



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Design and Distribution Obligations Interim Measures) Instrument 2021/784

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

Date 1 October 2021

Anthony Graham

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Design and Distribution Obligations Interim Measures) Instrument 2021/784*.

2 Commencement

- (1) This instrument (other than subsection 6(5)) commences on the later of:
 - (a) 5 October 2021; and
 - (b) the day after it is registered on the Federal Register of Legislation.

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

- (2) Subsection 6(5) commences on 1 November 2021.

3 Repeal

This instrument is repealed on 5 October 2023.

4 Authority

This instrument is made under subsection 994L(2) of the *Corporations Act 2001*.

5 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

ASIC Act means the *Australian Securities and Investments Commission Act 2001*.

credit facility has the same meaning as in paragraph 12BAA(7)(k) of the ASIC Act.

debit card has the meaning given by subsection 12DL(5) of the ASIC Act, provided that for the purposes of this instrument a debit card does not include a non-cash payment facility referred to in subparagraphs (b)(i) to (v) of the definition of **stored value facility**.

facility has a meaning affected by section 762C of the Act.

financial product has the meaning given by subsection 994AA(1) of the Act.

gift facility has the meaning given in *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211*.

loyalty scheme has the meaning given in *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211*.

makes non-cash payments has the meaning given by section 763D of the Act.

non-cash payment facility means a facility through which, or through the acquisition of which, a person makes non-cash payments.

prepaid mobile facility has the meaning given in *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211*.

Regulations means the *Corporations Regulations 2001*.

stored value facility means a non-cash payment facility in relation to which both the following are satisfied:

- (a) under the terms of the facility, the person may store value (however described) for the purpose of making non-cash payments at a later time;
- (b) the facility is not any of the following:
 - (i) a facility that can only be used to make payments to one person;

- (ii) a gift facility;
- (iii) a loyalty scheme;
- (iv) a facility through which, or through the acquisition of which, a person makes a non-cash payment of a toll for the use of a road, but no other kind of non-cash payment;
- (v) a prepaid mobile facility.

Part 2—Declaration

6 Declaration for Part 7.8A of the Corporations Act

Retail and wholesale client definitions

- (1) Part 7.8A of the Act applies in relation to regulated persons, and any other persons who are required to make a target market determination, as if:
 - (a) section 761G of the Act were modified or varied as follows:
 - (i) in paragraph 761G(7)(c), omit “6 months”, substitute “2 years”;
 - (ii) after paragraph 761G(7)(c), insert:

“(ca) the financial product, or the financial service, is acquired by a company or trust controlled by a person who meets the requirements of subparagraph (c)(i) or (ii);”;
 - (iii) after subsection 761G(7), insert:

“(7A) In determining the net assets of a person under subparagraph (7)(c)(i), the net assets of a company or trust controlled by the person may be included.

Note: *control* is defined in section 50AA.
 - (7B) In determining the gross income of a person under subparagraph (7)(c)(ii), the gross income of a company or trust controlled by the person may be included.

Note: *control* is defined in section 50AA.”;
 - (iv) after subsection 761G(4), insert:

“(4A) For the purposes of this Chapter, if a financial product, or a financial service, is or would be

provided to, or acquired by, a body corporate as a wholesale client, related bodies corporate of the client are taken to be wholesale clients in respect of the provision or acquisition of that financial product or financial service.”; and

- (b) the definition of *professional investor* in section 9 of the Act were modified or varied by omitting paragraph (e) of the definition and substituting:

“(e) the person has or controls gross assets of at least \$10 million (including any assets held by an associate or under a trust that the person manages);”.

Reporting complaint information to persons who make target market determinations

- (2) Part 7.8A of the Corporations Act applies in relation to regulated persons as if subsection 994F(4) were modified or varied by:
 - (a) after “(which relates to complaints)” inserting “and the regulated person received complaints in relation to the product during the reporting period”; and
 - (b) omitting “determination:” and substituting “determination the number of complaints the regulated person received.”; and
 - (c) omitting paragraphs 994F(4)(a) and (b).

Reporting other information to persons who make target market determinations

- (3) Part 7.8A of the Corporations Act applies in relation to regulated persons as if subsection 994F(5) were modified or varied by:
 - (a) omitting “determination:” and substituting “determination all the information of that kind (if any) that the regulated person acquired during the reporting period.”; and
 - (b) omitting paragraphs 994F(5)(c) and (d).

Meaning of excluded conduct

- (4) Part 7.8A of the Corporations Act applies in relation to persons who make target market determinations and regulated persons as if subsection 994A(1) were modified or varied by omitting the definition of *excluded conduct* and substituting:

“*excluded conduct* means:

- (a) an excluded dealing; or

- (b) providing personal advice; or
- (c) in the course of providing personal advice about a financial product, giving:
 - (i) a disclosure document for that product under Part 6D.2 of the Act; or
 - (ii) a Product Disclosure Statement for the product under Part 7.9 of the Act.”.

Provision of Product Disclosure Statements by employers

- (5) Part 7.8A of the Corporations Act applies in relation to regulated persons who are employers as if regulation 7.8A.25 of the Regulations were modified or varied as follows:
 - (a) in paragraph 7.8A.25(2)(a), after “employer and employee”, inserting:

“or that would be a default fund product for the employer and employee if there were no stapled fund for the employee”;
 - (b) in subregulation 7.8A.25(3), after the definition of *fund* inserting:

“*stapled fund*, for an employee at a particular time, has the meaning given by section 32Q of the *Superannuation Guarantee (Administration) Act 1992*.”.

Part 3—Exemptions

7 Exemptions for Part 7.8A of the Corporations Act

Facilities for making non-cash payments

- (1) Subsections 994B(1) and (2) of the Act do not apply to a financial product that:
 - (a) is a financial product only because it is a non-cash payment facility; and
 - (b) is neither of the following:
 - (i) a debit card;
 - (ii) a stored value facility.

Contracts to exchange currency that are to be settled immediately

- (2) Subsections 994B(1) and (2) of the Act do not apply to a financial product referred to in section 765A(1)(m) of the Act.

Margin lending to non-natural persons

- (3) Subsections 994B(1) and (2) of the Act do not apply to a credit facility that would be a margin lending facility within the meaning of section 761EA of the Act, but for the credit facility being provided to non-natural persons.

Cashless welfare arrangements

- (4) Subsections 994B(1) and (2) of the Act do not apply to a financial product that is any of the following:
- (a) a welfare restricted bank account within the meaning of section 124PD of the *Social Security (Administration) Act 1999*;
 - (b) an income management account within the meaning of section 123TC of the *Social Security (Administration) Act 1999*;
 - (c) a debit card which enables access to an account referred to in paragraph (a) or (b).