



AUSTRALIAN
SENATE

**Senate Standing Committee for the
Scrutiny of Delegated Legislation**

Parliament House, Canberra ACT 2600
02 6277 3066 | sdlc.sen@aph.gov.au
www.aph.gov.au/senate_sdlc

12 November 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@aph.gov.au

Dear Assistant Minister,

ASIC Corporations (Amendment) Instrument 2020/721 [F2020L01064]

ASIC Corporations (IPO Communications) Instrument 2020/722 [F2020L01066]

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 scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instruments, and the committee seeks your advice in relation to this matter.

Exemptions from primary legislation

Modification of 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 implement measures aimed at reducing the costs for issuers undertaking an initial public offer by providing for exemptions from, and modifying the operation of, certain provisions of Chapters 6, 6A, 6C and 6D of the *Corporations Act 2003* (Corporations Act).

The instruments were made under subsections 655A(1), 669(1) and 673(1) and subsection 741(1) of the Corporations Act, respectively. Those subsections allow ASIC to exempt persons, entities and classes of persons and entities from provisions of the Corporations Act, or to declare that certain provisions of that Act apply as if modified or varied.

Provisions that modify or exempt persons or entities from the operation of primary legislation may limit parliamentary oversight, and may subvert the appropriate relationship between Parliament and the executive. The committee considers that such measures should ordinarily be included in primary legislation, unless a sound justification for the use of delegated legislation is provided.

In this instance, the explanatory statements to the instruments explain that it may be appropriate to set out these matters in delegated, rather than primary, legislation as they contain 'tailored policy adjustments designed to ensure the application of primary legislation remain flexible to adapt to market developments and applies in a way that is consistent with the overall intended policy of the primary legislation'.

While the committee acknowledges this explanation, it is concerned that these measures appear to be intended to remain in force for at least 10 years (until the instruments sunset under the *Legislation Act 2003*). The committee's longstanding view is that provisions which modify or exempt persons or entities from the operation of primary legislation should cease to operate no more than three years after they commence. This is to ensure a minimum degree of regular parliamentary oversight.

In light of this, from a scrutiny perspective, the committee considers that the instruments should be amended to specify that they cease to operate three years after it commences. If it becomes necessary to extend the operation of these provisions, the committee considers that this should be done by amending the primary legislation or via a subsequent legislative instrument that is subject to disallowance and parliamentary scrutiny.

The committee therefore requests your advice as to whether the instruments could be amended to specify that the instruments cease to operate three years after they commence.

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is 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 **26 November 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



THE HON JOSH FRYDENBERG MP
TREASURER

Ref: MS20-002561

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

Via email: sdlc.sen@aph.gov.au

Dear Senator Fierravanti-Wells

Thank you for your letter dated 12 November 2020, on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation (the Committee), requesting further advice in relation to:

- *ASIC Corporations (Amendment) Instruments 2020/721* [F2020L01064] (the Amendment Instrument)
- *ASIC Corporations (IPO Communications) Instrument 2020/722* [F2020L01066] (the IPO Instrument), (together, the Instruments).

The Committee has requested advice in relation to exemptions from primary legislation, modification of primary legislation and parliamentary oversight. Specifically, the Committee has requested advice as to whether the Instruments could be amended to specify that the Instruments cease to operate three years after they commence. I understand that the Committee agreed to provide an extension to 2 December 2020 to receive a reply on this matter.

The purpose of the Instruments is to reduce the costs for issuers undertaking an initial public offer (IPO) of securities. The relief provided under the instruments removes the need for issuers to seek the following types of relief from the *Corporations Act 2001* (the Act):

- relief to disregard the relevant interests of the issuer, underwriter or lead manager for the purposes of the takeover provisions in Chapter 6 of the Act where those relevant interests arise because of voluntary escrow arrangements with security holders (voluntary escrow relief); and
- relief from the advertising restrictions in the Act to enable issuers to communicate certain limited information about a planned IPO to their security holders, and current and former employees, before the disclosure document is lodged with ASIC (pre-prospectus communications relief).

The relief in the Instruments has been given by ASIC on a case by case basis routinely since 2013. It is not expected that any developments in the next three years would cause the relief provided under the Instruments to become redundant.

That said, the Government shares the Committee's concerns that there be sufficient Parliamentary oversight. We will continue to engage with ASIC to stress that the period of operation of Instruments made by them should be consistent not only with the policy intent of the underlying primary legislation and the need to minimise any regulatory burden imposed on individuals or entities, but also importantly with the need for Parliamentary oversight of instruments that modify the operation of the primary legislation.

