



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Securities Lending Arrangements) Instrument 2021/821

I, Anthony Graham, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 27 September 2021

Anthony Graham

Contents

Part 1—Preliminary	3
1 Name of legislative instrument	3
2 Commencement	3
3 Repeal	3
4 Authority	3
5 Definitions	3
Part 2—Declaration	4
6 Securities lending—relevant interests	4
7 Securities lending—situations not giving rise to relevant interests	6
8 Securities lending—substantial holding information	8

Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Securities Lending Arrangements) Instrument 2021/821*.

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 Repeal

This instrument is repealed on 1 October 2026.

4 Authority

This instrument is made under subsection 673(1) of the *Corporations Act 2001*.

5 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

Part 2—Declaration

6 Securities lending—relevant interests

Part 6C.1 of the Act applies to all persons as if section 608 were modified or varied by, after subsection (8), inserting:

“Securities lending arrangements

(8A) If securities are subject to:

- (a) an arrangement (the *securities lending arrangement*) under which:
 - (i) one entity (the *lender*) agrees that it will:
 - (A) deliver the securities to another entity (the *borrower*) or to an entity nominated by the borrower; and
 - (B) vest title in those securities in the entity to which they are delivered; and
 - (ii) the borrower agrees that it will, after the lender does the things mentioned in subparagraph (i):
 - (A) deliver the securities (or equivalent securities) to the lender or to an entity nominated by the lender; and
 - (B) vest title in those securities (or those equivalent securities) in the entity to which they are delivered; or
- (b) an arrangement (the *securities lending arrangement*) under which:
 - (i) the securities are held by one entity (the *borrower*) or an entity nominated by the borrower, on behalf of another entity (the *lender*); and
 - (ii) the lender agrees that the borrower may deal in the securities on its own behalf or on behalf of a person; and
 - (iii) the borrower agrees that it will at some future time:
 - (A) deliver the securities (or equivalent securities) to the lender or to an entity nominated by the lender; and
 - (B) vest title in those securities (or those equivalent securities) in the entity to which they are delivered;

and the securities are subsequently disposed of by the borrower or an entity nominated by the borrower, resulting in that entity ceasing to have a relevant interest in the securities, the lender of the securities under the

securities lending arrangement is taken to have a relevant interest in the securities (or equivalent securities) that the borrower has agreed to deliver to, and vest title in, the lender or an entity nominated by the lender.

(8B) If:

- (a) an agent lender is authorised under an authorisation agreement to act on behalf of a lender in relation to a securities lending arrangement between the lender and a borrower; and
- (b) in the case of a securities lending arrangement referred to in paragraph (8A)(a)—the agent lender, acting under the authorisation agreement, delivers and vests title in securities the subject of the securities lending arrangement to the borrower or an entity nominated by the borrower; and
- (c) the securities are subsequently disposed of by the borrower or an entity nominated by the borrower, resulting in that entity ceasing to have a relevant interest in the securities;

the agent lender is taken to have a relevant interest in the securities (or equivalent securities) that the borrower has agreed to deliver to, and vest title in, the lender or an entity nominated by the lender.

(8C) In subsection (8B):

agent lender: see the definition of **authorisation agreement**.

authorisation agreement means an agreement between a lender and another entity (**agent lender**) under which the lender authorises the agent lender to act on the lender's behalf in relation to securities lending arrangements, including by:

- (a) negotiating and arranging securities lending arrangements for the lender with a borrower (which may be the agent lender itself acting in the capacity as borrower under a securities lending arrangement); and
- (b) transferring securities held by or on behalf of the lender to the borrower on the terms of a securities lending arrangement without giving further notice of such transfer to the lender; and
- (c) terminating securities lending arrangements (including without prior instructions from the lender).

borrower the same meaning as in paragraphs 608(8A)(a) and (b).

lender has the same meaning as in paragraphs 608(8A)(a) and (b).

securities lending arrangement has the same meaning as in paragraphs 608(8A)(a) and (b).”

