



21 May 2020

Senator the Hon Jane Hume
Assistant Minister for Superannuation, Financial Services
and Financial Technology
Parliament House
Canberra 2600 ACT

Via email: Senator.Hume@aph.gov.au

CC: tsrdlos@aph.gov.au; committeescrutiny@treasury.gov.au;
Shelby.Brinkley@treasury.gov.au

Dear Assistant Minister,

ASIC Corporations (Amendment) Instrument 2020/290 [F2020L00376]

ASIC Corporations (Trading Suspensions Relief) Instrument 2020/289 [F2020L00377]

**ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2020/355
[F2020L00425]**

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instruments, and seeks your advice about this matter.

Exemptions and modifications to primary legislation

Parliamentary oversight

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be enacted via primary rather than delegated legislation). This includes where an instrument modifies or exempts persons or entities from the operation of primary legislation. In addition, Senate standing order 23(3)(k) requires the committee to scrutinise each legislative instrument as to whether it complies with any ground relating to the technical scrutiny of delegated legislation. This includes whether an instrument limits parliamentary oversight.

The instruments provide relief from certain disclosure and licensing requirements in the *Corporations Act 2001* (Corporations Act). To do so, they modify the operation of, or create or extend exemptions to, specified provisions of that Act.

The explanatory statements to the instruments indicate that the measures are intended to be temporary. They also explain that ASIC will continue to monitor the appropriateness of the instruments having regard to the state of capital markets, and will provide 30 days' notice to stakeholders before repealing the measures. The committee understands that the matters ASIC will take into account when making such a decision include the extent of capital raising activities conducted in reliance on the instruments; levels of market volatility; whether adverse economic impacts associated with COVID-19 have eased; and whether governments have lifted restrictions implemented in response to the pandemic.

However, the committee is concerned that the instruments do not specify when the measures will cease. In this regard, the committee draws your attention to its letter of 2 April 2020 in which the committee outlined its expectations in relation to legislative instruments implementing COVID-19 responses measures. In that letter the committee outlined its expectation that such instruments will be time limited where they modify the operation of primary legislation.

In this instance, the committee understands that it is not considered appropriate to specify a cessation date due to uncertainties around the nature, severity and duration of the economic impacts associated with the COVID-19 pandemic. While the committee appreciates this point, the committee considers that the instruments should still specify a date by which the exemptions and modifications will cease in line with the committee's previous advice. This is to ensure an appropriate level of regular parliamentary oversight.

For example, the instruments could specify that the measures cease to operate six months after they commence, with the option to extend this date using a subsequent disallowable legislative instrument if necessary. If it is deemed appropriate to cease the measures at an earlier date, the measures could still be repealed following the provision of 30 days' notice to stakeholders. Noting this, the committee does not consider that specifying an end date for the measures would inhibit ASIC from responding flexibly to the economic impacts associated with the COVID-19 pandemic.

In light of the comments above, the committee requests your advice as to whether the instruments could be amended to specify a date by which the measures in the instruments will cease to operate.

The committee's expectation is to receive a response in time for it to consider and report on the instruments while they are still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

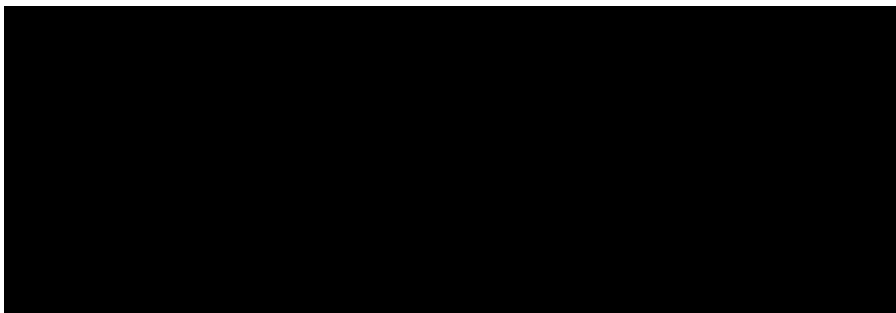
Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **4 June 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,



