



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Business Introduction Services) Instrument 2022/805

I, Kate Metz, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 28 September 2022

<signature>

Kate Metz

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Business Introduction Services) Instrument 2022/805*.

2 Commencement

This instrument commences on the later of:

- (a) 1 October 2022; 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.

3 Authority

This instrument is made under paragraphs 992B(1)(a) and 1020F(1)(a) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

endorsed material means material that is endorsed, verified or assessed by an endorser.

endorser, in relation to introduction services, means a person who by endorsing, verifying or providing an assessment of any information included in a publication or provided at a meeting arranged by an issuer or seller:

- (a) offers scheme interests for issue or sale;
- (b) advertises an offer or intended offer of scheme interests for issue or sale;
- (c) makes a recommendation for a person to acquire those scheme interests;
- (d) publishes a statement that directly or indirectly refers to an offer or intended offer of scheme interests for issue or sale, or is reasonably likely to induce people to apply for the scheme interests; or
- (e) is involved in making or publishing such offers, advertisements, recommendations or statements.

introduction commission means any commission, fee or other payment made to an operator by:

- (a) an issuer where the issuer agrees to issue or issues any scheme interest;
- (b) a seller where the seller agrees to sell or sells any scheme interest;

as a result of the operator identifying a person who accepts an offer for the issue or sale of the scheme interest.

introduction service means a business that has as one of its objectives the promotion or encouragement of investment in schemes by identifying potential investors to invest in the schemes or potential investments for ascertained investors.

issuer means a person who through a publication or at a meeting:

- (a) offers scheme interests of the issuer for issue;
- (b) advertises an offer or intended offer of scheme interests for issue or sale;
- (c) publishes a statement that directly or indirectly refers to an offer or intended offer of scheme interests for issue or sale, or is reasonably likely to induce people to apply for the scheme interests;
- (d) makes a recommendation that a person acquire those scheme interests; and

to any person acting for or on behalf of the issuer who makes or publishes such an offer, advertisement or publication, or who makes such a recommendation to acquire scheme interests.

Note: For the purposes of this instrument, an offer to sell scheme interests to which subsection 1012C(6) of the Act applies is treated as an offer for issue of those scheme interests and as having been made by the issuer of the scheme interests as well as by the person who offers them for sale.

meeting means any meeting between an issuer or seller and potential investors which is organised and conducted by an operator and not held at the premises of any potential investor.

operator means any person who conducts an introduction service, and through a publication or a meeting:

- (a) offers scheme interests for issue or sale;
- (b) advertises an offer or intended offer scheme interests for issue or sale;
- (c) makes a recommendation that a person acquire those scheme

interests; or

- (d) publishes a statement that directly or indirectly refers to an offer or intended offer of scheme interests for issue or sale, or is reasonably likely to induce people to apply for the scheme interests.

publication means a document or series of documents published by an operator, including any electronic publication, which principally contains information about persons other than the operator who are soliciting investments.

publisher means a person other than an issuer, operator, seller or endorser who by publishing a publication:

- (a) offers scheme interests for issue or sale;
- (b) makes a recommendation that a person acquire those scheme interests;
- (c) advertises an offer or intended offer of scheme interests for issue or sale;
- (d) publishes a statement that directly or indirectly refers to an offer or intended offer of scheme interests for issue or sale, or is reasonably likely to induce people to apply for the scheme interests; or
- (e) is involved in making or publishing such recommendations, offers, advertisements or statements.

reliance notice means a notice given to ASIC by a person relying on the relief in this instrument that sets out in writing all of the following:

- (a) the name of the person;
- (b) the capacity in which the person is acting in relation to the introduction service; and
- (c) the date the person will start to rely on an exemption or exemptions in Part 2 of this instrument, being no earlier than the date of the reliance notice.

scheme has the meaning given by section 9 of the Act.

scheme interests means a right to benefits produced by the scheme (whether the right is actual, prospective or contingent and whether it is enforceable or not).

seller means a person who through a publication or at a meeting offers or recommends scheme interests for sale, other than an offer to which subsection 1012C(6) applies, and any person acting for or on behalf of a seller who makes such an offer.

Part 2—Exemptions

5 Operator

- (1) An operator does not have to comply with any of the following in conducting an introduction service:
 - (a) Part 7.9 of the Act; and
 - (b) subsection 992A(1) of the Act.

