

Attachment 9 to CS 36: Draft instrument



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Sale Offers By Controllers) Instrument 2026/<Number>

I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 2026

[DRAFT ONLY – NOT FOR SIGNATURE]

<signature>

<insert name>

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Sale Offers By Controllers) Instrument 2026/<Number>*.

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 741(1) and 1020F(1) of the *Corporations Act 2001*.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Simplified outline of this instrument

This instrument modifies various provisions of the Act to ensure the effective operation of the disclosure exemptions in sections 708A and 1012DA of the Act for certain sale offers made within 12 months of a sale by a controller.

6 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

regulated person has the meaning given by section 1011B of the Act.

Part 2—Declaration

7 Sale offers of securities by a controller

- (1) Chapter 6D of the Act applies to all persons as if subsection 707(5) were modified or varied by, after “section 708”, inserting “or 708A”.
- (2) Chapter 6D of the Act applies to all persons as if section 708A were modified or varied as follows:
 - (a) in paragraph (1A)(c) omit “when the relevant securities were issued”, substitute “when the relevant securities were sold by the controller”;
 - (b) omit paragraph (5)(a), substitute:

“(a) the relevant securities are in a class of securities that were quoted securities at all times in the following period:

 - (i) if this section applies because of subsection (1)—
3 months before the day on which the relevant securities were issued; or
 - (ii) if this section applies because of subsection (1A)—
3 months before the day on which the relevant securities were sold by the controller; and” ;
 - (c) omit paragraph (5)(b), substitute:

“(b) trading in that class of securities on a declared financial market on which they were quoted was not suspended for more than a total of 5 days during:

 - (i) if this section applies because of subsection (1)—
the shorter of the period during which the class of securities were quoted, and the period of 12 months before the day on which the relevant securities were issued; or
 - (ii) if this section applies because of subsection (1A)—
the shorter of the period during which the class of securities were quoted, and the period of 12 months before the day on which the relevant securities were sold by the controller; and ”;

Note: **declared financial market** is defined in section 9D of the Act. Until the time the first declaration is made under subsection 9D(2), a market that was prescribed as a **prescribed financial market** by former regulation 1.0.02A of the *Corporations Regulations 2001* is taken to be a declared financial market: see section 1705F of the Act.

(d) omit paragraph (6)(a), substitute:

“(a) is given:

- (i) if this section applies because of subsection (1)—within 5 business days after the day on which the relevant securities were issued by the body; or
- (ii) if this section applies because of subsection (1A)—within 5 business days after the day on which the relevant securities were sold by the controller; and”;

(e) omit paragraph (6)(b), substitute:

“(b) states that:

- (i) if this section applies because of subsection (1)—the body issued the relevant securities without disclosure to investors under this Part; or
- (ii) if this section applies because of subsection (1A)—the controller sold the securities without disclosure to investors under this Part; and ”;

(f) omit subsection (9), substitute:

“Obligation to correct defective notice

(9) A person contravenes this subsection if:

(a) where the person is the body:

- (i) the notice given under paragraph (5)(e) is defective; and
- (ii) the body becomes aware of the defect in the notice within the following period:
 - (A) if this section applies because of subsection (1) —12 months after the relevant securities are issued; or
 - (B) if this section applies because of subsection (1A)—12 months after the relevant securities are sold by the controller; and
- (iii) the body does not, within a reasonable time after becoming aware of the defect, give the relevant market operator a notice that sets out the information necessary to correct the defect;

- (b) where the person is the controller:
 - (i) the notice given under subparagraph (5)(e)(ii) is defective; and
 - (ii) the controller becomes aware of the defect in the notice within 12 months after the relevant securities are sold by the controller; and
 - (iii) the controller does not, within a reasonable time after becoming aware of the defect, make the body aware of the defect.”.

8 Sale offers of financial products by a controller

- (1) Part 7.9 of the Act applies in relation to regulated persons as if paragraph 1012C(9)(b) were modified or varied by omitting “within 12 months after issue” and substituting “within 12 months after their sale by the controller”.
- (2) Part 7.9 of the Act applies in relation to regulated persons as if section 1012DA were modified or varied as follows:
 - (a) in paragraph (1A)(d) omit “when the relevant product was issued”, substitute “when the relevant product was sold by the controller”;
 - (b) omit paragraph (5)(a), substitute:
 - “(a) the relevant product is in a class of financial products that were quoted securities at all times in the following period:
 - (i) if the regulated person is not required under subsection (1) to give a Product Disclosure Statement—3 months before the day on which the relevant product was issued; or
 - (ii) if the regulated person is not required under subsection (1A) to give a Product Disclosure Statement—3 months before the day on which the relevant product was sold by the controller; and” ;
 - (c) omit paragraph (5)(b), substitute:
 - “(b) trading in that class of financial products on a declared financial market on which they were quoted was not suspended for more than a total of 5 days during:
 - (i) if the regulated person is not required under subsection (1) to give a Product Disclosure Statement—the shorter of the period during which the class of financial products was quoted, and the period

of 12 months before the day on which the relevant product was issued; or

- (ii) if the regulated person is not required under subsection (1A) to give a Product Disclosure Statement—the shorter of the period during which the class of financial products was quoted, and the period of 12 months before the day on which the relevant financial product was sold by the controller; and”;

- (d) omit paragraph (6)(a), substitute:

“(a) is given:

- (i) if the regulated person is not required under subsection (1) to give a Product Disclosure Statement—within 5 business days after the day on which the relevant financial product was issued; or
- (ii) if the regulated person is not required under subsection (1A) to give a Product Disclosure Statement—within 5 business days after the day on which the relevant financial product was sold by the controller; and”;

- (e) omit paragraph (6)(b), substitute:

“(b) states that:

- (i) if the regulated person is not required under subsection (1) to give a Product Disclosure Statement—the relevant financial product was issued without a Product Disclosure Statement for the relevant product being prepared; or
- (ii) if the regulated person is not required under subsection (1A) to give a Product Disclosure Statement—the relevant financial product was sold by the controller without a Product Disclosure Statement for the relevant product being prepared; and”;

- (f) omit subsection (9), substitute:

“Obligation to correct defective notice

- (9) A person contravenes this subsection if:

- (a) where the person is the issuer:

- (i) the notice given under paragraph (5)(e) is defective; and

- (ii) the issuer becomes aware of the defect in the notice within the following period:
 - (A) if the regulated person is not required under subsection (1) to give a Product Disclosure Statement—12 months after the relevant product is issued; or
 - (B) if the regulated person is not required under subsection (1A) to give a Product Disclosure Statement—12 months after the relevant product is sold by the controller; and
 - (iii) the issuer does not, within a reasonable time after becoming aware of the defect, give the relevant market operator a notice that sets out the information necessary to correct the defect;
- (b) where the person is the controller:
- (i) the notice given under subparagraph (5)(e)(ii) is defective; and
 - (ii) the controller becomes aware of the defect in the notice within 12 months after the relevant product is sold by the controller; and
 - (iii) the controller does not, within a reasonable time after becoming aware of the defect, make the issuer aware of the defect.”.

Part 3—Repeal

9 Repeal

This instrument is repealed at the start of 1 April 2031.

Schedule 1—Repeals

ASIC Corporations (Sale Offers By Controllers) Instrument 2016/81

1 The whole of the instrument

Repeal the instrument.