



ASIC
Australian Securities &
Investments Commission

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

I, Grant Moodie, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 26 August 2019

Grant Moodie

Contents

Part 1—Preliminary	3
1 Name of legislative instrument	3
2 Commencement	3
3 Authority	3
4 Definitions	3
5 Interpretation	6
Part 2—Exemptions	8
6 Exemptions for issuers	8
7 Requirements	8
8 Conditions	10
9 Exemptions for other regulated persons	12
Part 3—Transitional	13
10 Existing purchase plans	13

Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under subsections 741(1) and 1020F(1) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

ASX means ASX Limited.

current and previous plan purchases, in relation to an application for shares or interests under a purchase plan, means:

- (a) the shares or interests the subject of the application;
- (b) any other shares or interests in the class applied for under the purchase plan or any shares or interests in the class issued under a similar arrangement in the 12 months before the application;
- (c) any other shares or interests in the class which the holder has instructed a custodian to acquire on their behalf under the purchase plan;
- (d) any other shares or interests in the class issued to a custodian under an arrangement similar to the purchase plan in the 12 months before the application as a result of an instruction given by the holder to the custodian or another custodian and which resulted in the holder holding beneficial interests in the shares or interests.

custodial or depository service has the meaning given by section 766E of the Act.

custodian means a person that provides a custodial or depository service in relation to shares of a body or interests in a registered scheme and who:

- (a) holds an Australian financial services licence covering the provision of a custodial or depository service;
- (b) is exempt from the requirement to hold an Australian financial services licence covering the provision of a custodial or depository service;
- (c) holds an Australian financial services licence covering the operation an IDPS or is a responsible entity of an IDPS-like scheme;
- (d) is a trustee of a self-managed superannuation fund or a superannuation master trust; or
- (e) is a registered holder of shares or interests in the class and is noted on the register of members of the body or scheme as holding the shares or interests on account of another person.

custodian offer means an offer to a registered holder to the extent that it is of the kind referred to in paragraph (b) of the definition of **purchase plan**.

excluded order means a technical relief instrument to the extent it is made under section 340 or 341 of the Act.

Note: ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73 notionally inserts a definition of **technical relief instrument** in section 9 of the Act.

IDPS and **IDPS-like scheme** have the same meanings as in ASIC Class Order [CO 13/763] and [CO 13/762] respectively.

instruction includes a direction or request.

purchase plan, in relation to shares in a body or interests in a registered scheme, means an arrangement under which:

- (a) an offer is made to each registered holder of shares or interests in the class on a date determined by the issuer, and whose address (as recorded in the register of members) is in a place in which, in the reasonable opinion of the issuer, it is lawful and practical for the issuer to offer and issue shares or interests to that person;
- (b) an offer may enable a registered holder who is a custodian to acquire shares or interests on behalf of a person (the **beneficiary**) on whose behalf the custodian is holding shares or interests in the class;
- (c) each offer is made on:
 - (i) the same terms and conditions:

- (A) to the extent that it is an offer to a registered holder to acquire shares or interests on their own behalf; and
 - (B) to the extent (if any) it is an offer to a registered holder to acquire shares or interests as a custodian on behalf of a beneficiary; and
- (ii) a non-renounceable basis;
- (d) if offers of the kind are referred to in sub-subparagraph (c)(i)(B) are made—the terms and conditions on which a registered holder may acquire shares or interests on their own behalf or as a custodian on behalf of a beneficiary are nearly as practicable the same;
 - (e) the issue price of the shares or interests is less than the market price of the shares or interests during a specified period in the 30 days before either the date of the offer or the date of the issue; and
 - (f) the total application price for the shares or interests acquired:
 - (i) by a person on their own behalf; and
 - (ii) by a custodian on behalf of the person; and
 - (iii) by a custodian in relation to which another custodian holds beneficial interests in the shares or interests on behalf of the person,
- in any 12-month period does not exceed \$30,000.

registered holder means a person recorded in:

- (a) the register of members of a body as a member of the body; or
- (b) the register of members of a registered scheme as a member of the scheme.

