrument operates to repeal ASIC Class Order [CO 02/273] *Business matching and introduction services* ([CO 02/273]) while providing transitional relief to extend its effect for two years.

1. Background

Business Introduction Services

Business introduction services identify potential investors and issuers or sellers of securities by circulating information about investment opportunities. This can be done by various means, such as brochures, online publications, or conducting meetings between potential investors and fundraisers. The information circulated by the introduction services may constitute an offer or invitation of securities (including shares and debentures) or interests in a registered managed investment scheme. Those that are involved in the making of an offer must comply with the relevant provisions of the Act. The Act does not specifically prohibit the making or calling attention to offers of securities or interests in a registered managed investment scheme through a business introduction service,

however, certain requirements in the Act have the effect of preventing or making it commercially difficult for persons involved in a business introduction service.

Purpose of the relief for Business Introduction Services

The purpose of [CO 02/273] is to facilitate the growth of small and medium enterprises (SMEs) by reducing the regulatory and cost burden of small-scale fundraising. It is also intended to help facilitate investment by opening up the pool of investors that can invest in an SME.

[CO 02/273] reduces the regulatory burden on the persons involved in making or calling attention to offers of securities through a business introduction service by relieving them from a range of statutory obligations under the Act that would otherwise apply in relation to fundraising, financial product disclosure, hawking and advertising.

Relief for business introduction services

[CO 02/273] provides relief from certain requirements in the Act for persons involved in a business introduction service. Separate relief is provided for each of the following categories:

- (a) operators of business introduction services;
- (b) those who propose to issue or sell securities or interests in a registered managed investment scheme through the use of introduction services;
- (c) persons who endorse or verify information which appears in introduction services; and
- (d) those who sponsor or publish introduction services.

The relief

Subject to certain conditions [CO 02/273] provides relief from the requirements that otherwise apply to a person involved in a business introduction service in relation to:

- (a) the offer or issue of debentures;
- (b) fundraising;
- (c) the issue, sale and purchase of financial products; and
- (d) the prohibition on advertising and hawking.

Relief from the legislative framework for the offer or issue of debentures

Chapter 2L of the Act provides the legislative framework for debentures. The Chapter imposes, among other things, an obligation on the person who makes an offer of debentures or issues debentures to enter into a trust deed that complies with certain requirements. Chapter 2L also imposes duties on the trustee, borrower and guarantor.

Subject to certain conditions [CO 02/273] provides relief to allow the business introduction service operator, the issuer or seller, and other persons involved in the issue or offer of debentures from the

legislative framework that would otherwise apply to the offer or issue of debentures in Chapter 2L of the Act.

Relief from the fundraising provisions

Chapter 6D of the Act establishes the statutory regime applying to fundraising through the offer of securities (including shares and debentures) for issue or sale in Australia. It addresses the circumstances in which a person offering securities for issue or sale must lodge a disclosure document with ASIC and the relevant form, content and procedural requirements applying to that disclosure document. Chapter 6D also sets out certain prohibited conduct in relation to fundraising activity and outlines the circumstances in and extent to which persons may be liable for defective disclosure documents. Chapter 6D also provides certain statutory remedies for investors.

[CO 02/273] exempts a person involved in making or calling attention to offers of securities through a business introduction service from these requirements subject to the conditions of the exemption. [CO 02/273] broadens the ability of a body to make small scale personal offers of securities (20 investors and \$2 million limit) without the need for a disclosure document under subsection 708(1) of the Act by enabling up to \$5 million to be raised where such offerings are conducted through an introduction service. The 20 investor limit for small-scale offerings remains in place.

Relief from the financial product disclosure provisions relating to the issue, sale and purchase of financial products

[CO 02/273] provides conditional relief from the financial product disclosure provisions in Part 7.9 of the Act to facilitate the provision of a business introduction service

Part 7.9 of the Act sets out the situations which give rise to an obligation to give another person a Product Disclosure Statement and other disclosure obligations. These obligations may otherwise apply to persons involved in giving financial product advice, or an offer relating to the issue or sale of a financial product through a business introduction service.