7 Securities lending—situations not giving rise to relevant interests

Part 6C.1 of the Act applies to all persons as if section 609 were modified or varied by, after subsection (10), inserting:

“Securities lending arrangements

(10A) A service provider does not have a relevant interest in securities under subsection 608(8) merely because, in the course of providing services to a person as part of carrying on a prime broking business or custodial business, the person has, under a securities lending arrangement, given to the provider:

- (a) where the provider or an entity nominated by the provider holds the securities on behalf of the person or an entity nominated by the person—a present right (***borrowing right***) to, at some future time, deal in the securities on its own behalf or on behalf of a person;
- (b) otherwise—a present right (***borrowing right***) to, at some future time, have the securities held by or on behalf of the person delivered to the provider or an entity nominated by the provider and to have the title in those securities vested in the entity to which they are delivered;

provided both of the following are satisfied:

- (c) the person is not subject to any restriction (other than a permissible restriction) by or under any relevant agreement between the person and the provider or an associate of the provider in how it can deal with the securities in respect of which the borrowing right is given;
 - (d) the borrowing right is acquired by the provider as part of a bona fide arrangement entered into in the ordinary course of carrying on that business.
- (10B) For the avoidance of doubt, subsection (10A) stops applying in respect of particular securities when the service provider exercises the borrowing right in respect of those securities.
- (10C) An agent lender does not have a relevant interest in securities under subsection 608(8) merely because the agent lender has been given the rights (the ***lending authority***) referred to in paragraphs (a) and (b) of the definition of ***authorisation agreement*** to act on behalf of a lender, provided both of the following are satisfied:
- (a) the lender is not subject to any restriction (other than a permissible restriction) by or under any relevant agreement between the lender and the agent lender or an associate of the

agent lender in how it can deal with the securities in respect of which the lending authority is given;

- (b) the lending authority is given to the agent lender as part of a bona fide authorisation agreement entered into in the ordinary course of carrying on an agency lending business.

(10D) For the avoidance of doubt:

- (a) in subsection (10C), the borrower under a securities lending arrangement entered into pursuant to the authorisation agreement may be the agent lender itself acting in the capacity as borrower under the securities lending arrangement; and
- (b) subsection (10C) stops applying in respect of particular securities when the agent lender transfers the securities to the borrower.

(10E) In subsections (10A) to (10D) and in this subsection:

agency lending business means a business of acting as an agent lender for wholesale clients under authorisation agreements.

agent lender has the same meaning as in subsection 608(8C).

authorisation agreement has the same meaning as in subsection 608(8C).

borrower the same meaning as in paragraphs 608(8A)(a) and (b).

custodial business means a business of providing to wholesale clients a package of at least the following financial services and other services:

- (a) custodial or depository services;
- (b) services in relation to a securities lending arrangement.

custodial or depository service has the meaning given by subsection 766E(1).

lender has the same meaning as in paragraphs 608(8A)(a) and (b).

permissible restriction means:

- (a) a mortgage, charge or security taken or acquired in relation to the securities in the ordinary course of carrying on a prime broking business, a custodial business or an agency lending business and on ordinary commercial terms; or
- (b) any restrictions of a procedural or administrative nature in relation to giving instructions to the service provider for dealing in the securities.

prime broking business means a business of providing to wholesale clients a package of at least the following services in accordance with a written agreement commonly known as a prime broking agreement or prime brokerage agreement:

- (a) dealing in a financial product to the extent the dealing is acquiring or disposing of the financial product, or arranging for another person to acquire or dispose of the financial product;
- (b) services that enable or facilitate clients to meet their obligations to other persons that arise from entering into transactions with those other persons in connection with the acquisitions and disposals mentioned in paragraph (a);
- (c) custodial or depository services;
- (d) services in relation to a securities lending arrangement;
- (e) consolidated reporting and other operational support services.

securities lending arrangement has the same meaning as in paragraphs 608(8A)(a) and (b).

service provider means a person who carries on any or all of the following:

- (a) a custodial business;
- (b) a prime broking business;
- (c) an agency lending business.

wholesale client has the meaning given by section 761G. ”.

Note: For the avoidance of doubt, nothing in sections 6 and 7 of this instrument has effect for the purposes of Chapter 6 or Part 6C.2 of the Act.

8 Securities lending—substantial holding information

Chapter 6C of the Act applies to all persons as if section 671B were modified or varied as follows:

- (1) after subsection (3) insert:

“Information that need not be given

- (3A) Where a relevant interest in voting shares in the company or interests in the scheme arises, changes or ceases because of either:
 - (a) a securities lending arrangement; or

- (b) the terms of an authorisation given under an authorisation agreement by a lender to a person to act on behalf of the lender in relation to a securities lending arrangement between the lender and a borrower;

information about the consideration paid in relation to the relevant interest does not need to be given.”;

- (2) after subsection (4) insert:

“Information that need not be accompanied by certain securities lending arrangements

(4A) Where a securities lending arrangement contributed to the situation giving rise to the person needing to provide the information, the information need not be accompanied by a copy of any master securities lending agreement, provided the information is accompanied by:

