



**ASIC**  
Australian Securities &  
Investments Commission

## Explanatory Statement

### *ASIC Corporations (Amendment) Instrument 2020/862*

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2020/862*.

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

#### Summary

1. *ASIC Corporations (Amendment) Instrument 2020/862* (the **amending instrument**) amends the following legislative instruments:
  - (a) *ASIC Corporations (Amendment) Instrument 2020/565* – to specify that the temporary measures relating to *ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547* (the **purchase plan instrument**) will cease to operate on 1 January 2021;
  - (b) *ASIC Corporations (Trading Suspensions Relief) Instrument 2020/289* – to specify that the temporary measures will cease to operate on 1 January 2021; and
  - (c) *ASIC Corporations (COVID-19 – Advice-related Relief) Instrument 2020/355* – to specify that the temporary measures will cease to operate on 15 April 2021.
2. The temporary relief measures are deregulatory in nature. Having regard to the uncertain impacts of COVID-19, ASIC will continue to monitor the appropriateness of these temporary relief measures. If ASIC considers it appropriate to repeal the relief before the end of the above periods or extend the relief, ASIC will give sufficient notice before any early repeal or extension is implemented.

#### Purpose of the instrument

3. The explanatory statements to the legislative instruments stated that these temporary measures were implemented in response to the economic impact directly associated with the coronavirus pandemic, known as COVID-19.
4. The purpose of these amendments is to notify stakeholders that might be seeking to rely on the legislative instruments of when these temporary measures

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will cease to operate. The instruments have been extended due to the continuing uncertain impacts of COVID-19 and the Government's extension of the early release of superannuation measure.

### *Capital raisings*

5. *ASIC Corporations (Amendment) Instrument 2020/290* and *ASIC Corporations (Trading Suspensions Relief) Instrument 2020/289* temporarily increased the permissible total trading suspension days from 5 to 10 days in:
  - (a) the 'low doc' capital raising regime in sections 708AA, 708A, 1012DAA, and 1012DA of the *Corporations Act 2001* (the *Act*); and
  - (b) the purchase plan instrument.
6. The extended permissible suspension period of 10 days is only available to listed entities in certain circumstances.
7. The temporary measures were due to expire in October 2020. The temporary measures will now expire on 1 January 2021.
8. ASIC will continue to monitor the appropriateness of these legislative instruments having regard to the state of capital markets. The matters ASIC will take into account include but are not limited to:
  - (a) the extent of the capital raising activities conducted in reliance on the legislative instruments;
  - (b) the length of the suspensions required in order to execute a capital raising in the current environment;
  - (c) the level of market volatility; and
  - (d) the extent and impact of any easing of restrictions implemented by state and federal governments in response to COVID-19.

### *Financial product advice*

9. *ASIC Corporations (COVID-19 – Advice-related Relief) Instrument 2020/355* implements three temporary relief measures to facilitate retail clients receiving timely and affordable financial product advice because of the adverse economic effects of the COVID-19 pandemic:
  - (a) with respect to advice about the '*Early Release of Superannuation*' measure:
    - (i) allowing providing entities to give financial product advice to clients without the obligation to give a Statement of Advice (*SOA*) when certain conditions are met; and

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- (ii) conditionally permitting registered tax agents to give this advice to their existing clients without needing to hold an Australian financial services licence;
  - (b) extending the timeframe for a financial adviser to give an SOA for time-critical COVID-19 advice up to 30 business days (instead of five business days that is usually required by section 946C of the Act);
  - (c) enabling a Record of Advice to be given instead of an SOA, in certain defined circumstances to existing clients of providing entities.
10. The temporary measures were due to expire in October 2020. The temporary measures will now expire on 15 April 2021.
11. ASIC will continue to monitor the appropriateness of the relief having regard to the ongoing impact of COVID-19 on the need for timely and affordable advice for consumers. ASIC will take into consideration the following factors when determining whether relief remains appropriate:
- (a) whether the adverse economic effect of COVID-19 on consumers has eased;
  - (b) whether the Government's early release of superannuation measures have concluded; and
  - (c) whether there has been a reduction in the demand for urgent advice from consumers in relation to COVID-19.

### **Consultation**

12. Before making this amending instrument, ASIC engaged with a targeted range of stakeholders to invite feedback on extending the temporary relief measures. In relation to the capital raisings relief, ASIC engaged with representative legal advisers of listed companies. In relation to the financial advice relief, ASIC engaged with relevant industry associations, consumer groups and related regulators.

### **Operation of the instrument**

13. The amending instrument has the following effect:
- (a) the amendments made by *ASIC Corporations (Amendment) Instrument 2020/290* will be reversed on 1 January 2021. The effect is that *ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547* will, on 1 January 2021, return the version in force as at 1 April 2020;
  - (b) inserts a new repeal date so that the declaration made under *ASIC Corporations (Trading Suspensions Relief) Instrument 2020/289* is repealed on 1 January 2021; and

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- (c) inserts a new repeal date so that the exemption and declaration made under *ASIC Corporations (COVID-19 – Advice-related Relief) Instrument 2020/355* is repealed on 15 April 2021.

14. The amending instrument commences on the day after it is registered on the Federal Register of Legislation.

### **Legislative authority**

15. The amending instrument is made under subsections 741(1), 926A(2), 951B(1) and 1020F(1) of the Act.
16. 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.
17. Subsection 951B(1) provides that ASIC may exempt a class of persons from all or specified provisions of Part 7.7 of the Act. It also provides that ASIC may declare that Part 7.7 applies in relation to a class of persons as if specified provisions of Part 7.7 were omitted, modified or varied as specified in the declaration.
18. Subsection 926A(2) of the Act provides that ASIC may exempt a class of persons from all or specified provisions of Part 7.6 of the Act (other than Divisions 4 and 8).
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*, 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. The amending instrument is a disallowable legislative instrument.

### **Legislative instrument and primary legislations**

22. The subject matter and policy implemented by the amending instrument 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, Parts 7.6, 7.7 and 7.9 of the Act to respond quickly and temporarily to 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)

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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 (Amendment) Instrument 2020/862***

#### Overview

1. *ASIC Corporations (Amendment) Instrument 2020/862* amends the following legislative instruments:
  - (a) *ASIC Corporations (Amendment) Instrument 2020/565*, which itself amends *ASIC Corporations (Share and Interest Purchase Plan) Instrument 2019/547*;
  - (b) *ASIC Corporations (Trading Suspensions Relief) Instrument 2020/289*; and
  - (c) *ASIC Corporations (COVID-19 – Advice-related Relief) Instrument 2020/355*.
2. The effect of these amendments is that the temporary deregulatory measures implemented by those legislative instruments will cease to operate on 1 January 2021, 1 January 2021 and 15 April 2021 respectively.

#### Assessment of human rights implications

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

#### Conclusion

4. 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*.