

EXPLANATORY STATEMENT for

ASIC Corporations (Time-sharing Schemes) Instrument 2017/272

and

ASIC Corporations (Repeal) Instrument 2017/273

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes *ASIC Corporations (Time-sharing Schemes) Instrument 2017/272* (the **Time-sharing Schemes Instrument**) under subsections 601QA(1), 926A(2) and 1020F(1) of the *Corporations Act 2001* (the **Act**).

ASIC Corporations (Repeal) Instrument 2017/273 (The **Repeal Instrument**) is made under subsections 601QA(1) and 1020F(1) and paragraph 911A(2)(l) of the Act and repeals [CO 00/2460], [CO 02/237], [CO 02/315] and [CO 03/104].

Subsection 601QA(1) of the Act provides that ASIC may:

- (a) exempt a person from a provision of Chapter 5C of the Act; or
- (b) declare that Chapter 5C of the Act applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

Subsection 926A(2) of the Act provides that ASIC may:

- (a) exempt a person or class of persons from all or specified provisions of Part 7.6 of the Act (other than Divisions 4 and 8);
- (b) exempt a financial product or class of financial products from all or specified provisions of Part 7.6 (other than Divisions 4 and 8); or
- (c) declare that provisions of Part 7.6 (other than Divisions 4 and 8) apply in relation to a person or financial product, or class or persons or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.

Subsection 1020F(1) of the Act provides that ASIC may:

- (a) exempt a person or class of persons from all or specified provisions of Part 7.9 of the Act;
- (b) exempt a financial product or a class of financial products from all or specified provisions of Part 7.9 of the Act; or
- (c) declare that Part 7.9 of the Act applies in relation to a person or a financial product, or a class of persons or financial products, as if specified provisions of Part 7.9 were omitted, modified or varied as specified in the declaration.

Paragraph 911A(2)(l) of the Act provides that a person is exempt from the requirement to hold an Australian financial services (AFS) licence for a service that the person provides where the provision of the service is covered by an exemption specified by ASIC in writing and published in the *Gazette*.

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

[CO 00/2460] exempts responsible entities of registered time-sharing schemes from the requirement that scheme property be valued at regular intervals under paragraphs 601FC(1)(j) and 601HA(1)(c) of the Act. The relief is conditional on the responsible entity having scheme property valued when it has reasonable grounds to believe a valuation is in the best interests of members. Under the *Legislation Act 2003* (the LA), [CO 00/2460] will expire, or sunset, on 1 April 2017.

[CO 02/237] grants relief to responsible entities of registered time-sharing schemes and operators of exempt time-sharing schemes from the managed investment, AFS licensing and certain product disclosure provisions in relation to the operation of a rental pool. Under the LA, [CO 02/237] will expire, or sunset, on 1 April 2017.

[CO 02/315] grants relief to responsible entities of registered time-sharing schemes from the requirement in paragraph 601GA(1)(a) of the Act to specify the price to purchase an interest in the scheme in the scheme's constitution. Under the LA, [CO 02/315] will expire, or sunset, on 1 April 2017.

[CO 03/104] grants relief to enable responsible entities of registered time-sharing schemes to acquire, hold and dispose of forfeited interests in the time-sharing scheme at a price that is

less than the price that would be payable if the interests were acquired by another person. Under the LA, [CO 03/104] will expire, or sunset, on 1 October 2017.

ASIC has reviewed [CO 00/2460], [CO 02/315] and [CO 03/104] and has decided to extend the operation of the relief by making the Time-sharing Scheme Instrument. The Time-Sharing Instrument will also afford transitional relief for existing operators relying on [CO 02/237].

In light of divergent feedback received on proposals outlined in Consultation Paper 272 *Remaking ASIC class orders on time-sharing schemes (CP 272)* we consider additional consultation is required prior to implementing further changes to the current policy settings.

2. Purpose of the instrument

The purpose of the Time-Sharing Schemes Instrument is to continue the relief provided by [CO 00/2460], [CO 02/315] and [CO 03/104] in a single legislative instrument with non-substantive changes and to provide transitional relief for existing operators relying on [CO 02/237].