- (a) a statement by the person giving full and accurate details of the following matters in relation to the securities lending arrangement:
 - (i) the type of agreement;
 - (ii) the parties to the agreement;
 - (iii) the circumstances in which the parties can exercise the voting rights attached to the securities;
 - (iv) the date the securities were or are expected to be delivered by the lender to the borrower or the entity nominated by the borrower;
 - (v) the scheduled date (if any) the securities (or equivalent securities) are expected to be delivered by the borrower to the lender or to an entity nominated by the lender;
 - (vi) whether the borrower has a right to deliver the securities (or equivalent securities) to the lender or to an entity nominated by the lender earlier than the scheduled date (if any) and, if so, the circumstances in which this right can be exercised;
 - (vii) whether the lender has a right to require the borrower to deliver the securities (or equivalent securities) to the lender or to an entity nominated by the lender earlier than the scheduled date (if any) and, if so, the circumstances in which this right can be exercised;

- (viii) the circumstances (if any) under which the borrower is not required to deliver the securities (or equivalent securities) to the lender or to an entity nominated by the lender on settlement; and
- (b) a statement that the person will, if requested by the company or responsible entity to whom the prescribed form must be given or ASIC, give a copy of the agreement to the company, responsible entity or ASIC.

If the person is requested to give a copy of the agreement, the copy must be given within 2 business days after receiving the request and the copy must be endorsed with a statement that the copy is a true copy.

- (4B) Where an authorisation agreement between a lender and an agent lender in relation a securities lending arrangement contributed to the situation giving rise to the person needing to provide the information, the information need not be accompanied by a copy of the authorisation agreement or any master securities lending agreement to which the authorisation relates, provided the information is accompanied by:
 - (a) in relation to the securities lending arrangement—a statement by the person giving full and accurate details of the matters referred to in paragraph (4A)(a); and
 - (b) in relation to the authorisation agreement—a statement by the person giving full and accurate details of the following matters:
 - (i) the type of agreement;
 - (ii) the parties to the agreement;
 - (iii) the circumstances in which the agent lender can exercise the authorisations in relation to the securities;
 - (iv) the circumstances in which the agent lender is subject to any restriction in how it can deal with the securities;
 - (v) whether the agent lender has a right to require the borrower to deliver the securities (or equivalent securities) to the agent lender or to an entity nominated by the agent lender earlier than the scheduled date (if any) and, if so, the circumstances in which this right can be exercised; and
 - (c) a statement that the person will, if requested by the company or responsible entity to whom the prescribed form must be

given or ASIC, give a copy of the authorisation agreement to the company, responsible entity or ASIC.

If the person is requested to give a copy of the authorisation agreement, the copy must be given within 2 business days after receiving the request and the copy must be endorsed with a statement that the copy is a true copy.

(4C) In subsections (3A), (4A), (4B) and this subsection:

agent lender has the same meaning as in subsection 608(8C).

authorisation agreement has the same meaning as in subsection 608(8C).

borrower the same meaning as in paragraphs 608(8A)(a) and (b).

custodial or depository service has the meaning given by subsection 766E(1).

lender the same meaning as in paragraphs 608(8A)(a) and (b).

master securities lending agreement means:

- (a) an Australian Master Securities Lending Agreement as published by the Australian Securities Lending Association; or
- (b) a Global Master Securities Lending Agreement as published by the International Securities Lending Association; or
- (c) a Global Master Repurchase Agreement as published by the Securities Industry and Financial Markets Association and the International Capital Market Association; or
- (d) a written agreement that is on substantially the same terms as an agreement mentioned in paragraph (a), (b) or (c); or
- (e) a written agreement commonly known as a prime broking agreement or prime brokerage agreement between a service provider and a wholesale client under which the provider agrees to provide a package of at least the following services to the client:
 - (i) dealing in a financial product to the extent the dealing is acquiring or disposing of the financial product, or arranging for another person to acquire or dispose of the financial product;
 - (ii) services that enable or facilitate clients to meet their obligations to other persons that arise from entering into transactions with those other persons in connection with

the acquisitions and disposals mentioned in subparagraph (i);

- (iii) custodial or depository services;
- (iv) services in relation to a securities lending arrangement;
- (v) consolidated reporting and other operational support services.

securities lending arrangement has the same meaning as in paragraphs 608(8A)(a) and (b).

service provider has the same meaning as in subsection 609(10E).

wholesale client has the meaning given by section 761G.”.