

Attachment 1 to CP 329: Draft instrument



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Consent to Deductions— Ongoing Fee Arrangements) Instrument 2020/XX

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

Date 2020

[CONSULTATION DRAFT – NOT FOR SIGNATURE]

<signature>

<insert name>

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument 2020/XX*.

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 section 962T of *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

account holder has the same meaning as in subsections 962R(1) and 962S(1) of the Act.

consent expiry date means the date of the day that corresponds to the end of the period referred to in paragraph 962V(b) of the Act.

fee recipient has the meaning given by section 962C of the Act.

ongoing fees has the meaning given by section 962B of the Act.

ongoing fee arrangement has the meaning given by section 962A of the Act.

Part 2—Determination

5 Requirements for giving written consent to deductions of ongoing fees

- (1) The requirements in this section are specified for the purposes of section 962T of the Act in relation to giving written consent by an account holder to permit a fee recipient in relation to an ongoing fee arrangement to deduct, or arrange for or accept the deduction of, ongoing fees from the account holder's account.

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- (2) A written consent may only be given by an account holder by signing, or otherwise agreeing in writing (including electronically) to the terms of, a document seeking consent which complies with this section.
- (3) The document seeking consent must include the following information:
 - (a) the name of the account holder;
 - (b) the name and contact details of the fee recipient;
 - (c) an explanation of why the account holder's consent is being sought;
 - (d) information about the services that the account holder will be entitled to receive under the ongoing fee arrangement;
 - (e) subject to paragraph (f)—the frequency, amount and time of payment of each ongoing fee the account holder will pay during a period of 12 months determined by the fee recipient beginning on a day within 30 days after the document seeking consent is given or made available by the fee recipient to the account holder;
 - (f) if the frequency, amount or time of payment of an ongoing fee cannot be determined at the time the document seeking consent is given or made available by the fee recipient to the account holder—a reasonable estimate of the frequency, amount or time of payment (as applicable) of the ongoing fee that the account holder will pay during the period referred to in paragraph (e) and an explanation of the method used to work out the estimate;
 - (g) details of the account from which the account holder will be paying ongoing fees and, if the account holder will pay ongoing fees from more than one account, a breakdown of the proportion of the ongoing fees that will be deducted from each account;
 - (h) a warning of the benefits to which the account holder is entitled that may cease or be reduced because of deduction of the ongoing fees;
 - (i) the consent expiry date accompanied by statements to the effect that:
 - (i) the consent can last until the consent expiry date providing the ongoing fee arrangement continues; and
 - (ii) the account holder can withdraw their consent or terminate or vary the ongoing fee arrangement at any time by notice in writing to the fee recipient.
- (4) The document seeking consent must be worded and presented in a clear, concise and effective manner.
- (5) The written consent must bear a date indicating when it was given.

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