regulated superannuation fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

self-managed superannuation fund has the meaning given by section 17A of the *Superannuation Industry (Supervision) Act 1993*.

superannuation master trust means a regulated superannuation fund under which:

- (a) a member of the fund gives, or is entitled to give, an instruction that a particular financial product is to be acquired; and
- (b) if the member gives such an instruction, the trustee, or a custodian who holds financial products on behalf of the trustee, must (subject

to any discretion they have to refuse) acquire the financial product;
and

- (c) if the trustee or custodian acquires the financial product in accordance with an instruction given by the member—the member is to have rights or benefits calculated by reference to dividends or other benefits derived from the product.

5 Interpretation

In this instrument:

- (a) if two or more persons are recorded in the register of members as jointly holding shares or interests in the body or scheme they are taken to be a single registered holder and a certificate given or statement made by any of them for the purpose of subsection 8(2) is taken to be a certificate given or statement made by all of them;
- (b) subject to subparagraph (c), if a custodian holds shares or interests jointly on behalf of two or more persons:
 - (i) the \$30,000 limit applies jointly in relation to those persons as if the custodian holds the shares or interests on behalf of a single person; and
 - (ii) the custodian is taken to have been instructed to apply for shares or interests on behalf of those persons if:
 - (A) the custodian has received such an instruction in accordance with the terms on which the shares and interests are held; or
 - (B) where the terms on which the shares or interests are held do not cover the giving of instructions of this kind—the custodian has received such an instruction from any of those persons;
- (c) if, in relation to an IDPS-like scheme, a superannuation master trust or a self-managed superannuation fund, a member of the scheme, trust or fund has their distributions of capital and income from the scheme, trust or fund determined by reference to shares or interests that are held by the responsible entity or trustee of the trust or fund (or, if applicable, another custodian) as a result of an instruction given by the member to the responsible entity or trustee, then:
 - (i) any shares or interests held by the responsible entity or trustee (or, if applicable, another custodian) as a result of the instruction are taken to be held on behalf of the member;
 - (ii) any instruction given by the member to the responsible entity or trustee to acquire shares or interests is taken to be an instruction to acquire shares or interests on behalf of the member; and
 - (iii) any application for shares or interests by the responsible entity or trustee (or, if applicable, another custodian) as a result of an

instruction given by the member is taken to be an application to acquire shares or interests on behalf of the member;

Note: In IDPS-like schemes, superannuation master trusts and self-managed superannuation funds, the responsible entity or trustee may hold trust property on behalf of members as a whole rather than on behalf of a specific member even if the property was acquired on the instructions of that member.

- (d) references to an issuer offering shares or interests include the issuer inviting applications for the issue of shares or interests;
- (e) if a share or interest must under the terms on which it is traded only be transferred together with one or more other shares or interests or other financial products (together, a *stapled security*):
 - (i) the \$30,000 limit in section 8 (wherever occurring), and in the definition of *purchase plan*, applies to the stapled security as if its component shares or interests constituted a single share or interest and not to any of those components separately;
 - (ii) references to issue price and market price of shares or interests in paragraph (e) of the definition of *purchase plan* apply to the stapled security as if its component shares or interests constituted a single share or interest and not to any of those components separately;
 - (iii) the share or interest is taken to be in a class which is quoted on the financial market operated by ASX if the stapled security is quoted on that market.
- (f) a notice is *defective* if the notice:
 - (i) does not comply with subparagraph 7(f)(ii); or
 - (ii) is false in a material particular; or
 - (iii) has omitted from it a matter or thing which renders the notice misleading in a material respect.
- (g) an arrangement covered by ASIC Class Order [CO 09/425] is taken to be similar to a purchase plan;
- (h) an arrangement is not to be taken not to be similar to a purchase plan merely because:
 - (i) only one of them involves custodian offers; or
 - (ii) where both the arrangement and the purchase plan involve custodian offers—only one of them involves offers to a custodian to acquire shares or interests in the class where another custodian holds beneficial interests on behalf of another person; or
 - (iii) they involve different maximum levels of applications by registered holders.

