



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Amendment) Instrument 2020/721

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

Date 26 August 2020

Grant Moodie

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Amendment) Instrument 2020/721*.

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 655A(1), 669(1) and 673(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 13/520]

1 Subparagraph 4(c)

Omit the subparagraph, substitute:

- (c) in the definition of **substantial holding**, omit subparagraph (a)(ii), substitute:

“(ii) would have a relevant interest but for subsection 609(6) (market traded options), subsection 609(7) (conditional agreements), subsection 609(11) (company that issues restricted securities) or subsections 609(13A) or (13B) (securities subject to escrow agreement);”.

2 Paragraph 6

After subparagraph (d), insert:

- (da) after subsection 609(10), insert:

“Securities subject to escrow agreement

- (13A) A body corporate does not have a relevant interest in its own securities (the **escrow securities**) merely because, under an agreement (the **escrow agreement**) entered into by the body corporate with the holder of the securities, the body applies restrictions on the disposal of the escrow securities by the holder.
- (13B) A person does not have a relevant interest in the securities (the **escrow securities**) of a body corporate merely because, under an agreement (the **escrow agreement**) entered into by the person in the ordinary course of the person’s business as an underwriter, lead manager or joint lead manager with the holder of the securities, the person applies restrictions on the disposal of the escrow securities by the holder.
- (13C) Subsections (13A) and (13B) apply in relation to an initial public offer of securities in the body corporate where both of the following are satisfied:
- (a) the escrow securities are in the same class of securities as the securities offered under the initial public offer;
- (b) the escrow agreement:

- (i) does not restrict the exercise of voting rights attaching to the escrow securities;
- (ii) in the case of a takeover bid (including a proportional takeover bid):
 - (A) allows each holder of escrow securities to accept into the takeover bid where the holders of at least half of the bid class securities that are not subject to escrow have accepted into the bid; and
 - (B) requires that the escrow securities be returned to escrow if the bid does not become unconditional;
- (iii) allows the escrow securities to be transferred or cancelled as part of a merger by way of a compromise or arrangement under Part 5.1;
- (iv) terminates no later than:
 - (A) for the purposes of subsection (13A)—the second anniversary of the date of entry into the escrow agreement;
 - (B) for the purposes of subsection (13B)—the first anniversary of the date of entry into the escrow agreement;
- (v) where the holder is permitted to create a security interest in some or all of the escrow securities in favour of a person whose relevant interests in the escrow securities does not arise because of subsection (1)—requires that the holder must not create a security interest in favour of the person unless the person has agreed in writing to take or acquire the security interest in the escrow securities subject to the terms of the escrow agreement; and
- (vi) where the holder is permitted to transfer their interests in the escrow securities to another person—requires that the holder must not transfer the escrow securities to another person if:
 - (A) the transfer would result in a change in the beneficial ownership of the escrow securities; or

- (B) the transfer would result in an extension in the period of the escrow agreement; or
- (C) the transferee does not agree to be subject to the same restrictions on disposal of the escrow securities under the escrow agreement.

(13D) For the purposes of subsections (13A) – (13C):

initial public offer, in relation to a body corporate, means an offer of securities in the body corporate that are in a class of securities that are to be quoted on a prescribed financial market.”;

3 Subparagraph 6(j)

Omit the subparagraph, substitute:

- (j) omit subsection 671B(7), substitute:

“Relevant interests not excluded

- (7) For the purposes of this section a person has a relevant interest in securities if the person would have a relevant interest in the securities but for subsection 609(6) (market traded options), subsection 609(7) (conditional agreements), subsection 609(11) (company that issues restricted securities) or subsections 609(13A) or (13B) (securities subject to escrow agreement).”.