



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 and ASIC Corporations (Amendment and Repeal) Instrument 2019/548

This is the Explanatory Statement for ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 and ASIC Corporations (Amendment and Repeal) Instrument 2019/548.

The Explanatory Statement is approved by the Australian Securities and Investments Commission (**ASIC**).

Summary

1. ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 (***Legislative Instrument***) facilitates the offer of share and interest purchase plans to existing registered holders, who are provided with the opportunity to participate in secondary capital raisings at a discount to the market price without brokerage fees.
2. The Legislative Instrument restricts the amount that each registered holder may invest in purchase plans offered in reliance on the Legislative Instrument to no more than \$30,000 worth of shares or interests per 12-month period.
3. ASIC Corporations (Amendment and Repeal) Instrument 2019/548 (***Amendment and Repeal Instrument***) repeals ASIC Class Order [CO 09/425] (the predecessor to the Legislative Instrument) which was due to expire on 1 October 2019 and amends and omits certain references made to [CO 09/425] in other legislative instruments.

Purpose of the instruments

4. Generally, an offer of shares or interests (or both) requires a disclosure document under Chapter 6D or Part 7.9 of the *Corporations Act 2001 (Act)*. Under the Legislative Instrument, entities listed on the Australian Securities Exchange (**ASX**) do not have to prepare a prospectus or Product Disclosure Statement (**PDS**) to offer shares or interests to registered holders, providing that certain conditions are met.
5. The Legislative Instrument provides conditional relief from the disclosure requirements of Ch 6D and Pt 7.9 of the Act, on the basis that:

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- the amount being raised from each existing investor is capped;
 - the cost of preparing and distributing a disclosure document is relatively high compared to the amount being raised; and
 - without such relief, retail investors may be disadvantaged if they are unable to participate in secondary fundraising activities which an issuer may undertake without a disclosure document, such as placements to institutional investors.
7. The risks associated with a purchase plan offer pursuant to the Legislative Instrument are limited, as:
- the amount that may be invested by each investor in a 12-month period under a purchase plan is restricted;
 - the offer price must be at a discount to the market price during a specified period; and
 - the issuer must comply with its continuous disclosure requirements and other conditions that apply to the relief.
8. Without relief from the requirement to prepare a disclosure document, it is unlikely that purchase plans would be offered, which could disadvantage retail investors who are most likely to participate in purchase plans and who may be excluded from other secondary fundraising activities.
9. The Legislative Instrument will continue the relief provided by [CO 09/425] with an increase to the permitted purchase limit (for each registered holder in a 12-month period) from \$15,000 to \$30,000. The Legislative Instrument also reflects updated drafting practice.
10. The purpose of the Amendment and Repeal Instrument is to repeal [CO 09/425] and amend certain references to [CO 09/425] made in other ASIC class orders and legislative instruments.

Consultation

11. In Consultation Paper 304: *Remaking ASIC class order on share and interest purchase plans: [CO 09/425] (CP 304)*, ASIC consulted generally on the proposal to remake [CO 09/425]. ASIC also sought specific submissions regarding:
- (a) whether [CO 09/425] was operating effectively and efficiently; and
 - (b) whether the conditions to relief (including the \$15,000 participation limit per individual member in any consecutive 12-month period) should remain unchanged.

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12. ASIC received three non-confidential submissions in response to CP 304 during the consultation period. Where appropriate, we have had regard to relevant feedback in finalising the Legislative Instrument.

Operation of the instruments

Legislative Instrument

Exemptions

13. Subsection 6(2) of the Legislative Instrument exempts ASX-listed issuers of shares from the disclosure requirements of Pts 6D.2 and 6D.3 of the Act (other than sections 736 or 738) for an offer of shares under a purchase plan.
14. Subsection 6(3) of the Legislative Instrument exempts ASX-listed issuers of interests in a managed investment scheme from the disclosure requirements of section 1012B or Div 4 of Pt 7.9 of the Act for an offer of interests under a purchase plan.

Requirements

15. Section 7 of the Legislative Instrument provides that the exemptions in subsections 6(2) and (3) apply to a written offer for the issue of shares or interests and to the issue of shares or interests under such an offer where the following requirements are met at the time that the offer is made:
- (a) the shares or interests are in a class which:
 - (i) is quoted on the financial market operated by the ASX; and
 - (ii) is not suspended from trading and was not suspended from trading for more than a total of 5 days during the shorter of the period during which the class was quoted, and the period of 12 months before the day on which the offer is made;
 - (b) an ASIC determination under subsection 708AA(3), 708A(2), 1012DAA(3) or 1012DA(2) of the Act is not in force in relation to the issuer;
 - (c) no exemption under section 111AS or 111AT of the Act covered the issuer, or any person as director or auditor of the issuer, at any time in the shorter of the period during which the class was quoted, and the period of 12 months before the day on which the offer is made;
 - (d) no ASIC order under section 340 or 341 of the Act (other than an excluded order) covered the issuer, or any person as director or auditor of the issuer, at any time in the shorter of the period during which the class was quoted, and the period of 12 months before the day on which the offer is made;
 - (e) the offer document contains certain prescribed information pertaining to the calculation of the issue price, the relationship of the issue price with the

market price and disclosure that the market price may vary prior to issuance;
and

- (f) the issuer gives notice to the ASX either:
- (i) not more than 30 days before the offer, that the issuer complied with sections 708A(6) or 1012DA(6) of the Act (cleansing notice) in relation to another offer; or
 - (ii) within 24 hours before the offer is made, provides the equivalent information required in a cleansing notice in relation to the purchase plan offer and states that they are relying on the Legislative Instrument.

