



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Equality of Treatment Impacting on the Acquisition of Scheme Interests and CCIV Shares) Instrument 2023/697

I, Leah Sciacca, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 8 September 2023

Leah Sciacca

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Equality of Treatment Impacting on the Acquisition of Scheme Interests and CCIV Shares) Instrument 2023/697*.

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 Authority

This instrument is made under subsections 601QA(1) and 1243(2) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

ASX Limited means ASX Limited ACN 008 624 691.

offer in relation to an issue of interests, includes inviting an application for the issue of interests.

wholesale client has the meaning given by section 761G of the Act.

Part 2—Exemption

5 Equal treatment relief—responsible entity of a registered scheme

A responsible entity of a registered scheme does not have to comply with paragraph 601FC(1)(d) of the Act to the extent that it would prevent the responsible entity from doing any or all of the following:

- (a) not making an offer of interests to a member (a ***non-resident***) with a registered address outside Australia and New Zealand and, in the case of an Australian passport fund, each host economy of the fund, if the responsible entity:
 - (i) where the scheme is included in the official list of the financial market operated by ASX Limited and the offer is one to which Rule 7.7 (Issues to Australian and New Zealand holders and overseas holders) of the listing rules of ASX Limited as at 1 December 2019 applies—complies with the requirements of that rule that are applicable to the relevant offer and issue of interests; or
 - (ii) where the scheme is not included in the official list of the financial market operated by ASX Limited and the offer is renounceable—appoints a nominee to sell the rights to acquire the interests that are not offered to the non-residents and distribute to each non-resident their proportion of the proceeds of sale net of expenses; or
 - (ii) in any other case—determines that it would be unreasonable to make the offer to the non-resident having regard to each of the following:
 - (A) the number of members in the place (the ***relevant place***) where the registered address of the non-resident is situated;
 - (B) the number and the value of the interests that may be issued to non-residents in the relevant place;
 - (C) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to making the offer in the relevant place;
- (b) offering interests to some members (the ***priority offerees***) who would be acquiring as wholesale clients at an earlier time than other members where:
 - (i) the terms of the offer require the priority offerees to notify the responsible entity of their acceptance of the offer by a date

that occurs before another date by which other members are to notify their acceptance; and

- (ii) under the terms of the offers interests will not be issued to the priority offerees before the earliest date on which interests may be issued to the other members of the scheme; and
- (iii) interests are only issued to the priority offerees in accordance with the terms of the offers required by paragraphs (i) and (ii);
- (c) dealing with complaints made by members who acquire an interest as wholesale clients differently from complaints by other members;
- (d) offering and issuing interests in accordance with *ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547*.

6 Equal treatment relief—corporate director of a retail CCIV

A corporate director of a retail CCIV does not have to comply with paragraph 1224D(2)(b) of the Act to the extent that it would prevent the corporate director from doing any or all of the following:

- (a) not making an offer of shares to a member of the retail CCIV (a ***non-resident***) with a registered address outside Australia, New Zealand and, in the case of an Australian passport fund, each host economy of the fund, if the corporate director:
 - (i) where the sub-fund of the retail CCIV is not included in the official list of the financial market operated by ASX Limited and the offer is renounceable—appoints a nominee to sell the rights to acquire the shares that are not offered to the non-residents and distribute to each non-resident their proportion of the proceeds of sale net of expenses; or
 - (ii) in any other case—determines that it would be unreasonable to make the offer to the non-resident having regard to each of the following:
 - (A) the number of members of the retail CCIV in the place (the ***relevant place***) where the registered address of the non-resident is situated;
 - (B) the number and the value of the shares that may be issued to non-residents in the relevant place;
 - (C) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to making the offer in the relevant place;

- (b) offering shares to some members of a sub-fund of the retail CCIV (the **priority offerees**) who would be acquiring as wholesale clients at an earlier time than other members where:
 - (i) the terms of the offer require the priority offerees to notify the corporate director of their acceptance of the offer by a date that occurs before another date by which other members of the sub-fund are to notify their acceptance; and
 - (ii) under the terms of the offers shares will not be issued to the priority offerees before the earliest date on which shares may be issued to the other members of the sub-fund; and
 - (iii) shares are only issued to the priority offerees in accordance with the terms of the offers required by subparagraphs (i) and (ii);
- (c) dealing with complaints made by members of a sub-fund of the retail CCIV who acquire a share as wholesale clients differently from complaints by other members of the sub-fund;
- (d) offering and issuing shares in accordance with *ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547*.

7 Equal treatment relief—corporate director of a wholesale CCIV

A corporate director of a wholesale CCIV does not have to comply with paragraph 1224D(3)(b) of the Act to the extent that it would prevent the corporate director from not making an offer of shares to a member of the wholesale CCIV (a **non-resident**) with a registered address outside Australia and New Zealand, if the corporate director:

- (a) where the offer is renounceable—appoints a nominee to sell the rights to acquire the shares that are not offered to the non-residents and distribute to each non-resident their proportion of the proceeds of sale net of expenses; or
- (b) in any other case—determines that it would be unreasonable to make the offer to the non-resident having regard to each of the following:
 - (i) the number of members of the wholesale CCIV in the place (the **relevant place**) where the registered address of the non-resident is situated;
 - (ii) the number and the value of the shares that may be issued to non-residents in the relevant place;
 - (iii) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to making the offer in the relevant place.

8 Acquiring forfeited interests

A responsible entity of a registered scheme does not have to comply with paragraph 601FG(1)(a) of the Act to the extent that it would prevent the responsible entity from acquiring interests on trust for the members of the scheme on forfeiture of the interests where the constitution requires that any sale of the interests be in accordance with the requirements in:

- (a) subsection 601GAA(8) of the Act, as notionally in force because of *ASIC Corporations (Managed investment product consideration) Instrument 2015/847*; or
- (b) subsection 601GAD(9) of the Act, as notionally in force because of *ASIC Corporations (Discretions for Setting the Issue Price and Withdrawal Price of Interests in Managed Investment Schemes) Instrument 2023/693*.

Part 3—Repeal

9 Repeal

This instrument is repealed at the start of 1 October 2028.