Note: This exemption does not affect an operator's obligations under Part 7.8A of the Act (design and distribution obligations).

- (2) The exemption in subsection (1) applies where all the following are satisfied:

Reliance notice

- (a) the operator gives ASIC a reliance notice that complies with the definition of 'reliance notice' in section 4 of this instrument;

Pecuniary interests

- (b) neither the operator nor any associate of the operator has any pecuniary interest in the outcome of any investment decision by the users of the introduction service, other than the charging of a fee for providing the introduction service or the payment of an introduction commission;

Publication content

- (c) every publication contains prominent statements to the effect that:
 - (i) investment in new business carries high risks, is highly speculative and before investing in any project about which information is given, prospective investors are strongly advised to take appropriate professional advice;
 - (ii) the information contained in the publication has been prepared by or on behalf of the issuer or seller of the scheme interests and neither the operator nor publisher (if any) has undertaken an independent review of the information contained in the publication;
 - (iii) the information contained in the publication about the proposed business opportunity and the scheme interests is not intended to be the only information on which the investment decision is made. It is not a substitute for a Product Disclosure Statement or any other disclosure that may be required under

the Act. Detailed information may be needed to make an investment decision, for example: financial statements; a business plan; information about ownership of intellectual or industrial property; or expert opinions, including valuations or auditors reports;

- (iv) prospective investors should be aware that no established market exists for the trading of any scheme interests that may be offered; and
- (v) the publication is subject to this instrument.

Distinguishing trademark or logo

- (d) except as provided in paragraph (2)(e), the publication must not contain the name or any distinguishing trademark or logo of:
 - (i) any person who may issue, arrange the issue of, make available, or sell scheme interests; or
 - (ii) the original issuer of the scheme interests which may be sold, as a result of an offer made, issued or referred to in the publication.
- (e) a publication may contain the name and any distinguishing trademark or logo of a person described in paragraph (2)(d) if:
 - (i) the publication is available only on subscription;
 - (ii) before a person is entitled to receive the first copy of, or first obtain access to, the publication for which the person has subscribed, the person acknowledges to the operator that the person is aware of the limitations of the information provided in the publication, as set out in paragraph (2)(c).
 - (iii) the publication contains prominent statements to the effect:
 - (A) of the matters set out in subparagraph (2)(c)(iii);
 - (B) that a prospective investor is strongly advised to take appropriate professional advice before accepting an offer for issue or sale of any scheme interests.

Notices to prospective investors

- (f) other than in the situation set out in paragraph (2)(e), at the time of first supplying the name of the proposed issuer or proposed seller of the scheme interests to any prospective investor, the operator issues or causes to be issued to the prospective investor a notice containing statements to the effect of the matters set out in subparagraph (2)(e)(iii);

- (g) the operator does not provide at any meeting or publish in any publication any information about an offer made by an issuer or seller without the prior written authorisation of the issuer or seller, as the case may be;

No application for the scheme interests

- (h) the publication does not contain any application form for the scheme interests;

Prohibited statements

- (i) the publication does not contain any:
 - (i) advertisement of; or
 - (ii) statement that directly or indirectly refers to, or that is reasonably likely to induce people to apply for the scheme interests under;

an offer or intended offer of scheme interests for more than \$5 million in total in relation to any one managed investment scheme;

- (j) the publication does not contain any statement to the effect that the introduction service, the operator or any other person associated with the introduction service has been endorsed or approved by ASIC;

Meetings

- (k) the operator, at every meeting does not issue or permit the issue of any application form for the scheme interests;
- (l) the operator, at every meeting, does not make any statement to the effect that that the introduction service, the operator or any other person associated with the introduction service has been endorsed or approved by ASIC;
- (m) the operator, at every meeting makes, at the start of the meeting, and circulates in writing to each person attending the meeting, statements to the effect that:
 - (i) a prospective investor should obtain further information from the issuer or seller and conduct further enquiries about the proposed investment and the scheme interests that may be issued, or sold before applying for or acquiring the interests;
 - (ii) requests for further information about a proposed investment and the relevant scheme interests may be made to the issuer or seller;
 - (iii) a prospective investor is strongly advised to take appropriate

professional advice before accepting an offer for issue or sale of any scheme interests, including advice about whether the proposed investment is suitable for that person's circumstances;

- (iv) no contract for the issue or sale of the scheme interests discussed at a meeting will be entered into on the day of the meeting between an issuer or seller and a prospective investor who attended the meeting;
- (v) under a contract for the issue or sale of scheme interests, the prospective investor is entitled a cooling off period as set out in paragraph 6(2)(k).