Conditions

16. Section 8 of the Legislative Instrument sets out the conditions to the provision of purchase plan relief. The primary condition of relief under the Legislative Instrument is that the total application price for shares or interests paid under current or previous purchase plans cannot exceed \$30,000 per registered holder in any consecutive 12-month period. The Legislative Instrument requires that before an issue of shares or interests under a plan purchase plan occurs, the issuer has received from the registered holder a statement or certificate confirming that the participation limit has not been exceeded.
17. Section 8 of the Legislative Instrument provides a process for issuing shares and interests to custodians or downstream custodians on behalf of participating beneficiaries. Section 8 further details additional conditions which apply where purchase plan offers are extended by custodians to beneficiaries to ensure that the issuer has reliable information necessary to ensure compliance with the terms of the Legislative Instrument.

Amendment and Repeal Instrument

Amendments

18. The Amendment and Repeal Instrument makes certain consequential amendments to existing ASIC class orders and legislative instruments which do not materially alter the existing policy settings of those class orders and legislative instruments.
19. Schedule 1 to the Amendment and Repeal Instrument amends or omits references to [CO 09/425] made in:
- (a) ASIC Class Order [CO 13/655];
 - (b) ASIC Class Order [CO 13/656];
 - (c) ASIC Corporations (Amendment and Repeal) Instrument 2015/843;
 - (d) ASIC Corporations (Managed investment product consideration) Instrument 2015/847;

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- (e) ASIC Corporations (Disregarding Technical Relief) 2016/73; and
 - (f) ASIC Corporations (Sale Offers That Do Not Need Disclosure) 2016/80.

Repeals

- 20. Schedule 2 to the Amendment and Repeal Instrument repeals the whole of [CO 09/425].

Commencement

- 21. Each of the Legislative Instrument and the Amendment and Repeal Instrument commenced on the day that they were registered with the Federal Register of Legislation. Both instruments were registered, and therefore commenced on the same day (***Changeover Date***) to facilitate an orderly transition from the purchase plan relief afforded by [CO 09/425] to that provided by the Legislative Instrument.

Incorporation by reference

- 22. The Legislative Instrument refers to and incorporates the contents of [CO 09/425] (as in force immediately before its repeal). Such references engage section 14 of the *Legislation Act 2003* because the contents of the class order affect how the Legislative Instrument operates. [CO 09/425] is available on the Federal Register. The incorporation by reference is made for the purposes of facilitating issuers to continue operating, for a transitional period of 6 months, share and interest purchase plans that, as at the Changeover Date, had commenced but not finished, in reliance on [CO 09/425].
- 23. The Legislative Instrument also makes reference to definitions that are contained in other ASIC legislative instruments, such as the definitions of “IDPS” and “IDPS-like scheme” found in ASIC Class Orders [CO 13/763] and [CO 13/762], and the definition of “technical relief instrument” as inserted by *ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73*. Those class orders and instruments are disallowable legislative instruments and are registered on the Federal Register. Such references do not engage section 14 of the *Legislation Act 2003* because such references do not affect how the Legislative Instrument operates.

Legislative authority

- 24. The Legislative Instrument is made under subsections 741(1) and 1020F(1) of the Act.
- 25. Under subsection 13(1) of the *Legislation Act 2003*, if enabling legislation confers on a person the power to make a legislative instrument or notifiable instrument, then unless the contrary intention appears, the *Acts Interpretation Act 1901* applies to any instrument so made as if it were an Act and as if each provision of the instrument were a section of the Act.

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25. The Amendment and Repeal Instrument is made under subsections 601QA(1), 741(1) and 1020F(1) of the Act.
 26. Under subsection 33(3) of the *Acts Interpretation Act 1901* where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (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.
 27. Each of the Legislative Instrument and the Amendment and Repeal Instrument are disallowable instruments.

Statement of Compatibility with Human Rights

28. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 and ASIC Corporations (Amendment and Repeal) Instrument 2019/548

Overview

1. The Legislative Instrument provides relief from the disclosure requirements of Chapter 6D and Part 7.9 of the Act to facilitate offers of share and interest purchase plans by ASX-listed entities to their existing investors. The relief is subject to conditions, and there is a monetary restriction preventing an issuer from accepting more than \$30,000 per registered holder, per 12-month period under a purchase plan.
2. The relief afforded by the Legislative Instrument provides ASX-listed entities with a cost effective and convenient means of raising capital. Investors are provided with the opportunity to participate in secondary fundraising activities at a discount to the market price and without brokerage fees.
3. Without the relief provided by the Legislative Instrument it is unlikely that purchase plans would be offered, which could disadvantage retail investors who are most likely to participate in purchase plans and who may be excluded from other secondary fundraising activities.
4. The Legislative Instrument remakes ASIC Class Order [CO 09/425] as a new legislative instrument, with an amendment to the participation limit (for each registered holder per 12-month period) from \$15,000 to \$30,000.
5. The Amendment and Repeal Instrument repeals the class order that gave effect to ASIC's previous policy on share and interest purchase plans and makes consequential changes to other ASIC class orders and legislative instruments to ensure that those class orders and instruments continue to operate as intended.

Assessment of human rights implications

6. The instruments do not engage any of the applicable rights or freedoms.

Conclusion

7. The instruments 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*.