



**ASIC**  
Australian Securities &  
Investments Commission

## Explanatory Statement

### *ASIC Corporations (Trading Suspension Relief) Instrument 2020/289*

### *ASIC Corporations (Amendment) Instrument 2020/290*

This is the Explanatory Statement for the *ASIC Corporations (Trading Suspension Relief) Instrument 2020/289* and the *ASIC Corporations (Amendment) Instrument 2020/290*.

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

#### Summary

1. *ASIC Corporations (Trading Suspension Relief) Instrument 2020/289* (the **principal instrument**) and *ASIC Corporations (Amendment) Instrument 2020/290* (the **amending instrument**) implement temporary measures aimed at facilitating capital raisings by entities affected by the national and international initiatives responses to COVID-19. The temporary measures are intended to allow listed entities that need to raise funds urgently from investors more time to consider, plan for and complete a capital raising.
2. ASIC will continue to monitor the appropriateness of these legislative instruments having regard to the state of the capital markets. To provide some certainty to companies that might be seeking to rely on the legislative instruments, ASIC's present policy position is to give 30 days' notice before implementing any decision to repeal the effect of these declarations.
3. The principal instrument affects the operation of sections 708AA, 1012DAA, 708A and 1012DA of the *Corporations Act 2001* (the **Act**) by declaring that the sections apply as if the permissible total trading suspension days specified in the sections were 10 days instead of 5 days. The declarations have effect in relation to certain kinds of rights issues and certain kinds of sale offers of quoted securities or quoted financial products.
4. The amending instrument amends the *ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547* (the **purchase plan instrument**) by implementing equivalent temporary measures in relation to offers of shares and interests under purchase plans covered by the purchase plan instrument.

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## **Purpose of the instruments**

5. The purpose of the instruments is to assist listed entities affected by the national and international responses to COVID-19 by enabling them to raise capital in a quicker and less costly way without undermining investor protection.
6. Chapter 6D regulates the making of offers for issue or sale of securities and sets out when an offer needs disclosure to investors in a disclosure document. Part 7.9 regulates, among other things, the making of offers for the issue or sale of financial products (other than securities) and sets out when an offer needs disclosure to investors through a Product Disclosure Statement (*PDS*).
7. Listed entities that have been suspended for more than 5 trading days while assessing the impact of COVID-19 on their business and preparing for a capital raising will be prevented from utilising the ‘low doc’ capital raising regime in sections 708AA, 1012DAA, 708A and 1012DA of the Act and the purchase plan instrument. The ‘low doc’ capital raising regime is not available to listed entities that have been suspended for more than 5 days in the prior 12 month period before the date of issue or the date the offer is made.
8. Listed entities that have been suspended for more than 5 days in the previous 12 months must raise capital by either preparing a disclosure document or a PDS, or seek individual relief from ASIC to utilise the ‘low doc’ capital raising regime. These options can be costly and may involve delay.

## **Consultation**

9. Before making these instruments, ASIC engaged with a targeted range of stakeholders to invite feedback on the proposal to increase the permissible total trading suspension days in sections 708AA, 708A, 1012DAA and 1012DA of the Act and in the purchase plan instrument.

## **Operation of the instruments**

10. The declarations in the principal instrument have effect in relation to:
  - (a) rights issues that do not need disclosure under sections 708AA and 1012DAA of the Act; and
  - (b) sale offers of quoted securities or quoted interests that do not need disclosure under sections 708A and 1012DA of the Act.
11. The principal instrument affects the operation of those sections of the Act by declaring that those sections apply as if the permissible total trading suspension days specified in those sections were 10 days instead of 5 days.
12. The extended permissible suspension period of 10 days is only available:
  - (a) in relation to sections 708AA and 1012DAA of the Act where the relevant securities or financial products have not been suspended for than 5 days in

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the period commencing on the day 12 months before the day on which the offer is made and ending on 19 March 2020; and

- (b) in relation to sections 708A(5) and 1012DA(5) of the Act where the relevant securities or financial products have not been suspended for than 5 days in the period commencing on the day 12 months before the day on which the relevant securities or financial products were issued and ending on 19 March 2020.
13. The date of 19 March 2020 is the date the Federal Government raised the travel warning for all Australians to Level 4—“do not travel” overseas to any country.
  14. Equivalent temporary measures in relation to offers of shares and interests under purchase plans covered by the purchase plan instrument are implemented through the amendments made to the purchase plan instrument.
  15. Examples of the effect of the legislative instruments are as follows:
    - (a) if Company A was suspended for 4 days prior to 19 March 2020, it can conduct a rights issue without disclosure or a PDS even if it is suspended for another 6 days after 19 March 2020 and before the day on which the offer is made;
    - (b) if Company B was not suspended prior to 19 March 2020, it can still conduct a share or interest purchase plan without disclosure or a PDS even if it is suspended for up to 10 days before the day on which the securities offered for sale are issued.
  16. Each legislative instrument commences on the day after it is registered on the Federal Register of Legislation.

### **Legislative authority**

17. The principal instrument is made under subsections 741(1) and 1020F(1) of the Act. The amending instrument is made under those same subsections, having regard to subsection 33(3) of the *Acts Interpretation Act 1901* (the *AIA*).
18. Subsection 741(1) provides that ASIC may declare that Chapter 6D of the Act applies to all persons or a specified class of persons as if specified provisions of that Chapter were modified or varied as specified in the declaration.
19. Subsection 1020F(1) provides that ASIC may declare that Part 7.9 of the Act applies in relation to a class of persons as if specified provisions were modified or varied as specified in the declaration.
20. Under subsection 33(3) of the *Acts Interpretation Act 1901* (the *AIA*), where an Act confers a power to make any instrument, the power is to be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to amend any such instrument.
21. Both legislative instruments are disallowable legislative instruments.

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Legislative instrument and primary legislation

22. The subject matter and policy implemented by these legislative instruments is more appropriate for a legislative instrument rather than primary legislation because the instruments utilise powers given by Parliament to ASIC that allow ASIC to affect the operation of Chapter 6D and Part 7.9 of the Act to respond quickly and temporarily to adverse market developments, including in connection with or arising from COVID-19.

**Statement of Compatibility with Human Rights**

23. 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*.

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***ASIC Corporations (Amendment) Instrument 2020/290***

### Overview

1. *ASIC Corporations (Trading Suspension Relief) Instrument 2020/289* and *ASIC Corporations (Amendment) Instrument 2020/290* implement temporary measures aimed at facilitating capital raisings by entities affected by the national and international responses to COVID-19. The measures are intended to allow listed entities that need to raise funds urgently from investors more time to consider, plan for and complete a capital raising.

### Assessment of human rights implications

2. This instrument does not engage any of the applicable rights or freedoms

### Conclusion

3. This 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*.