



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2021/895

This is the Explanatory Statement for ASIC Corporations (Amendment) Instrument 2021/895.

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

Summary

1. The defined term 'approved foreign market' is notionally inserted into section 9 of the *Corporations Act 2001* (the **Act**) by ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669 (**Instrument 2017/669**). The purpose of ASIC Corporations (Amendment) Instrument 2021/895 (the **Amendment Instrument**) is to amend Instrument 2017/669 so that the Oslo Bors (also known as the Oslo Stock Exchange) is added to the definition of 'approved foreign market'.

Background

2. The concept of an 'approved foreign market' is used in numerous ASIC legislative instruments to provide disclosure relief for securities that are quoted on an approved foreign market. Regulatory Guide 72 *Foreign securities disclosure relief* (**RG 72**) explains the rationale for providing disclosure relief for securities that are quoted on an approved foreign market.
3. The concept is also used for the purposes of subsection 257B(7) (on-market buy-backs) and for the purposes of the takeovers' exemption in item 14(b) of section 611 (downstream acquisitions): see ASIC Corporations (Approved Foreign Financial Markets – Buy-backs and Takeovers) Instrument 2015/1071 and Regulatory Guide 71 *Downstream Acquisitions*.
4. In 2017, ASIC issued Instrument 2017/669 which, amongst other things, simplified and made it easier for ASIC stakeholders to understand which markets are 'approved foreign market[s]' by introducing a consistent definition contained within the one instrument.
5. From time-to-time ASIC may, on receipt of an application, include additional foreign markets in the list of approved foreign markets. RG 72 sets out the criteria that ASIC will consider when determining whether to add a market to the list of approved foreign markets.

Purpose of the instrument

6. Upon ASIC receiving an application in respect of the Oslo Bors and, determining that the relevant criteria in RG 72 have been met, it has decided to add the Oslo Bors to the list of approved foreign markets.
7. The purpose of the Amendment Instrument is to modify Instrument 2017/669 so that the Oslo Bors is formally added to the list of approved foreign markets.

Consultation

8. ASIC did not undertake any external consultation in relation to the Amendment Instrument as ASIC is satisfied that the addition of the Oslo Bors to the approved foreign markets list is consistent with the existing public policy position in RG 72.

Operation of the instrument

9. Section 5 of Instrument 2017/669 inserts the definition of approved foreign market to mean any of the markets listed in subparagraphs (a) to (s). Schedule 1 of the Amendment Instrument amends section 5 of Instrument 2017/669 to insert the following after paragraph (o):

“(oa) Oslo Bors (also known as Oslo Stock Exchange);”

10. This instrument commences on the day after it is registered on the Federal Register of Legislation.

Legislative instrument and primary legislation

11. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because it requires a detailed technical assessment of the suitability of the foreign market for ‘approved foreign market’ status. This assessment is more suitably undertaken by ASIC rather than Parliament. In this regard ASIC notes it is satisfied the Oslo Bors meets the criteria in RG 72 to be an approved foreign market. This means suitable investor protections will be in place and it is comparable to ASX in terms of being fair, efficient, well informed, and internationally competitive.
12. The amendments made by this instrument will sunset at the same time as Instrument 2017/669 being 1 October 2027. ASIC will review the Instrument 2017/669 ahead of its sunset date and consult on options for amending or remaking it as appropriate. As part of this consultation, ASIC will engage with Government to ensure disclosure relief for securities that are quoted on an approved foreign market remains appropriate for delegated legislation.

Legislative authority

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13. ASIC Corporations (Amendment) Instrument 2021/895 is made under subsections 283GA(1), 601QA(1), 655A(1), 741(1), 926A(2), 992B(1) and 1020F(1) of the Act.
 14. Paragraphs 283GA(1), 601QA(1), 741(1)(b), 926A(2), 992B(1) and 1020F(1)(c) respectively provide that ASIC may declare that Chapters 2L, 5C, , 6D, Part 7.6, Part 7.8 and Part 7.9 of the Act apply to a person as if specified provisions were omitted, modified or varied as specified in the declaration.
 15. Paragraph 655A(1)(b) of the Act provides that ASIC may declare that Chapter 6 of the Act (takeovers) applies to all persons as if specified provisions were modified or varied as specified in the declaration. Subsection 655A(2) of the Act states that in deciding whether to give the declaration, ASIC must consider the purposes of Chapter 6 of the Act as set out in section 602 of the Act.
 16. *ASIC Corporations (Amendment) Instrument 2021/895* amends *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669* by modifying section 5 to include the Oslo Bors in the definition of ‘approved foreign market’. Subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the relevant powers because of section 5C of the Act) provides that 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.
 17. *ASIC Corporations (Amendment) Instrument 2021/895* is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

18. 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*.

ASIC Corporations (Amendment) Instrument 2021/895

Overview

1. *ASIC Corporations (Amendment) Instrument 2021/895* amends section 5 of *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669* to add the Oslo Bors to the definition of an ‘approved foreign market’.

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*.