6 Issuer and Seller

- (1) An issuer or a seller does not have to comply with any of the following in relation to an introduction service:
 - (a) Part 7.9 of the Act; and
 - (b) subsection 992A(1) of the Act.

Note: This exemption does not affect an issuer's or a seller's obligations under Part 7.8A of the Act (design and distribution obligations).

- (2) The exemption in subsection (1) applies where all the following are satisfied:

Reliance notice

- (a) the issuer or seller, as the case may be, gives ASIC a reliance notice that complies with the definition of 'reliance notice' in section 4 of this instrument;

Limit on offers for scheme interests

- (b) total amount for which the scheme interests offered does not exceed \$5 million in relation to any one scheme or schemes which are determined by ASIC to be closely related schemes under subsection 601ED(3) of the Act;
- (c) the issuer or seller has not offered the scheme interests, or scheme interest of the same class, to more than 20 persons (as worked out under subparagraph (d)) at the time of the offer or in the preceding 12 months of the offer;
- (d) In counting 20 persons for the purposes of paragraph 2(c), count all of the following:
 - (i) persons to whom an offer for scheme interests was made in accordance with this instrument or former ASIC Class Order

- [CO 02/0273] and which cannot, by acceptance, give rise to a contract to issue or sell scheme interests;
- (ii) persons to whom an offer for scheme interests, which by acceptance, give rise to a contract to issue or sell scheme interests;
 - (iii) persons to whom an offer for scheme interests was made, which did not need a Product Disclosure Statement (other than because of this instrument or section 1012E of the Act).
- (e) the issuer or seller does not make an offer of scheme interests for issue or sale which may, by acceptance give rise to a contract with a person who responded to an offer to which subparagraph (2)(d)(i) applies, during one year after that offer was made, other than any of the following:
- (i) an offer of scheme interests which does not need a Product Disclosure Statement (other than a because of this instrument or section 1012E of the Act);
 - (iii) an offer to which subparagraph (2)(d)(ii) applies;
 - (iv) an offer contained in a Product Disclosure Statement that relates to scheme interests, lodged with ASIC;
- (f) the seller or issuer does not issue or sell scheme interests in schemes that are determined by ASIC to be closely related schemes under subsection 601ED(3) of the Act to persons who respond to offers made under subparagraphs (2)(d)(i) or (ii) for more than \$5 million (as worked out under paragraph (2)(g)) in total until one year after the last of those offers was made;
- (g) In calculating \$5 million for the purposes of paragraph (2)(f) do not count all of the following:
- (i) amounts paid in relation to issues that result from offers of scheme interests which did not need a Product Disclosure Statement (other than because of this instrument or section 1012E of the Act);
 - (ii) amounts paid in response to an offer made in a Product Disclosure Statement dated after the issuer or seller has ceased to make or publish offers, advertisements or publications under subparagraph (2)(d)(i).

Note: References to amounts for which scheme interests are offered, issued or sold are to the total consideration paid or payable for the issue or sale of the scheme interests.

No application for the scheme interests

- (h) neither the issuer nor any person who issues makes available at any meeting any application form for scheme interest of the issuer;

Offer of scheme interests must be available for one year

- (i) the issuer or seller does not issue or sell scheme interests to a person to whom a publication has been made available, or who has attended a meeting, relating to scheme interests unless the:
 - (i) issuer has given the person an application form which when completed is capable by acceptance of giving rise to a contract for issue of the scheme interests for the period of one year after the publication was made available or the meeting was held; or
 - (ii) the seller has issued to the person a document offering the scheme interests for sale which is capable by acceptance of giving rise to a contract for sale of the scheme interests, for the period of one year after the publication was made available or the meeting was held;

No issue or sale of scheme interests on the day of the meeting

- (j) the issuer or seller does not enter into a contract for issue or sale of scheme interests discussed at a meeting on the day of the meeting with a prospective investor who attended the meeting;