Senator the Hon Concetta Fierravanti-Wells

Chair

Senate Standing Committee for the Scrutiny of Delegated Legislation



SENATOR THE HON JANE HUME
ASSISTANT MINISTER FOR SUPERANNUATION,
FINANCIAL SERVICES AND FINANCIAL TECHNOLOGY

Ref: MS20-001028

11 JUN 2020

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
Suite S1.111
Parliament House
CANBERRA ACT 2600

Dear Senator ~~Fierravanti-Wells~~

Connie

I am writing in response to your letter dated 21 May 2020, on behalf of Senate Standing Committee for the Scrutiny of Delegated Legislation relating to the following legislative instruments issued by the Australian Securities and Investments Commission (ASIC):

- *ASIC Corporations (Amendment) Instrument 2020/290* [F2020L00376];
- *ASIC Corporations (Trading Suspensions Relief) Instrument 2020/289* [F2020L00377]; and
- *ASIC Corporations (COVID-19 – Advice-related Relief) Instrument 2020/355* [F2020L00425].

The Committee has requested further detailed advice as to whether the instruments could be amended to specify a date by which the measures in the instruments will cease to operate. In responding to the Committee's concerns, I have sought advice from ASIC.

Following further consideration of this issue, ASIC has advised that they will amend the legislative instruments in the following manner:

- a new repeal section will be inserted into *ASIC Corporations (Trading Suspensions Relief) Instrument 2020/289* which will have the effect that the instrument will be repealed 6 months after it commenced on 2 April 2020;
- new amendments will be made to *ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547* [F2020C00262] that will reverse the earlier amendments made by *ASIC Corporations (Amendment) Instrument 2020/290* and will take effect 6 months after those earlier amendments commenced on 2 April 2020; and
- a new repeal section will be inserted into *ASIC Corporations (COVID-19 – Advice-related Relief) Instrument 2020/355* which will have the effect that the instrument will be repealed 6 months after it commenced on 15 April 2020.

I have been informed that ASIC also intends to note in the explanatory statement that ASIC has the ability to repeal the instrument earlier and outline the factors that ASIC will take into account in making this decision. Any early repeal will be subject to 30 days' notice. I am advised that ASIC will attend to these amendments as soon as possible.

I trust this information will be of assistance to you.

Yours sincerely



Senator the Hon Jane Hume



AUSTRALIAN
SENATE

Senate Standing Committee for the

Scrutiny of Delegated Legislation

Parliament House, Canberra ACT 2600

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18 June 2020

Senator the Hon Jane Hume
Assistant Minister for Superannuation, Financial Services
and Financial Technology
Parliament House
CANBERRA ACT 2600

Via email: Senator.Hume@aph.gov.au

CC: tsrdlos@aph.gov.au; committeescrutiny@treasury.gov.au;
Shelby.Brinkley@treasury.gov.au


Dear Assistant Minister,

ASIC Corporations (Amendment) Instrument 2020/290 [F2020L00376]

ASIC Corporations (Trading Suspensions Relief) Instrument 2020/289 [F2020L00377]

ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2020/355 [F2020L00425]

Thank you for your response of 11 June 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation, in relation to the above instruments.

The committee considered your response at its private meeting on 17 June 2020. On the basis of your advice, the committee has concluded its examination of the instrument.

The committee welcomes your undertaking to amend the instruments to specify an end date, and notes that this undertaking was implemented on 12 June 2020.

In the interests of transparency, I note that your undertaking will be recorded as implemented in the *Delegated Legislation Monitor* and this correspondence will be published on the committee's website.

Thank you for your assistance with this matter.

Yours sincerely,


Senator the Hon Concetta Fierravanti-Wells

Chair

Senate Standing Committee for the Scrutiny of Delegated Legislation