

EXPLANATORY STATEMENT for
ASIC Corporations (Financial Reporting: Natural Person Licensees)
Instrument 2017/307

and

ASIC Corporations (Repeal) Instrument 2017/308

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes *ASIC Corporations (Financial Reporting: Natural Person Licensees) Instrument 2017/307* (**the Instrument**) and *ASIC Corporations (Repeal) Instrument 2017/308* (**the Repeal Instrument**) under paragraph 992B(1)(a) of the *Corporations Act 2001* (**the Act**).

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

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

Subsection 989B(1) of the Act provides that Australian financial services (**AFS**) licensees must, in respect of each financial years, prepare a true and fair profit and loss statement and a balance sheet. Where the AFS licensee is a natural person, these statements and balance

sheets may include expenses and revenues that are unrelated to their financial services businesses, such as income from other sources and personal expenses.

In September 2003, ASIC issued Class Order [CO 03/748] *Reporting requirements under s 989B ([CO 03/784])*. [CO 03/748] was issued to address concerns around the disproportionate burden placed on AFS licensees who are natural persons. [CO 03/748] limits the operation of subsection 989B(1) of the Act by relieving AFS licensees who are natural persons from the requirement to include in a profit and loss statement or balance sheet any revenues and expenses that do not relate to the financial services businesses carried on by the licensees.

The relief [CO 03/748] provides is confined to the preparation of profit and loss statements. An AFS licensee who is a natural person must still prepare a balance sheet, which discloses all of their assets and liabilities, including personal assets and liabilities, and the assets and liabilities of any other businesses; per subsection 989B(2) of the Act. An AFS licensee who is a natural person must still with the statement and balance sheet, lodge an auditor's report with ASIC containing the information and matters required by the regulations, per subsection 989B(3) of the Act.

2. Purpose of the instrument

The purpose of the Instrument is to preserve the effect of [CO 03/748] beyond its sunset date of 1 October 2017 in substantially the same form. But for the Instrument, the relief in [CO 03/748] would cease to have effect from 1 April 2017 under the *Legislation Act 2003*.

The Repeal Instrument is made to repeal the relief provided by [CO 03/748].

3. Operation of the instrument

Part 1 – Preliminary

Section 1 provides that the name of the Instrument is to be *ASIC Corporations (Financial Reporting: Natural Person Licensees) Instrument 2017/307*.

Section 2 provides that the Instrument is to commence the day after it is registered on the Federal Register of Legislation.

Section 3 provides that the instrument is made under subsection 992B(1) of the Act.

Section 4 outlines the relevant definitions for key terms used in the instrument. 'Act' is defined as meaning the *Corporations Act 2001*.

Part 2 – Exemption

Section 5 provides that a financial services licensee who is a natural person does not have to comply with subsection 989B(1) of the Act to the extent that the licensee is required to include in a profit and loss statement any revenues and expenses that do not relate to a financial services business carried on by the licensee.

Section 5 reflects ASIC's general intention regulate only the revenues and expenses included in include in profit and loss statements or balance sheets that relate to the financial services businesses carried on by AFS licensees.

4. Consultation

As part of its review of [CO 03/748], ASIC released Consultation Paper 278 *Remaking ASIC class order on reporting requirements for AFS licensees who are natural persons (CP 278)*. A draft of the Instrument was attached to CP 278. ASIC did not receive any submissions in response to CP 278.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Financial Reporting – Natural Person Licensees) Instrument 2017/307

And

ASIC Corporations (Repeal) Instrument 2017/308

ASIC Corporations (Financial Reporting: Natural Person Licensees) Instrument 2017/307 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 (Financial Reporting: Natural Person Licensees) Instrument 2017/307 gives relief to AFS licensees from having to include personal and unrelated revenue and expenses in profit and loss statements required by s 989B (1).

ASIC Corporations (Repeal) Instrument 2017/307 is made to repeal the relief provided by [CO 03/748].

Human rights implications

This legislative instrument engages the right to privacy. The right to privacy is recognised by Article 17 of the *International Covenant on Civil and Political Rights* listed in section 3(1)(c) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The legislative instrument enhances the right to privacy by removing the need for natural persons to disclose personal financial information that is unrelated to the financial services business for which they hold an Australian Financial Services Licence.

Conclusion

This legislative instrument is compatible with human rights as it enhances the right to privacy.

[Australian Securities and Investments Commission]