



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2023/24

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2023/24* (the *instrument*).

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

Summary

1. The instrument amends *ASIC Corporations (Short Selling) Instrument 2018/745* (the *Principal Instrument*) to:
 - a. put beyond doubt the effect of a minor misdescribed amendment in *ASIC Corporations (Short Selling) Amendment Instrument 2022/968 (Amending Instrument)*, and
 - b. make other minor clarifying changes to notional subsection 1020B(7H) of the *Corporations Act 2001 (Corporations Act)*.

Purpose of the instrument

2. The purpose of the instrument is to:
 - a. clarify that the amendment made by item 15 of Schedule 1 to the Amending Instrument to Section 11 of the Principal Instrument has its intended effect; and
 - b. make other minor clarifying amendments to notional subsection 1020B(7H), which is inserted into the Corporations Act by Section 11 of the Principal Instrument.

Consultation

3. ASIC did not consult on the instrument. The instrument merely puts beyond doubt the effect of a misdescribed amendment made by the Amending Instrument, and makes other minor clarifying amendments to the Principal Instrument that are not intended to affect its operation.

Operation of the instrument

Name

4. Section 1 of the instrument provides that the instrument is the *ASIC Corporations (Amendment) Instrument 2023/24*.

Commencement

5. Section 2 of the instrument provides that the 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

Authority

6. Section 3 of the instrument provides that the instrument is made under subsection 1020F(1) of the Corporations Act.

Schedules

7. Section 4 of the instrument provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 – Amendments

8. Item 1 of Schedule 1 repeals notional subsection 1020B(7H) of the Corporations Act and substitutes it as follows:

“(7H) A person must only, in this jurisdiction, sell section 1020B products to a buyer on a licensed market during a deferred settlement trading period if, at the time of the sale:

- (a) the person is or, if the person is selling on behalf of another person, that other person is; or
- (b) the person believes on reasonable grounds that the person is or, if the person is selling on behalf of another person, that other person is;

in a class of persons who, because such persons hold financial products of a particular class, have an entitlement to be issued with or transferred the section 1020B products under or in connection with the corporate action.”.

9. The effect of the substituted notional subsection 1020B(7H) is that it puts beyond doubt that the amendment is applicable to notional subsection 1020B(7H) and not notional paragraph 1020B(7H)(b) (as misdescribed in the Amending Instrument). The substitution also makes minor clarifications to notional subsection 1020B(7H), such as specifying either (7H)(a) or (b) are

applicable by including ‘or’, and correcting the omission of ‘in’ for the purposes of ‘in connection.’

Legislative instrument and primary legislation

10. The subject matter and policy implemented by the instrument is more appropriate for a legislative instrument rather than primary legislation. This is because its purpose is to put beyond doubt the effect of a misdescribed amendment by the Amending Instrument to notional subsection 1020B(7H) which is inserted into the Corporations Act by Section 11 of the Principal Instrument. The instrument also makes other minor clarifying amendments to notional subsection 1020B(7H).
11. It will be a matter for the Government and for Parliament as to whether the Corporations Act or the *Corporations Regulations 2001* may be amended in future to include the relief in the Principal Instrument.

Duration of the instrument

12. This instrument is automatically repealed by section 48A of the *Legislation Act 2003* as its only legal affect is to amend another legislative instrument.
13. The Principal Instrument sunsets on 1 October 2028 in accordance with section 50 of the *Legislation Act 2003*.

Legislative authority

14. ASIC makes this instrument under subsection 1020F(1) of the Corporations Act.
15. Where an Act confers a power to make an instrument, the power is to be constructed as including a power exercisable in the like manner and subject to the like conditions to amend the instrument: see subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005, as per section 5C of the Corporations Act).
16. This instrument is a disallowable legislative instrument: see section 42 of the *Legislation Act 2003*.

Statement of Compatibility with Human Rights

17. 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 2023/24

Overview

1. The *ASIC Corporations (Amendment) Instrument 2023/24* (the **instrument**) amends *ASIC Corporations (Short Selling) Instrument 2018/745* to:
 - a. put beyond doubt the effect of a minor misdescribed amendment in *ASIC Corporations (Short Selling) Amendment Instrument 2022/968*;
 - b. make other minor clarifying changes to notional subsection 1020B(7H) of the *Corporations Act 2001*.

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*.