Relief from the prohibition on advertising and hawking

Class Order [CO 02/273] provides conditional relief from:

- (a) the restrictions on advertising and publicity of an offer of:
 - a. securities in s734 of the Act;
 - b. financial products in s1018B of the Act; and
- (b) the prohibitions against hawking:
 - a. securities in s736(1) of the Act;
 - b. managed investment schemes in s992AA of the Act; and
 - c. other financial products in s992A of the Act.

[CO 02/273] enables a person involved in business introduction services to advertise and publish statements that directly or indirectly refer to an offer, or intended offer of securities or other financial products. The publications must meet the requirements of the class order for the exemption to apply.

Under the Act, a person must not offer financial products for issue or sale in the course of, or because of, an unsolicited meeting with another person. Due to the way in which introduction services generate interest in potential investment opportunities, the hawking provisions have the effect of preventing persons involved from carrying out their business. [CO 02/273] exempts persons from the requirements of the hawking provisions subject to compliance with the requirements of the class order.

Crowd-sourced Equity Funding regime (CSEF)

The Government consulted extensively with industry and the public on the introduction of a CSEF regime in 2014 and 2016. On 24 November 2016, the Corporations Amendment (Crowd-sourced Funding) Bill 2016 (**Bill**) was introduced into the House of Representatives. The Bill was subsequently referred to the Senate Economics Legislation Committee on 1 December. The Committee released its report on 13 February 2017.

The Bill amends the Act to establish a regulatory framework to facilitate CSEF by small, unlisted public companies. If the Bill is passed it may give rise to policy issues that impact on ASIC's approach to giving relief to business introduction services. It may also have practical consequences that mean the relief is no longer necessary or tenable.

Extending ASIC's relief for business matching and introduction services

In order to provide certainty until the CSEF Bill is enacted and takes effect, ASIC has extended the effect of the Instrument for two years in *ASIC Corporations (Repeal and Transitional) Instrument 2017/186*.

2. Purpose of the instrument

The purpose of the *ASIC Corporations (Repeal and Transitional) Instrument 2017/186* is to preserve the effect of [CO 02/273] for two years. The two year period will allow an opportunity to review whether the policy settings are inconsistent with those informing the CSEF regime. It will enable ASIC to evaluate how the market responds to the CSEF regime, determine how and to what extent the CSEF regime will interact with the relief, and whether there is an ongoing need for ASIC to provide the relief in [CO 02/273].

3. Operation of the instrument

ASIC Corporations (Repeal and Transitional) Instrument 2017/186 operates to repeal [CO 02/273] while providing transitional relief to extending its effect for two years.

Schedule 1 – Repeal of sunseting legislative instrument

Clause (1) of Schedule 1 provides that [CO 02/273] is repealed in full.

Schedule 2 – Transitional continuation of relief

Subitem (1) of the Schedule 2 provides that the exemptions specified in [CO 02/273] continue to apply by force of this instrument, in the circumstances and on the conditions specified in relation to the exemption.

Subitem (2) provides that subitem (1) has effect for a period of 2 years from the date of the commencement of the instrument.

4. Consultation

ASIC consulted stakeholders on its proposal to continue the effect of the instrument for a period of two years to accommodate the implementation of the CSEF regime. The four stakeholder responses we received supported this proposal.

Once there is more certainty around the implementation of the CSEF regime, we will review *ASIC Corporations (Repeal and Transitional) Instrument 2017/186*. This review will include an evaluation of the impact of the CSEF regime and the potential policy issues and practical consequences.

Following the review, ASIC will publically consult on any proposed changes to the underlying exemptions and their associated conditions.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Repeal and Transitional) Instrument 2017/186

ASIC Corporations (Repeal and Transitional) Instrument 2017/186 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 (Repeal and Transitional) Instrument 2017/186 repeals one class order while extending its effect for two years from the commencement of this instrument. The class order facilitated a limited form of crowd-sourced equity funding. It provided relief for business introduction services to facilitate arrangements through which a business can seek to raise capital, particularly early-stage funding.

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.

Australian Securities and Investments Commission