Part 2—Exemptions

6 Exemptions for issuers

Application

- (1) The exemptions in this section apply where the requirements of section 7 are satisfied. A person relying on the exemptions must comply with the conditions in section 8.

Shares—disclosure and advertising relief

- (2) A body (the **issuer**) which is admitted to the official list of ASX does not have to comply with Part 6D.2 or 6D.3 of the Act (other than sections 736 and 738) for an offer of shares for issue under a purchase plan.

Interests in registered schemes—disclosure and advertising relief

- (3) A responsible entity (the **issuer**) of a registered scheme which is admitted to the official list of ASX does not have to comply with section 1012B or Division 4 of Part 7.9 of the Act in relation to an offer of interests in the scheme for issue, or an issue of interests in the scheme, under a purchase plan.

7 Requirements

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 (the **class**) which:
 - (i) is quoted on the financial market operated by ASX; and
 - (ii) is not suspended from trading and was not suspended from trading on that market 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) a 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 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 the following information:
 - (i) the method used to calculate the issue price and the time when this price will be determined; and
 - (ii) a statement describing the relationship between the issue price and the market price; and
 - (iii) disclosure of the risk that the market price may change between the date of the offer and the date when the shares or interests are issued to an applicant under the purchase plan, and the effect this would have on the price or value of the shares or interests which the applicant would receive; and

- (f) the issuer has either:
 - (i) not more than 30 days before the offer, given a notice to ASX that complies with subsection 708A(6) or 1012DA(6) of the Act in relation to an issue of shares or interests in the class made otherwise than under a purchase plan; or
 - (ii) within 24 hours before the offer, given a notice to ASX that:
 - (A) states that the issuer will make offers to issue:
 - (I) shares under a purchase plan without disclosure to investors under Part 6D.2; and/or
 - (II) interests under a purchase plan without giving a Product Disclosure Statement under Division 2 of Part 7.9 of the Act; and
 - (B) states that the notice is being given in accordance with this instrument; and
 - (C) states that, as at the date of the notice, the issuer has complied with the provisions of Chapter 2M of the Act as they apply to the issuer (or if the issuer is the responsible entity of a registered scheme, as they apply to the scheme) and section 674 of the Act; and
 - (D) sets out any information that is excluded information as at the date of the notice (in accordance with the requirements of subsections 708A(7) and (8) or subsections 1012DA(7) and (8) of the Act as if the notice were a notice under paragraph 708A(5)(e) or 1012DA(5)(e) of the Act).

8 Conditions

- (1) The issuer must not issue shares or interests under a purchase plan to a registered holder unless:
 - (a) in relation to a registered holder that is not custodian—subsection (2) is satisfied; and
 - (b) in relation to a registered holder that is a custodian—either subsection (2) or (3) are satisfied; and
 - (c) in any case—subsection (4) is satisfied.
 - (2) The issuer must not issue shares or interests under the purchase plan to a registered holder unless:
 - (a) if the holder applies for shares or interest using an electronic payment facility referred to in the offer document—the part of the document containing instructions for use of the facility includes:
 - (i) a unique identifier in relation to the holder that must be provided by the holder when making a payment using the facility and that is not provided by the issuer to the holder other than in the offer document; and
 - (ii) a prominent statement to the effect that the holder, in applying for the shares or interests, represents to the issuer that the total of the application price for current and previous plan purchases does not exceed \$30,000;
 - (b) otherwise—the holder has, on application for the shares or interests, provided the issuer with a certificate to the effect that the total of the application price for current and previous plan purchases does not exceed \$30,000.
- Note: The statement and certificate mentioned subparagraph (a)(ii) and paragraph (b) respectively in relation to the total of the application price for **current and previous plan purchases** must reflect the content of that definition.
- (3) The issuer must not issue shares or interests under the purchase plan to a custodian with a total application price exceeding \$30,000 in any 12 month period unless, on application for the shares or interests, the custodian certifies the following in writing to the issuer:
 - (a) either or both of the following:
 - (i) that the custodian holds shares or interests in the class on behalf of one or more persons (each a **participating beneficiary**) that are not custodians;
 - (ii) that another custodian (the **downstream custodian**) holds beneficial interests in shares or interests in the

class on behalf of one or more other persons (each a *participating beneficiary*), and the custodian holds the shares or interests to which those beneficial interests relate on behalf of the downstream custodian or another custodian,

on the date referred to in paragraph (a) of the definition of *purchase plan* and that each participating beneficiary has subsequently given an instruction to apply for shares or interests on their behalf under the purchase plan to the following persons:

