



ASIC
Australian Securities &
Investments Commission

ASIC Corporations and Credit (Amendment) Instrument 2023/589

I, Greg Yanco, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 17 October 2023

Greg Yanco

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations and Credit (Amendment) Instrument 2023/589*.

2 Commencement

This instrument commences on the later of:

- (a) the day after it is registered on the Federal Register of Legislation;
and
- (b) 20 October 2023.

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

3 Authority

This instrument is made under subsection 926A(2) of the *Corporations Act 2001* and subsection 109(3) of the *National Consumer Credit Protection Act 2009*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

ASIC Corporations and Credit (Breach Reporting—Reportable Situations) Instrument 2021/716

1 After section 6

Insert:

7 Insignificant contraventions of core obligations

(1) Part 7.6 of the Corporations Act (other than Divisions 4 and 8) applies in relation to financial service licensees as if section 912D were modified or varied by:

(a) in subsection 912D(4), omitting “For the purposes” and substituting “Subject to subsection (4A), for the purposes”; and

(b) after subsection 912D(4), inserting:

“(4A) A breach constituted by a contravention of subsection 1041H(1) of this Act or subsection 12DA(1) or 12DB(1) of the ASIC Act is not taken to be *significant* if:

(a) but for this subsection, the underlying circumstances in relation to the breach:

(i) would only give rise, and would only be likely to give rise, to a single reportable situation as a result of the following:

(A) paragraph (4)(b) in so far as it relates to a contravention of subsection 12DB(1) of the ASIC Act;

(B) paragraph (4)(c); and

(ii) would not give rise, and would be unlikely to give rise, to a reportable situation other than as specified in subparagraph (i); and

(b) either:

(i) only one person (*client*) is, or is likely to be impacted by the contravention; or

(ii) if the contravention relates to a financial product that is, or that is proposed to be, held by more than one person (each a *client*)

jointly, those clients are the only persons who are, or are likely to be, impacted by the contravention; and

- (c) the contravention has not resulted in, and is unlikely to result in, any financial loss or damage to any person (for the purposes of this paragraph, financial loss or damage is to be taken into account regardless of whether it is, or will or may be, remediated).

(4B) For the purposes of subsection (4A):

- (a) the circumstances in which there is a **single reportable situation** as a result of particular conduct include circumstances in which the conduct constitutes a single contravention of two or more of the following and does not otherwise give rise to a reportable situation:
 - (i) subsection 1041H(1) of this Act;
 - (ii) subsection 12DA(1) of the ASIC Act;
 - (iii) subsection 12DB(1) of the ASIC Act; and
- (b) a person is **impacted** by a contravention of:
 - (i) subsection 1041H(1) of this Act or subsection 12DA(1) of the ASIC Act if they are misled or deceived as a result of the contravention; and
 - (ii) subsection 12DB(1) of the ASIC Act if they are the recipient of the false or misleading representation to which the contravention relates.”.

(2) The provisions in relation to which Part 2-6 of the Credit Act applies apply in relation to credit licensees as if subsection 50A were modified or varied by:

- (a) in subsection 50A(4), omitting “For the purposes” and substituting “Subject to subsection (4A), for the purposes”; and
- (b) after subsection 50A(4), inserting:

“(4A) A breach constituted by a contravention of subsection 12DA(1) or 12DB(1) of the ASIC Act is not taken to be **significant** if:

- (a) but for this subsection, the underlying circumstances in relation to the breach:
 - (i) would only give rise, and would only be likely to give rise, to a single reportable situation as a result of the following:
 - (A) paragraph (4)(b) in so far as it relates to a contravention of subsection 12DB(1) of the ASIC Act;
 - (B) paragraph (4)(d); and
 - (ii) would not give rise, and would be unlikely to give rise, to a reportable situation other than as specified in subparagraph (i); and
- (b) either:
 - (i) only one person (*affected consumer*) is, or is likely to be, impacted by the contravention; or
 - (ii) if the contravention relates to any of the following that is, or that is proposed to be, entered into jointly by more than one credit activity client (each an *affected consumer*) of the licensee, those affected consumers are the only persons who are, or are likely to be, impacted by the contravention:
 - (A) a credit contract or proposed credit contract;
 - (B) a consumer lease or proposed consumer lease;
 - (C) a mortgage or proposed mortgage;
 - (D) a guarantee or proposed guarantee; and
- (c) the contravention has not resulted in, and is unlikely to result in, any financial loss or damage to any consumer (for the purposes of this paragraph, financial loss or damage is to be taken into account regardless of whether it is, or will or may be, remediated).

(4B) For the purposes of subsection (4A):

- (a) the circumstances in which there is a *single reportable situation* as a result of particular

conduct include circumstances in which the conduct constitutes a single contravention of both of the following and does not otherwise give rise to a reportable situation:

- (i) subsection 12DA(1) of the ASIC Act;
 - (ii) subsection 12DB(1) of the ASIC Act; and
- (b) a person is *impacted* by a contravention of:
- (i) subsection 12DA(1) of the ASIC Act if they are misled or deceived as a result of the contravention; and
 - (ii) subsection 12DB(1) of the ASIC Act if they are the recipient of the false or misleading representation to which the contravention relates.”.

8 Reporting period for additional reportable situations

- (1) Part 7.6 of the Corporations Act (other than Divisions 4 and 8) applies in relation to financial service licensees as if section 912DAA were modified or varied by omitting subsection 912DAA(3) (other than the heading) and substituting:

“(3) The report must be lodged with ASIC:

- (a) within 30 days after the financial services licensee first knows that, or is reckless with respect to whether, there are reasonable grounds to believe the reportable situation has arisen; or
- (b) if:
 - (i) there is a reportable situation (*previous reportable situation*) with underlying circumstances that are the same as, or substantially similar to, the underlying circumstances of the reportable situation (*current reportable situation*); and
 - (ii) the financial services licensee has lodged a report under this section in relation to the previous reportable situation with ASIC;

within 90 days after the financial services licensee first knows that, or is reckless with respect to whether, there are reasonable grounds to believe the current reportable situation has arisen.”.

- (2) The provisions in relation to which Part 2-6 of the Credit Act applies apply in relation to credit licensees as if subsection 50B were modified or varied by omitting subsection 50B(4) (other than the heading) and substituting:

“(4) The report must be lodged with ASIC:

- (a) within 30 days after the licensee first knows that, or is reckless with respect to whether, there are reasonable grounds to believe that the reportable situation has arisen; or
- (b) if:
 - (i) there is a reportable situation (*previous reportable situation*) with underlying circumstances that are the same as, or substantially similar to, the underlying circumstances relating to the reportable situation (*current reportable situation*); and
 - (ii) the licensee has lodged a report under this section in relation to the previous reportable situation with ASIC;

within 90 days after the licensee first knows that, or is reckless with respect to whether, there are reasonable grounds to believe the current reportable situation has arisen.”.

9 Core obligations in the financial services law

Part 7.6 of the Corporations Act (other than Divisions 4 and 8) applies in relation to financial service licensees as if subsection 912D were modified or varied by:

- (a) in paragraph 912D(3)(b), omitting “(ba) and (c)” and substituting “(c) and (d)”; and
- (b) in paragraph 912D(3)(c), omitting “paragraph (d)” and substituting “paragraph (e)”; and
- (c) in paragraph 912D(3)(d), omitting “paragraph (d) or (e)” and substituting “paragraph (e) or (f)”; and
- (d) in paragraph 912D(3)(e), omitting “(ba) and (c)” and substituting “(c) and (d)”.