



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2024/630

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2024/630*.

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

Summary

1. The *ASIC Corporations (Amendment) Instrument 2024/630* (the **Instrument**) amends [*ASIC Corporations \(Facilitating Electronic Delivery of Financial Services Disclosure\) Instrument 2015/647*](#) (LI 2015/647) and [*ASIC Corporations \(Periodic Statement Relief for Quoted Securities\) Instrument 2024/14*](#) (LI 2024/14) (collectively, the **principal instruments**).
2. The amendments relate to:
 - a) the electronic method of delivery of periodic statements for interests in quoted enhanced disclosure (**ED**) securities and interests in exchange traded funds (**ETFs**); and
 - b) the content requirements of periodic statements for interests in ETFs and quoted ED securities.
3. The Instrument introduces additional circumstances when investors may be given electronic notification of periodic statements for quoted ED securities and interests in ETFs and removes the requirement to disclose fund performance information in the periodic statements.

Purpose of the Instrument

4. The Instrument amends the principal instruments in order to:
 - a) provide an additional option for issuers of quoted ED securities and interests in ETFs that are traded on ASX or Cboe, to provide investors access to periodic statements via an electronic method of delivery; and

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- b) revise the periodic statement content requirements for quoted ED securities and interests in ETFs that are traded on ASX or Cboe, to remove the need to include content relating to fund performance information.

Amendments to LI 2015/647

- 5. Electronic delivery of financial services disclosure to clients is permitted under the ‘publish and notify’ method under LI 2015/647 or if the client has agreed to electronic disclosure. The amendments modify LI 2015/647 to provide an additional option for issuers to deliver, and provide notifications of the availability of, periodic statements to investors by an electronic method of delivery. The issuer must send one notification in printed or electronic form explaining how periodic statements can be accessed by electronic means and that future notifications of the availability of the periodic statement will be made on a relevant website.
- 6. Without the amendments, issuers must send the investor a notice each time they propose to make periodic statements available electronically. This imposes a compliance cost burden for issuers that do not have the email addresses of investors and need to send notifications in paper format to investors.
- 7. The relief will allow issuers to make periodic statements and exit statements available electronically and make notifications of when a periodic statement becomes available via the market announcements platform of the ASX or Cboe (as applicable), the website of the issuer or its registry services provider without a need for the issuer to send a prior notification via ordinary post or by e-mail, each time that periodic statements are available. Before relying on this method, the issuers will be required to send one notification in printed or electronic form to existing investors that explains how periodic statements may be accessed by electronic means and states that future notifications will be provided on a relevant website.
- 8. Existing arrangements for investors who have opted out of electronic delivery of periodic statements before 30 November 2024 will continue to be preserved unless they subsequently notify the issuer that they wish to change to electronic delivery. For new investors, issuers may notify them of online-only notification of periodic statements via on-boarding material.

Amendments to LI 2024/14

- 9. The amendments to LI 2024/14 remove the requirement to include fund performance information relative to the fund’s investment objectives, in a periodic statement.
- 10. The amendments to LI 2024/14 will allow issuers to omit the performance information and instead require the periodic statement to include the website address at which performance information is available (such as the issuer’s

website where fund performance information is available, or on a markets announcements platform).

11. The amendments to the definition of ETF means that a registered scheme or CCIV that uses internal market-making will not be precluded from satisfying the definition.

Consultation

12. ASIC commenced formal consultation in January 2024 on its proposal to remake ASIC Class Order [CO 13/1200]. The Class Order was remade as LI 2024/14 on 21 March 2024. ASIC engaged in further consultation with industry stakeholders and received feedback which informed the further amendments to LI 2024/14 and LI 2015/647.
13. The Office of Impact Analysis has advised that an Impact Analysis is not required for the Instrument.