- (iii) where subparagraph (i) applies—the custodian; and
 - (iv) where subparagraph (ii) applies—the downstream custodian;
- (b) the number of participating beneficiaries;
 - (c) the name and address of each participating beneficiary;
 - (d) in respect to each participating beneficiary:
 - (i) where subparagraph (a)(i) applies—the number of shares or interests in the class that the custodian holds on their behalf and the number or the dollar amount of shares or interests they instructed the custodian to apply for on their behalf; and
 - (ii) where subparagraph (a)(ii) applies—the number of shares or interests in the class to which the beneficial interests relate and the number or dollar amount of shares or interests they instructed the downstream custodian to apply for on their behalf;
 - (e) there are no participating beneficiaries in respect of which the total application price for the following exceeds \$30,000:
 - (i) the shares or interests applied for by the custodian under the purchase plan in accordance with the instructions referred to in subparagraph (d); and
 - (ii) any other shares or interests in the class issued to the custodian in the 12 months before the application as a result of an instruction given by them to the custodian or the downstream custodian to apply for shares or interests on their behalf under an arrangement similar to the purchase plan;
 - (f) that a copy of the offer document was given to each participating beneficiary; and
 - (g) where subparagraph (a)(ii) applies—the name and address of each custodian who holds beneficial interests in the shares or interests in the class held by the custodian in relation to each participating beneficiary.

- (4) In providing a certificate under subsection (3), the custodian may rely on information provided to it by the participating beneficiary and any custodian who holds beneficial interests in the shares or interests in the class held by the custodian.
- (5) The issuer must not issue shares or interests under the purchase plan unless the issuer is reasonably satisfied that the total of the application price for the following will not exceed \$30,000 in relation to any person as a result of issuing shares or interests:
- (a) the shares or interests issued to a person under the purchase plan; and
 - (b) any other shares or interests in the class issued to the person under an arrangement similar to the purchase plan in the 12 months before the date of issue under the purchase plan; and
 - (c) any other shares or interests in the class issued to a custodian as a result of an instruction given by the person to the custodian or another custodian to apply for shares or interests on their behalf under the purchase plan; and
 - (d) any other shares or interests in the class issued to a custodian in the 12 months before the date of issue under the purchase plan as a result of an instruction given by the person to the custodian or another custodian to apply for shares or interests on their behalf under an arrangement similar to the purchase plan,

except to the extent that the person is issued with shares or interests as a custodian under a custodian offer.

- (6) If:
- (a) a notice given under subparagraph 7(f)(ii) is defective; and
 - (b) the issuer becomes aware of the defect in the notice within 12 months after the shares or interests are issued under the offer,

the issuer must, within a reasonable time after becoming aware of the defect, give ASX a notice that sets out the information necessary to correct the defect.

9 Exemptions for other regulated persons

- (1) A regulated person (within the meaning of section 1011B of the Act) other than the issuer, does not have to comply with Divisions 2 and 4 of Part 7.9 of the Act in relation to a purchase plan.
- (2) The regulated person may only rely on this exemption if the person has no reason to suspect that the issuer in relation to the purchase plan

has not satisfied the requirements or complied with the conditions of this instrument.

Part 3—Transitional

10 Existing purchase plans

- (1) This section applies in relation to purchase plans covered by ASIC Class Order [CO 09/425] as in force immediately before its repeal.
- (2) The exemptions made under, and the requirements and conditions imposed by, ASIC Class Order [CO 09/425] as in force immediately before its repeal are made under and imposed by this section for a period of 6 months commencing on the date of repeal.