We will engage with ASIC as they monitor the operation of the Instruments and ensure that they take steps to amend the Instruments in the unlikely event they become unfit for purpose.

I trust this information will be of assistance to the Committee.

Yours sincerely

THE HON JOSH FRYDENBERG

2 / 12 / 2020



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Scrutiny of Delegated Legislation

Parliament House, Canberra ACT 2600
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10 December 2020

The Hon Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

Via email: Josh.Frydenberg.MP@aph.gov.au

CC: Senator.Hume@aph.gov.au; tsrdlos@treasury.gov.au;
committeescrutiny@treasury.gov.au

Dear Treasurer,

ASIC Corporations – various instruments [F2020L00962] [F2020L01045] [F2020L01064] [F2020L01066] [F2020L01069]

Thank you for your responses of 2 December 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above instruments. The committee considered your responses at its private meeting on 9 December 2020 and has resolved to seek your further advice about the issues outlined below.

Modification of primary legislation

Parliamentary oversight

The committee welcomes your advice that the government shares its concerns about the need to ensure appropriate parliamentary oversight of delegated legislation. It also welcomes your commitment to continuing to engage with the Australian Securities and Investments Commission (ASIC) to stress that the period in which the instruments are operational should be consistent with not only their policy intent and the need to reduce regulatory burdens, but also with the need to ensure regular parliamentary oversight.

Against this background, the committee notes your advice that it is not appropriate to amend these particular instruments to the time periods requested by the committee, as it is likely that the relevant measures will have ongoing relevance, and will therefore need to extend beyond those proposed periods. However, in this regard, it is unclear to the committee why ASIC could not simply amend the relevant instruments just prior to the time the instruments would cease, if the measures needed to be in place for a longer period.

In the committee's view, such an approach would facilitate appropriate parliamentary oversight of measures which modify primary legislation, without preventing ASIC from continuing those measures in a subsequent instrument, should they still be required.

In the interests of promoting parliamentary oversight of delegated legislation, the committee therefore requests your more detailed advice as to why it would not be possible for ASIC to amend each instrument to limit its duration to that previously suggested by the committee and, if necessary, subsequently amend the instruments if the relevant measures are still required beyond the cessation time.

The committee's expectation is to receive a response in time for it to consider and report on these instruments prior to consideration of the disallowance notices which are currently in place. Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **13 January 2020**.

The committee also notes that one of the instruments was made in response to the COVID-19 pandemic. The committee's views in relation to COVID-19 related delegated legislation are set out in detail in the interim report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight. The interim report highlights the importance of ensuring parliamentary oversight during times of emergency and notes that COVID-19 serves to shine a light on the deeper, systemic issues which inhibit Parliament from effectively overseeing delegated legislation at all times, not just during emergencies.

The committee will continue to closely monitor COVID-19 related delegated legislation in the future to ensure that it complies with the recommendations set out in the interim report.

A copy of the committee's interim report is available at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Exemptfromoversight/Interim_report.

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



THE HON JOSH FRYDENBERG MP
TREASURER

Ref: MS21-000070

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

Via email: sdlc.sen@aph.gov.au

Dear Senator Fierravanti-Wells

Thank you for your letter dated 10 December 2020, on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation (the Committee), requesting further advice in relation to:

- *ASIC Corporations (Amendment) Instruments 2020/721* (the Amendment Instrument);
- *ASIC Corporations (IPO Communications) Instrument 2020/722* (the IPO Instrument);
- *ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778* (the Hardship Instrument);
- *ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787* (the Litigation Instrument); and
- *ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98* (the IDR Instrument)(together, the instruments).

The Committee has asked whether these instruments could be amended to bring forward their respective sunseting dates to either three or five years after the relevant instrument is made. I understand that the Committee agreed to provide an extension to 29 January 2021 to receive a reply on this matter.

ASIC along with other regulators has a range of powers to make legislative instruments. For ASIC in particular this includes powers to make legislative instruments that modify the effect of the law or exempt a class of persons or products from requirements in the law (exemption and modification powers). Other powers provide ASIC and other regulators with the ability to set standards or make rules via legislative instrument. Legislative instruments made under these powers are, as with all Commonwealth legislative instruments, subject to a default 10 year sunseting period but may provide for a shorter sunseting period. The appropriate length of the sunseting period for

individual legislative instruments will vary depending on the nature of the instrument and the circumstances it addresses.