Operation of the Instrument

LI 2015/647

14. The Instrument amends LI 2015/647 by modifying the notional definition of ‘*nominated electronic means*’ in section 761A of the *Corporations Act 2001 (Act)* to provide for an additional method of notifying investors of the availability of a periodic statement under paragraph (b)(iii) of the amended definition. The amendments enable an issuer to provide periodic statements and notifications of their availability, in an electronic form, subject to the issuer first notifying the investor of the intended use of the electronic method and where the investor has not elected before 30 November 2024 to receive periodic statements in hard copy form.
15. An investor who had opted before 30 November 2024 to receive periodic statements in hard copy form may later notify the issuer that they wish to access their periodic statements electronically and receive notice of their availability on the relevant website. Such an investor must notify the issuer of their choice and the issuer must have first given the investor the notice of the intended use of the electronic delivery method. The issuer may use the original notice of intention to use an electronic delivery method for this purpose.
16. The new option for electronic notification applies to interests in ETFs and quoted ED securities that are traded on ASX or Cboe. The amendments insert definitions of ASX or Cboe to reflect this.
17. The Instrument also makes some minor amendments to paragraphs 5(8)(f) and 5(8)(g) of LI 2015/647 to correct the paragraph references in respect of the amendments to regulation 7.9.75A of the *Corporations Regulations 2001 (Regulations)*.

LI 2024/14

18. The Instrument amends the operation of section 1017D of the Act for quoted ED securities and interests in ETFs.
19. The Instrument replaces notional paragraph 1017D(5)(fa) with a new paragraph. Under the new paragraph 1017D(5)(fa), periodic statements for quoted ED securities or interests in an ETF (as defined under the LI 2024/14), must include the address of a website on which information about the performance of the scheme or sub-fund relative to the investment objectives of the scheme or sub-fund, is available for a holder to make an informed assessment of the performance of the scheme or sub-fund. This requirement replaces the previous requirement to include fund performance information in the periodic statement.
20. Issuers must therefore include a reference in the periodic statement to the relevant website, such as the issuer’s website where fund performance information is available.
21. As a result of the amendments to paragraph 1017D(5)(fa), notional subsection 1017D(8E) and the definitions of “first financial year”, “financial year” and “most recent financial year” in notional subsections 1017D(8D) are deleted to align with the amendments made in the Instrument.
22. The Instrument commences on the day after it is registered on the Federal Register of Legislation.

Incorporation by reference

23. The Instrument does not incorporate any matters by reference.

Retrospective application

24. The Instrument does not apply retrospectively.

Legislative instrument and primary legislation

25. The subject matter and policy implemented by the Instrument is more appropriate for a legislative instrument rather than primary legislation because the effect of the Instrument is to amend the existing requirements contained in the principal instruments. The principal instruments are themselves legislative instruments rather than primary legislation.
26. It will be a matter for the Government and for Parliament as to whether the Act or Regulations may be amended in future to include the relief in the Instrument.

Duration of the Instrument

27. The Instrument is an amending instrument. The amendments made by the Instrument do not affect the duration of the principal instruments.
28. The principal instruments will automatically sunset as follows:

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- a) for *ASIC Corporations (Periodic Statement Relief for Quoted Securities) Instrument 2024/14* – on 1 April 2029;
 - b) for *ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647* – on 1 October 2025;

in accordance with section 50 of the *Legislation Act 2003*. The amendments made by the Instrument will cease to have effect when the principal instruments are repealed.

Legislative authority

- 29. The Instrument is made under paragraphs 951B(1)(c) and 1020F(1)(c) of the *Corporations Act 2001*.
- 30. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make an 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 or repeal the Instrument.
- 31. The Instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

- 32. 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 2024/630

Overview

1. The *ASIC Corporations (Amendment) Instrument 2024/630* (the Instrument) amends *ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647 (LI 2015/647)* and the *ASIC Corporations (Periodic Statement Relief for Quoted Securities) Instrument 2024/14 (LI 2024/14)* (collectively, the principal instruments).
2. The Instrument amends the principal instruments as follows:
 - a) LI 2015/647 is amended to provide another option for issuers to provide investors with access to periodic statements by an electronic method of delivery. Issuers can provide periodic statements to investors by an electronic method of delivery and notifications of their availability on a relevant website, provided the investor notifies investors once in printed or electronic form, that future notifications of the availability of the periodic statement will be made on the website, and the investor has not, prior to 30 November 2024, opted out of electronic delivery.
 - b) LI 2024/14 is amended so that the requirement to disclose fund performance information in the periodic statement is removed and the issuer must instead include the address of a website on which performance information for the relevant scheme or sub-fund is made available.

Assessment of human rights implications

3. The Instrument does not engage any of the applicable rights or freedoms.

Conclusion

4. 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*.