



**ASIC**

Australian Securities & Investments Commission

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## **ASIC Corporations (Amendment) Instrument 2017/821**

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I, Anthony Graham, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 19 September 2017

Anthony Graham

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## **Part 1—Preliminary**

### **1 Name of legislative instrument**

This is the *ASIC Corporations (Amendment) Instrument 2017/821*.

### **2 Commencement**

This instrument commences on the later of:

- (a) the day after it is registered on the Federal Register of Legislation;  
and
- (b) the date of commencement of Schedule 1 to the *Corporations Amendment (Crowd-sourced Funding) Act 2017*.

Note: The register may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

### **3 Authority**

This instrument is made under subsections 926A(2) and 1020F(1) of the *Corporations Act 2001*.

### **4 Schedules**

Each instrument that is specified in a Schedule to this instrument is amended as set out in the applicable items in the Schedule.

## Schedule 1—Amendments

### ASIC Class Order [CO 13/762]

#### 1 Subparagraph 6(c) (notional paragraph 1013DAB(8)(a))

Omit all the words after “accessible securities”, substitute:

“:

- (i) for an acquisition of shares resulting from a CSF offer—subsection (8H) is satisfied; and
- (ii) otherwise—subsection (8A) or (8E) is satisfied; and”.

#### 2 Subparagraph 6(c) (after notional subsection 1013DAB(8G))

Insert:

“(8H) This subsection is satisfied if the responsible entity reasonably believes that:

- (a) the member:
  - (i) has accessed the platform of a CSF intermediary containing the CSF offer document for the CSF offer and the responsible entity has no reason to believe the document is defective as at the time of the acquisition of the shares; and
  - (ii) has completed the acknowledgement that would be required under paragraph 738ZA(3)(b) if the member had applied as a retail client; and
  - (iii) was able to use the relevant communication facility for the CSF offer provided under subsection 738ZA(5); and
  - (iv) was able to withdraw the direction within 5 business days after it was made; and
  - (v) has not been provided with financial assistance in relation to the CSF offer by any of the following:
    - (A) a person referred to in subsection 738ZE(1); or
    - (B) the responsible entity; or
    - (C) an associate of the responsible entity that is not an Australian ADI; and

- (vi) has not in total paid for, or become liable to pay for, or given directions under an IDPS, an IDPS-like scheme or a nominee and custody service for the acquisition of, shares under a CSF offer of the company making the CSF offer that together exceed the cap on investment in paragraph 738ZC(1)(b); or
  - (b) the member would have acquired the shares as a wholesale client if the member had acquired the shares directly under the CSF offer.”.
- 3 Subparagraph 6(c) (notional subsection 1013DAB(19), paragraph (b) of the definition of *defective*)**
- Omit “.”; substitute:
- “; and
- (c) in relation to a CSF offer document—has the same meaning as in section 738U.”.

### **ASIC Class Order [CO 13/763]**

**4 Paragraph 6 (notional paragraph 912AD(26)(a))**

Omit all the words after “accessible securities”, substitute:

“:

- (i) for an acquisition of shares resulting from a CSF offer—subsection (26H) is satisfied; and
- (ii) otherwise—subsection (26A) or (26E) is satisfied; and”.

**5 Paragraph 6 (after notional subsection 912AD(26G))**

Insert:

“(26H) This subsection is satisfied if the licensee reasonably believes that:

- (a) the client:
  - (i) has accessed the platform of a CSF intermediary containing the CSF offer document for the CSF offer and the licensee has no reason to believe the document is defective as at the time of the acquisition of the shares; and
  - (ii) has completed the acknowledgement that would be required under paragraph 738ZA(3)(b) if the client had applied as a retail client; and
  - (iii) was able to use the relevant communication facility for the CSF offer provided under subsection 738ZA(5); and

- (iv) was able to withdraw the direction within 5 business days after it was made; and
  - (v) has not been provided with financial assistance in relation to the CSF offer by:
    - (A) a person referred to in subsection 738ZE(1); or
    - (B) the licensee; or
    - (C) an associate of the licensee that is not an Australian ADI; and
  - (vi) has not in total paid for, or become liable to pay for, or given directions under an IDPS, an IDPS-like scheme or a nominee and custody service for the acquisition of, shares under a CSF offer of the company making the CSF offer that together exceed the cap on investment in paragraph 738ZC(1)(b); or
- (b) the client would have acquired the shares as a wholesale client if the client had acquired the shares directly under the CSF offer.”.

**6 Paragraph 6 (notional subsection 912AD(42), paragraph (b) of the definition of *defective*)**

Omit “.”; substitute:

“; and

- (c) in relation to a CSF offer document—has the same meaning as in section 738U.”.

**ASIC Corporations (Nominee and Custody Services) Instrument 2016/1156**

**7 Section 8 (notional subsection 912AE(3))**

Omit all the words after “unless:”, substitute:

- “(a) for an acquisition of shares resulting from a CSF offer—subsection (3A) is satisfied; and
- (b) otherwise:
  - (i) both of the following are satisfied:
    - (A) the licensee reasonably believes that the client has been given a disclosure document for the accessible securities that would have been required had the accessible

securities been offered to the client directly at the time of the acquisition of the accessible securities;

- (B) the licensee has no reason to believe that the disclosure document is defective as if it were prepared at that time; or
- (ii) the licensee reasonably believes that the accessible securities could lawfully have been offered and issued or sold, as the case may be, to the client directly without the client being required to be given a disclosure document other than because of subsection 708(1).”.

## **8 Section 8 (after notional subsection 912AE(3))**

Insert:

“(3A) This subsection is satisfied if the licensee reasonably believes that:

- (a) the client:
  - (i) has accessed the platform of a CSF intermediary containing the CSF offer document for the CSF offer and the licensee has no reason to believe the document is defective as at the time of the acquisition of the shares; and
  - (ii) has completed the acknowledgement that would be required under paragraph 738ZA(3)(b) if the client had applied as a retail client; and
  - (iii) was able to use the relevant communication facility for the CSF offer provided under subsection 738ZA(5); and
  - (iv) was able to withdraw the direction within 5 business days after it was made; and
  - (v) has not been provided with financial assistance in relation to the CSF offer by:
    - (A) a person referred to in subsection 738ZE(1); or
    - (B) the licensee; or
    - (C) an associate of the licensee that is not an Australian ADI; and
  - (vi) has not in total paid for, or become liable to pay for, or given directions under an IDPS, an IDPS-like scheme or a nominee and custody service for the acquisition of, shares under a CSF offer of the company making the

CSF offer that together exceed the cap on investment in paragraph 738ZC(1)(b); or

- (b) the client would have acquired the shares as a wholesale client if the client had acquired the shares directly under the CSF offer.”.

**9 Section 8 (notional subsection 912AE(10), paragraph (b) of the definition of *defective*)**

Omit “.”; substitute:

“; and

- (c) in relation to a CSF offer document—has the same meaning as in section 738U.”.