As I have noted in my previous correspondence with the Committee, the Government shares the Committee's objective that the period of operation of legislative instruments should be consistent with maintaining appropriate Parliamentary oversight, while also having consideration for the underlying policy intent of the relevant primary law and the regulatory burden imposed on individuals and entities. With these considerations in mind, in my view, a 10 year sunset period will generally be more appropriate where:

- a) The instrument is made under a specifically delegated power which is set out in the primary legislation and is intended to complement the requirements or objectives in the primary legislation.
- b) There would be appreciable business uncertainty about the treatment of, or framework for, business activities giving rise to significant commercial risks and/or costs if the sunset period was shorter. For example, uncertainty which impacts investment in compliance systems, or the effective operation of a market, are examples where this principle may apply.
- c) The legislative instrument deals with confined or unique circumstances affecting a particular class of entities or products which do not fit within the strict operation of the primary law but would result in anomalous or inconsistent outcomes given the intent of the primary legislation as set by Parliament.
- d) The legislative instrument makes minor and technical changes which support the practical operation of the legislative regime.

In my view, where these principles are not met a shorter sunset period, such as a five year sunset period, will generally be more appropriate.

These principles have been shared with ASIC and I have communicated to ASIC that I expect ASIC to take these principles into consideration in determining the appropriate sunset period for legislative instruments.

I note that the Committee has also suggested that a three year sunset period would be appropriate for some instruments. While there will be circumstances where it is appropriate for a legislative instrument to operate for a period of three years or less, for example where the instrument is required to address short-term transitory circumstances, this will not always be the case and there are a range of practical considerations with instruments sunset after three years.

Amending and remaking of an expiring instrument is not a mere technical or procedural formality and each time an instrument approaches its sunset date, the instrument must be reviewed and consulted upon to determine whether it remains fit-for-purpose. This process of unmaking or remaking an instrument imposes costs on those affected by or concerned with the instrument. This includes costs associated with engaging with consultation processes and commercial uncertainty for businesses about whether an instrument will be extended or what its future form will be. For more complex instruments, the review, consultation and assessment process will typically begin 18 months to two years before the sunset date for the instrument.

For these reasons, a five year sunset period is, in my view, a more appropriate duration for most instruments that do not meet the principles I have outlined above.

Parliamentary Oversight of the Instruments

Applying the above principles, I consider that the default length of ten years remains appropriate for the Amendment Instrument, IPO Instrument and the IDR Instrument for the reasons set out below. I note that the Hardship Instrument already has a sunset period of 5 years which I also consider to be appropriate. However, in assessing the Litigation Instrument against the principles, I support the Committee's suggestion for a shorter sunset period and consider it appropriate for it cease to operate 5 years after commencing.

Litigation Instrument

While the Litigation Instrument was made to address business uncertainty while litigation funders were transitioned into the managed investment scheme (MIS) regime, it was not made under a specifically delegated power and the changes, particularly when considered in the cumulative, are more than minor.

The Litigation Instrument was made on 22 August 2020, on the same day that Government regulations, through *Corporations Amendment (Litigation Funding) Regulations 2020*, removed the exemption for litigation funders from the MIS and Australian Financial Services License regimes. ASIC's Explanatory Statement for the Litigation Instrument clarifies that the instrument provides relief to facilitate the implementation of the new regulatory framework for litigation funding schemes. As my letter of 2 December 2020 stated, the matters addressed will have ongoing application and relevance to litigation funding schemes.

The Litigation Instrument makes some exemptions from the MIS regime that are technical and support the operation of the legislative regime, but some of them are exemptions from significant components of the MIS regime. Some of the core requirements for most MISs relate to the provision and content requirements of Product Disclosure Statements, the process for withdrawing from a MIS, and to maintain a register of members – all of which are amended for litigation funding schemes through the instrument. The exemptions from these requirements provided in this instance are therefore more suited to sunset after five years, rather than ten.

My support of the Committee's view that a shorter sunset period is appropriate for this instrument has been communicated to ASIC.

The IDR Instrument

The IDR Instrument updates standards and requirements for internal dispute resolution processes under specific powers provided by the Parliament, with only minor and technical modifications to the primary law. Industry is now undertaking planning, systems development and training to ensure compliance with the requirements of the instrument which represents a significant undertaking for financial firms. Given the scale of investment and training required, I consider a shorter sunset period would lead to uncertainty and additional cost for businesses such that the default 10-year sunset period remains appropriate for the IDR Instrument.

