

EXPLANATORY STATEMENT ASIC Corporations (Amendment) Instrument 2018/473

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes *ASIC Corporations (Amendment) Instrument 2018/473* (**legislative instrument**) under paragraph 1020F(1)(c) of the *Corporations Act 2001* (**Act**). Paragraph 1020F(1)(c) provides that ASIC may 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 were omitted, modified or varied as specified in the declaration.

The legislative instrument amends ASIC Class Order [CO 12/749] (**principal class order**). Under subsection 33(3) of the *Acts Interpretations Act 1901* (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

The *Corporations Amendment Regulations 2010 (No 5)* established a shorter Product Disclosure Statement (PDS) regime under Subdivision 4.2B (for superannuation products) and Subdivision 4.2C (for simple managed investment schemes) of Division 4 of Part 7.9 of the *Corporations Regulations 2001*, which commenced on 22 June 2012.

Since 2012 ASIC has deferred the operation of the shorter PDS regime to superannuation platforms, multi-funds and hedge funds (**relevant products**), by providing temporary relief in successive ASIC Class Orders.

The principal class order extended the relief until 30 June 2018 to permit further consideration of the final policy position in relation to permanent relief from the application of the shorter PDS regime to the relevant products.

2. Purpose of the instrument

The purpose of the legislative instrument is to continue to defer the application of the shorter PDS regime to the relevant products until 30 June 2022. This will extend the deferral, effective since 30 June 2012, for a total period consistent with the 10 year sunset period for legislative instruments under the *Legislation Act 2003*.

This deferral will allow the Government time to consider and settle its policy position. The deferral does not represent a policy view by ASIC in relation to the application of the shorter PDS regime to the relevant products nor a view as to the time likely to be taken by the

Government in settling a policy view. Accordingly, the deferral until 30 June 2022 is subject to change pending and according to the finalisation of the Government's policy position.

3. Operation of the instrument

The legislative instrument amends paragraph 6 of the principal class order to extend the operation of the principal class order from 30 June 2018 to 30 June 2022.

4. Consultation

Before making the legislative instrument to extend the existing relief, ASIC consulted with Treasury, but did not undertake a public consultation process. This is because the amendments made by the legislative instrument are transitional measures of a minor or machinery nature, and do not affect the position of any entity relying on the existing relief.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Amendment) Instrument 2018/473

*ASIC Corporations (Amendment) Instrument 2018/473 (the **legislative instrument**) 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

The purpose of the legislative instrument is to amend ASIC Class Order [CO 12/749] (the **principal class order**). The principal class order excludes multifunds, superannuation platforms and hedge funds from the shorter Product Disclosure Statement regime for an interim period until 30 June 2018. This legislative instrument extends the operation of the principal class order until 30 June 2022.

Human rights implications

The legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

The legislative instrument is compatible with human rights as it does not raise any human rights issues.