The purpose of the Repeal Instrument is to repeal [CO 00/2460], [CO 02/237], [CO 02/315] and [CO 03/104] as they no longer serve any on-going purpose given the release of the Time-Sharing Schemes Instrument.

3. Operation of the instrument

Time-sharing Schemes Instrument

Paragraph 5 of the Time-sharing Schemes Instrument remakes the relief provided by [CO 03/104] with no substantive changes.

Paragraph 6 of the Time-sharing Schemes Instrument remakes the relief provided by [CO 00/2460] with no substantive changes.

Paragraph 7 of the Time-sharing Schemes Instrument remakes the relief provided by [CO 02/315] with no substantive changes.

Paragraph 8 of the Time-sharing Schemes Instrument provides an additional consequential amendment to remake the relief provided by [CO 00/2460].

Paragraph 9 of the Time-Sharing Schemes Instrument provides transitional relief for existing operators in relation to an interest in a rental pool that was operated or purportedly operated in reliance on [CO 02/237] immediately prior to the repeal of the class order.

Repeal Instrument

Paragraph 1 of Schedule 1 of the Repeal Instrument repeals [CO 00/2460].

Paragraph 2 of Schedule 1 of the Repeal Instrument repeals [CO 02/237].

Paragraph 3 of Schedule 1 of the Repeal Instrument repeals [CO 02/315].

Paragraph 4 of Schedule 1 of the Repeal Instrument repeals [CO 03/104].

4. Consultation

In November 2016, ASIC issued CP 272 in relation to our review of [CO 00/2460], [CO 02/237] and [CO 02/315] and [CO 03/104] and our proposals in relation to the current policy settings for time-sharing schemes.

We received eight submissions in response to CP 272. The submissions generally supported our proposals to continue the relief under [CO 00/2460], [CO 02/315] and [CO 03/104]. We also received feedback that supported our proposal to provide transitional relief to existing operators relying on [CO 02/237] and to consider any new applications for similar relief on a case-by-case basis.

We propose to undertake further consultation in relation to feedback we received on our other proposals prior to implementing further changes to the policy settings.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Time-sharing Schemes) Instrument 2017/272

and

ASIC Corporations (Repeal) Instrument 2017/273

ASIC Corporations (Time-sharing Schemes) Instrument 2017/272 (the **Time-sharing Schemes Instrument**) and ASIC Corporations (Repeal) Instrument 2017/273 (the **Repeal Instrument**) are 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

Under the *Legislation Act 2003*, [CO 00/2460], [CO 02/237] and [CO 02/315] will expire, or sunset, on 1 April 2017 and [CO 03/104] will expire, or sunset on 1 October 2017.

[CO 00/2460] exempts responsible entities of registered time-sharing schemes from the requirement that scheme property be valued at regular intervals under paragraphs 601FC(1)(j) and 601HA(1)(c) of the Act. The relief is conditional on the responsible entity having scheme property valued when it has reasonable grounds to believe a valuation is in the best interests of members.

[CO 02/237] grants relief to responsible entities of registered time-sharing schemes and operators of exempt time-sharing schemes from the managed investment, AFS licensing and certain product disclosure provisions in relation to the operation of a rental pool.

[CO 02/315] grants relief to responsible entities of registered time-sharing schemes from the requirement in paragraph 601GA(1)(a) of the Act to specify the price to purchase an interest in the scheme in the scheme's constitution.

[CO 03/104] grants relief to enable responsible entities of registered time-sharing schemes to acquire, hold and dispose of forfeited interests in the time-sharing scheme at a price that is less than the price that would be payable if the interests were acquired by another person.

The Time-sharing Schemes Instrument remakes the relief under [CO 00/2460], [CO 02/315] and [CO 03/104] in a single legislative instrument with non-substantive changes and provides transitional relief for existing operators relying on [CO 02/237].

The Repeal Instrument repeals [CO 00/2460], [CO 02/237], [CO 02/315] and [CO 03/104].

Human rights implications

This legislative instruments do not engage any of the applicable rights or freedoms.

Conclusion

This legislative instruments are compatible with human rights as they do not raise any human rights issues.