The Amendment and IPO Instruments

As outlined in my letter of 2 December 2020, the Amendment Instrument provides relief to disregard the relevant interests of the issuer, underwriter or lead manager for the purposes of takeover provisions where those relevant interests arise because of voluntary escrow arrangements. As ASIC has stated in the Explanatory Statement, these types of relief applications are minor and technical in nature and involve the application of existing policy to new situations. Voluntary escrow – where existing security holders agree to hold their securities for a certain period of time in order to promote investor confidence in the IPO – is not a method of takeover and ASIC's

instrument makes a technical change that supports the effective functioning of the IPO market and is consistent with the intent of the takeover provisions.

The IPO Communications Instrument is similarly focussed on reducing the costs associated with an IPO, by providing relief from advertising restrictions in the Act to enable issuers to communicate limited information to security holders before a disclosure document is lodged with ASIC. This information is limited to non-promotional factual material. This remains consistent with the intent of the law – to prevent issuers from seeking to induce investors without adequate disclosure being made – while allowing issuers to undertake the necessary preparatory work. This technical change provides certainty to businesses and allows for consistent and efficient outcomes in IPOs without contradicting the intent of the legislation.

Given the two instruments facilitate business certainty, deal with anomalous outcomes, and are minor and technical changes that support the practical operation of the legislative regime, I consider the default 10 year period to be appropriate.

The Hardship Instrument

The Hardship Instrument is currently scheduled to sunset after five years. This relief is intended to respond to the immediate and further possible medium-term effects of the COVID-19 pandemic, by allowing funds to respond to the hardship faced by their investors without seeking individual relief from ASIC. Providing general relief rather than relief on a case-by-case basis is a minor change that gives businesses certainty that they can respond to hardship claims quickly. It does not impose an obligation on the entity, but rather provides flexibility during the particular set of circumstances that may arise during a period of economic volatility. A five year duration for this instrument is an appropriate length of time to evaluate these particular circumstances, based on the experience during the Global Financial Crisis.

I trust this information will be of assistance to the Committee.

Yours sincerely

THE HON JOSH FRYDENBERG MP

23 / 1 / 2021



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4 February 2021

The Hon Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

Via email: tsrdlos@treasury.gov.au
CC: committeescrutiny@treasury.gov.au

Dear Treasurer,

ASIC Corporations – various instruments [F2020L00962] [F2020L01045] [F2020L01064] [F2020L01066] [F2020L01069]

Thank you for your response of 28 January 2021 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 3 February 2021. Whilst noting your advice, the committee remains concerned that these five instruments raise significant scrutiny concerns that should be brought to the attention of the Senate.

The committee's scrutiny concerns are detailed in Chapter 1 of its *Delegated Legislation Monitor 2 of 2021*, available on the committee's website at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Monitor.

As set out in the Monitor, the committee welcomes your constructive engagement in relation to the committee's scrutiny of these instruments. However, the committee remains of the view that each of the five ASIC instruments should be amended to limit their duration to that previously suggested by the committee.

The committee has already given protective notices of motion to disallow each of the five instruments to provide the Senate with sufficient time to consider the committee's scrutiny concerns. The committee has resolved not to withdraw these notices of motion in order to highlight the significance of its concerns.

Your response to the committee's request for further advice in relation to the instruments, as set out in the Monitor, will inform the committee's consideration of whether to withdraw the notices of motion to disallow these instruments.

To facilitate the committee's timely consideration of these matters and noting that the disallowance period for the ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 [F2020L00962] expires on 22 February 2021, the committee would appreciate your response by **11 February 2021**.

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

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

Yours sincerely,

Senator ~~the~~ Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation



THE HON JOSH FRYDENBERG MP
TREASURER

Ref: MS21-000114

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

Via email: sdlc.sen@aph.gov.au

Dear Senator

Thank you for your correspondence, on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation, concerning the following instruments that are subject to protective disallowance motions:

- *ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98* [F2020L00962] (the IDR Instrument), for which the motion expires on Monday 22 February 2021;
- *ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787* [F2020L01045] (the Litigation Instrument), for which the motion expires on Tuesday 23 February 2021;
- *ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778* [F2020L01069], *ASIC Corporations (Amendment) Instrument 2020/721* [F2020L01064], *ASIC Corporations (IPO Communications) Instrument 2020/722* [F2020L01066], for which the motions expire on Monday 15 March 2021; and
- *ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734* [F2020L01199], *ASIC Credit (Electronic Precontractual Disclosure) Instrument 2020/835* [F2020L01261] and *ASIC Credit (Notice Requirements for Unlicensed Carried Over Instrument Lenders) Instrument 2020/834* [F2020L01259], for which the motions expire on Tuesday 11 May 2021.

