

**EXPLANATORY STATEMENT for**  
**ASIC Corporations (AFCA transition) Instrument 2018/447**

and

**ASIC Credit (AFCA transition) Instrument 2018/448**

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

*National Consumer Credit Protection Act 2009*

The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations (AFCA transition) Instrument 2018/447* under subsections 951B(1) and 1020F of *Corporations Act 2001* (the Corporations Act). Subsections 951B(1) and 1020F relevantly provide that ASIC may exempt a class of persons from specified provisions of Pt7.7 and 7.9 of the Corporations Act and declare that those parts apply as if modified or varied in the declaration.

ASIC makes *ASIC Credit (AFCA transition) Instrument 2018/448* under subsection 163(1) of *National Consumer Credit Protection Act 2009* (the Credit Act). Subsection 163(1) relevantly provides that ASIC may declare that Chapter 3 of the Credit Act applies to a class of persons as if specified provisions were modified or varied as set out in the declaration.

## **1. Background**

The *Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority) Act 2018* (the AFCA Act) establishes a single financial services external dispute resolution scheme: the Australian Financial Complaints Authority (AFCA). AFCA will replace the two existing ASIC-approved external dispute resolution (EDR) schemes: the Financial Ombudsman Service (FOS) and the Credit and Investments Ombudsman (CIO); and the statutory Superannuation Complaints Tribunal (SCT).

On 2 May 2018, the Minister announced the authorisation of Australian Financial Complaints Limited (AFCL) to operate the new AFCA scheme.

The AFCA scheme will commence operations on 1 November 2018.

There are a number of disclosure documents which are required to include details of a financial firm's EDR scheme. The AFCA Act consequentially amended various existing legislative provisions to refer to AFCA in the disclosure communications, placing an obligation on firms to change the name and contact details of predecessor schemes to those of AFCA.

The following documents are required to include details of a firm's EDR scheme:

- Financial Services Guides (s942B(2)(h) and 942C(2)(i) Corporations Act);
- Product Disclosure Statements (s1013D(1)(g) Corporations Act; items 9(1)(b) and (2)(a) of Sch 10C to the Corporations Regulations; items 11(1)(c) and 11(2) of Sch 10D to the Corporations Regulations);

- Short-Form PDSs (items 10(1)(d) and 10(2) of Sch 10E to the Corporations Regulations 2001);
- Periodic and exit statements (paragraph 7.9.75(1)(c) of the Corporations Regulations);
- Statements about superannuation interests under the Family Law Act (paragraphs 7.9.88(1)(g) and 7.9.89(1)(g) of the Corporations Regulations) and
- Credit Guides (s113(2)(h), 126(2)(e), 127(2)(e), 136(2)(h), 149(2)(e), 150(2)(e), 158(2)(h) and 160(3)(f) of the Credit Act).

The transition to AFCA also triggers significant event notification requirements for issuers of financial products captured by s.1017B of the *Corporations Act*.

## **2. Purpose of the instruments**

*ASIC Corporations (AFCA transition) Instrument 2018/447* and *ASIC Credit (AFCA transition) Instrument 2018/448 (the Instruments)* are intended to give firms transitional relief from the requirements to update disclosure documents and periodic statements with AFCA's contact details until 1 July 2019. This will give firms time to amend mandatory disclosure documents and adapt to the significant changes in the dispute resolution environment introduced by the AFCA Act.

## **3. Operation of the instruments**

The Instruments provide transitional relief generally until 1 July 2019. The relief from the significant event notification requirements is limited to events relating to the transition but is ongoing.

The relief is conditional upon consumer communications about how to complain (e.g. including on websites) and documented IDR procedures being updated with AFCA's details by 1 November 2018.

## **4. Consultation**

On 5 March 2018, ASIC issued draft updated RG 139, *Oversight of AFCA* for consultation. The linked consultation paper [CP 298](#) discussed the obligation on firms to change the name and contact details of predecessor schemes in disclosure documents to refer to AFCA. ASIC sought feedback on whether firms need any transitional relief from these EDR disclosure obligations.

28 submissions were made to CP 298. Of these, 17 made specific submissions on disclosure relief.

The Joint Consumer Submission recommended no relief be given. Whilst there was general consensus amongst industry that internal dispute resolution final response letters should be updated in time for AFCA's commencement on 1 November 2018, all industry submissions requested some form of transitional relief for updating mandatory disclosure documents and periodic statements with AFCA's details. Proposals for the duration of the transitional relief period ranged from 8 months to 2 years from the commencement of AFCA.

## **Statement of Compatibility with Human Rights**

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

### **ASIC Corporations (AFCA transition) Instrument 2018/447**

### **ASIC Credit (AFCA transition) Instrument 2018/448**

*ASIC Corporations (AFCA transition) Instrument 2018/447 and ASIC Credit (AFCA transition) Instrument 2018/448 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**

*ASIC Corporations (AFCA transition) Instrument 2018/447 and ASIC Credit (AFCA transition) Instrument 2018/448 provide exemptions from various disclosure obligations in order to facilitate a smooth transition to new external dispute resolution arrangements as a result of the Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority) Act 2018.*

#### **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**