Contracts to include cooling-off period

- (k) a contract for the issue or sale of scheme interests with a prospective investor contains a provision to the effect that the contract is voidable at the option of the prospective investor, without penalty or forfeiture, during the period of 10 business days from the date of the meeting; if:
 - (i) the investor attended a meeting at which the scheme interests were discussed; and
 - (ii) the contract is entered into during the period of five business days from the date of the meeting;

False, misleading or deceptive statements

- (l) the issuer or seller takes all reasonable steps to ensure that all material included in a publication or provided at a meeting that is prepared by or on behalf of the issuer or seller does not contain any false, misleading or deceptive statements;

Distinguishing trademark or logo

- (m) except as permitted by paragraph 5(2)(e), the issuer or seller does not publish or cause to be published in any publication the name or

any distinguishing trademark or logo of the issuer or seller;

Endorsed material

- (n) where the issuer or seller causes or authorises endorsed material to be included in a publication or referred to at a meeting, the issuer or seller:
- (i) obtains the prior written consent of the endorser to include or refer to the endorsed material in the publication or at the meeting;
 - (ii) states in the publication or at the meeting that the endorser has consented to the inclusion of or reference to the endorsed material, and has not withdrawn that consent;
 - (iii) indicates in the publication and at the meeting the information that the endorser has provided to the issuer or seller about the extent of the enquiries the endorser has made in order to make the endorsement, verification or assessment;
 - (iv) discloses in the publication or by a statement in writing provided to each person at the meeting, as the case may be:
 - (A) the nature and extent of the interest of the endorser, including a statement of all amounts paid or agreed to be paid to the endorser in cash or financial products or otherwise by any person for services rendered by the endorser when the offer is made or referred to in the publication or at the meeting; and that existed within two years before the publication or the meeting, in connection with:
 - (I) the promotion, formation, or inception;
 - (II) any property to be acquired in connection with the promotion, formation or inception; and
 - (III) any services rendered in connection with the promotion, formation or inception,of the scheme to which the endorsed material relates; and
 - (B) where the interest of the endorser consists of being a partner in a firm—the nature and extent of the interest of the firm in the matters referred to in sub-subparagraph (2)(n)(iv)(A).

7 Endorser

- (1) An endorser does not need to comply with any of the following in endorsing material for a publication in relation to an introduction service:
 - (a) Part 7.9 of the Act; and
 - (b) subsection 992A(1) of the Act.

Note: This exemption does not affect an endorser's obligations under Part 7.8A of the Act (design and distribution obligations.).

- (2) The exemption in subsection (1) applies where all the following are satisfied:
 - (a) the endorser gives ASIC a reliance notice that complies with the definition of 'reliance notice' in section 4 of this instrument;
 - (b) the endorser indicates in any endorsed material the extent of the enquiries the endorser has made in order to make the endorsement, verification or assessment.

8 Publisher

- (1) A publisher does not have to comply with any of the following in publishing a publication in relation to an introduction service:
 - (a) Part 7.9 of the Act; and
 - (b) subsection 992A(1) of the Act.

Note: This exemption does not affect a publisher's obligations under Part 7.8A of the Act (design and distribution obligations).

- (2) The exemption in subsection (1) applies where all the following are satisfied:
 - (a) the publisher gives ASIC a reliance notice that complies with the definition of 'reliance notice' in section 4 of this instrument;
 - (b) any of the following are satisfied:
 - (i) the publisher conducts a business of publishing information and the offer, advertisement and statement are received for publication in the ordinary course of that business;
 - (ii) the publisher is involved in the promotion or encouragement of investment in scheme interests on a not-for-profit basis;
 - (iii) the publisher allows its name to be associated with or used in the publication but not in relation to any particular offer in the publication;

- (iv) the publisher provides the operator direct financial assistance for the purpose of preparing, publishing or distributing the publication;
- (c) the publisher has no pecuniary interest in the outcome of any investment decision by the users of the introduction service;
- (d) the publisher is authorised by both of the following to publish the publication:
 - (i) an operator;
 - (ii) an issuer or seller, as the case may be.

Part 3—Repeal

9 Repeal

This instrument is repealed on 1 April 2025.