I recognise that it remains important that instruments made within my portfolio are consistent with the principles outlined in the changes to the Senate's standing orders in November. Furthermore, as I have previously advised, the Government shares the Committee's concerns about ensuring there is appropriate Parliamentary oversight of legislative instruments.

Thank you for making the time to discuss these issues with my office yesterday. To allow us to resolve the Committee's concerns, and based on your discussion with my office, I am seeking the Committee's agreement to the following:

- The Committee will withdraw the motion to disallow the *ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98* before the expiration of the disallowance period on Monday 22 February 2021;
- The Committee will withdraw the motion to disallow the *ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787* prior to the expiration of the disallowance period on Tuesday 23 February 2021, on the basis that ASIC will amend the sunset period for this instrument by 22 February 2021 to provide that the instrument will cease 5 years after commencement;
- For those instruments subject to disallowance motions which expire on 15 March 2021, my office will engage with you and the Committee in good faith to seek a resolution to the Committee's concerns; and
- Following the tabling of the Committee's final report into the exemption of delegated legislation from Parliamentary oversight, my office will again engage with the Committee in good faith to find a longer-term solution to resolve the Committee's concerns in relation to those instruments, subject to disallowance motions which expire on 11 May 2021 and legislative instruments across the portfolio more broadly.

As you know, the Treasury portfolio is responsible for a significant number of delegated powers that modify or exempt persons or entities from the operation of primary laws, many of which are in the *Corporations Act 2001*. Improving the coherence of this framework and the consistency with which it has been managed has been a priority for the Treasury in recent years.

In response to the concerns of the Committee and others, the Treasury has been implementing improvements to ensure that the Committee's concerns are addressed in the development of legislation in a consistent way and are appropriately explained in the associated explanatory materials.

In relation to the broader legislative framework, the Government has commissioned the Australian Law Reform Commission (ALRC) to conduct a review of the corporations and financial services law to consider whether changes could be made to simplify and rationalise the *Corporations Act 2001* and the *Corporations Regulations 2001*.

As part of this review, the ALRC has been specifically asked to consider the coherence of the regulatory design and the hierarchy of laws, including the relationship between the primary law, regulations and delegated powers, including exemption and modification powers. I encourage the Committee to engage the ALRC on its review.

I look forward to continuing to work constructively with you to resolve these issues of mutual concern.

Yours sincerely

THE HON JOSH FRYDENBERG MP

CB / 2 / 2021



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25 February 2021

The Hon Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

Via email: tsrdlos@treasury.gov.au
CC: committeescrutiny@treasury.gov.au


Dear Treasurer,

ASIC Corporations – various instruments [F2020L00962] [F2020L01045] [F2020L01064] [F2020L01066] [F2020L01069] [F2020L01199] [F2020L01261] [F2020L01259]

Thank you for your response of 18 February 2021 to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above instrument.

The committee has resolved to withdraw its notices of motion to disallow six of the eight ASIC instruments detailed in Chapter 1 of its *Delegated Legislation Monitor 4 of 2021*, on the basis of your undertaking to engage with the committee to resolve the committee's systemic scrutiny concerns in relation to legislative instruments across the Treasury portfolio, including the eight instruments referred to above.

The committee welcomes your advice that the government has commissioned the Australian Law Reform Commission (ALRC) to conduct a review of the corporations and financial services law. However, the committee would like to emphasise that it considers that this review is separate to and independent of your undertaking to engage with the committee in relation to our systemic scrutiny concerns, and anticipates that the outcome of this undertaking is not dependent on the outcome of the ALRC review.

As the committee has not yet received a response to all scrutiny concerns raised by the committee in relation to the ASIC Credit (Electronic Precontractual Disclosure) Instrument 2020/835 [F2020L01261] (the Electronic Precontractual Disclosure Instrument) and the ASIC Credit (Notice Requirements for Unlicensed Carried Over Instrument Lenders) Instrument 2020/834 [F2020L01259] (the Carried Over Instrument Lenders Instrument), the committee is reiterating its previous requests for advice.

Your response to these ongoing scrutiny concerns will assist the committee in determining whether to withdraw the disallowance notices currently in place on these instruments. The committee has therefore resolved to retain its notices of motion to disallow the Electronic Precontractual Disclosure Instrument and the Carried Over Instrument Lenders Instrument.

The committee's systemic scrutiny concerns, and requests for advice, are set out in detail in Chapter 1 of its *Delegated Legislation Monitor 4 of 2021*, available on the committee's website at: [https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated Legislation/Monitor](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Monitor).

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

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

Yours sincerely,

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation