**EXPLANATORY STATEMENT for
ASIC Corporations (Banking Code of Practice) Instrument 2018/700**

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations (Banking Code of Practice) Instrument 2018/700* (the Instrument) under subsection 1101A(1) of the *Corporations Act 2001* (the Corporations Act).

Subsection 1101A(1) of the Corporations Act provides that ASIC may, on application, approve codes of conduct that relate to any aspect of the activities of financial services licensees, authorised representatives of financial services licensees, or issuers of financial products, being activities in relation to which ASIC has a regulatory responsibility. The approval must be in writing.

1. **Background**

*ASIC’s code approval power*

ASIC must not approve a code of conduct under section 1101A unless it is satisfied that:

1. the code is not inconsistent with the Corporations Act or any other law of the Commonwealth under which ASIC has regulatory responsibilities; and
2. it is appropriate to approve the code, having regard to the following matters, and to any other matters that ASIC considers are relevant:
3. the ability of the applicant to ensure that persons who hold out that they comply with the code will comply with the code as in force from time to time; and
4. the desirability of codes of conduct being harmonised to the greatest extent possible.

*Australian Banking Association*

The Australian Banking Association (ABA) applied to ASIC for approval of its Banking Code of Practice under section 1101A of the Corporations Act.

### **Purpose of the instrument**

The purpose of the Instrumentis to provide ASIC’s approval of the ABA’s Banking Code of Practice, published in August 2018 by the ABA, as existing at the date of the Instrument.

ASIC has assessed the Banking Code of Practice and is satisfied that it meets the requirements of subsection 1101A(3) of the Corporations Act.

### **Operation of the instrument**

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

Section 5 of the Instrument approves the Banking Code of Practice for the purposes of section 1101A of the Corporations Act.

### **Documents incorporated by reference**

The Instrument incorporates by reference the Banking Code of Practice.

This document is available at <http://www.ausbanking.org.au>.

The Banking Code of Practice (the Code) is a self-regulatory document created by the banking industry, as represented by the ABA, and is administered by an independent Code monitoring body. The Code sets out standards of practice and service in the Australian banking industry for individual and small business customers, and their guarantors. ASIC does not administer the Code.

### **Consultation**

ASIC engaged with a targeted range of stakeholders to invite their feedback on the content of the draft Banking Code of Practice and on the adequacy and transparency of the ABA’s consultation process in developing the Code. Stakeholders with whom ASIC engaged included consumer and small business representatives, various industry peak bodies, ombudsmen and the Code monitoring body.

The ABA undertook a substantial stakeholder consultation process as part of the development of the Code.

**Statement of Compatibility with Human Rights**

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

**ASIC Corporations (Banking Code of Practice) Instrument 2018/700**

ASIC Corporations (Banking Code of Practice) Instrument 2018/700 (the ***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 Instrument approves the Banking Code of Practice, published in August 2018 by the Australian Banking Association Incorporated, as existing at the date of the Instrument.

**Human rights implications**

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

**Conclusion**

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

**Australian Securities and Investments Commission**