

## Attachment 9 to CP 365: Draft instrument



**ASIC**  
Australian Securities &  
Investments Commission

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### **ASIC Corporations (Changes to a Bidder's Statement between Lodgment and Dispatch) Instrument 2023/XXX**

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I, [ ], delegate of the Australian Securities and Investments Commission,  
make the following legislative instrument.

Date

[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 (Changes to a Bidder's Statement between Lodgment and Dispatch) Instrument 2023/XXX*.

### 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](http://www.legislation.gov.au).

### 3 Authority

This instrument is made under subsection 655A(1) of the Act.

### 4 Definitions

In this instrument:

*Act* means the *Corporations Act 2001*.

## Part 2—Declaration

### 5 Changes to a bidder's statement between lodgment and dispatch

Chapter 6 of the Act applies to all persons as if the Chapter were modified or varied as follows:

- (a) omit item 6 in the table in subsection 633(1), substitute:

“6 The bidder must:

(a) if the bidder is not eligible to rely on section 633A—send the bidder's statement and offers to each person (other than the bidder) who, as at the date set by the bidder under subsection (2), holds:

- securities in the bid class; or
- if the bid extends to securities that come to be in the bid class due to the conversion of or exercise of rights attached to other securities (see subsection 617(2))—the other securities;

or:

(b) if the bidder is eligible to rely on section 633A—send the replacement bidder's statement and offers to each person (other than the bidder) who, as at the date set by the bidder under subsection (2), holds:

- securities in the bid class; or
- if the bid extends to securities that come to be in the bid class due to the conversion of or exercise of rights attached to other securities (see subsection 617(2))—the other securities.

In either case, the offers must be made on the terms set out in the original bidder's statement and the offer document lodged with ASIC under item 2.

For subitem (a), to be done:

- within a 3 day period; and
- within 14—28 days after the bidder's statement is sent to the target.

The directors of the target may agree that the offers and accompanying documents be sent earlier.

*See also subsections (5) and (6).*

*Item 2 of the table in section 611 covers offers made by the bidder on-market during the period between the lodgment of the bidder's statement and the making of offers under the bid.*

*Sections 648B and 648C provide for the manner in which documents may be sent to holders.*

For subitem (b), to be done:

- (a) within a 3 day period; and
- (b) within 14—28 days after the bidder becomes eligible to rely on section 633A unless one of the following subparagraphs apply in which case it may be done less than 14 days after the bidder becomes eligible to rely on that section:
  - (i) the target agrees in writing, following approval of this agreement in any of the ways a target's statement must be approved under subsection 639(1);
  - (ii) ASIC agrees in writing; or
  - (iii) all changes to the bidder's statement reflect a change in the valuation of securities offered as bid consideration since the day that the bidder lodged the original bidder's statement.”;

- (b) after section 633 insert:

**“633A Off-market bid – Replacement bidder’s statement**

- (1) This section applies to an off-market bid before the bidder’s statement has been sent to any holder of bid class securities.
- (2) For the purposes of subitem 6(b) of the table subsection 633(1), a bidder is eligible to rely on this section if the bidder, no later than the time allowed for sending the original bidder’s statement to persons holding bid class securities under subitem 6(a) of the table in subsection 633(1):
- (a) lodges with ASIC; and
  - (b) sends to the target; and
  - (c) if the bid class securities are quoted and the target is listed—sends to the operator of each prescribed financial market on which the target’s securities are quoted;

a replacement bidder’s statement and a copy of that replacement bidder’s statement marked to show all changes from the original bidder’s statement.

- (3) In this section and subsection 633(1):

***replacement bidder’s statement*** means a bidder’s statement that:

- (a) incorporates all the substantive information in an original bidder’s statement and in each supplementary bidder’s statement that was lodged in relation to the original bidder’s statement before, or at the same time as, the time when the replacement bidder’s statement is lodged with ASIC; and
- (b) explains that it replaces the original bidder’s statement and each supplementary statement and states the date or dates that the original bidder’s statement and each supplementary statement were lodged with ASIC; and
- (c) bears a date that is the same as the date that it is lodged with ASIC; and
- (d) sets out or reflects offers under the bid that are on the same terms as those set out in the original bidder’s statement and offer document (if any) lodged with ASIC under item 2 of the table in subsection 633(1).”;

(c) omit item 6 in the table in subsection 635(1), substitute:

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| <p>“6 The bidder must:</p> <p>(a) if the bidder is not eligible to rely on subsection 635A—send to each holder of bid class securities (other than the bidder):</p> <ul style="list-style-type: none"> <li>• a copy of the bidder's statement; and</li> <li>• a copy of any other document that was sent with the bidder's statement to the relevant market operator;</li> </ul> | <p>For subitem (a), within 14 days after the announcement is made.</p> |
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or:

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| <p>(b) if the bidder is eligible to rely on section 635A—send to each holder of bid class securities (other than the bidder):</p> <ul style="list-style-type: none"> <li>• a copy of the replacement bidder's statement; and</li> <li>• a copy of any other document that was sent with the replacement bidder's statement to the relevant market operator.</li> </ul> | <p>For subitem (b), within 14 days after the bidder is eligible to rely on section 635A.</p> <p><i>Sections 648B and 648C provide for the manner in which documents may be sent to holders.”;</i></p> |
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(d) omit item 13 in the table in subsection 635(1), substitute:

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| <p>“13 The target must send to each holder of bid class securities:</p> <ul style="list-style-type: none"> <li>• a copy of the target's statement; and</li> <li>• a copy of any other document that was sent with target's statement to the relevant market operator.</li> </ul> | <p>No later than the last date for the bidder to send the bidder's statement under item 6(a), or the replacement bidder statement under item 6(b) as applicable.</p> <p><i>Sections 648B and 648C provide for the manner in which documents may be sent to holders.”;</i></p> |
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(e) omit item 14 in the table in subsection 635(1), substitute:

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| <p>“14 The bidder must make offers for the securities under the bid through the relevant financial market.</p> | <p>If the bidder does not make the offers at that time, the bidder contravenes this section.</p> <p><i>Item 2 of the table in section 611 covers offers made by the bidder on market during the period between the announcement and the making of the offers under the bid”;</i></p> |
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- (f) after section 635 insert:

**“635A Market bid – Replacement bidder’s statement**

- (1) This section applies to a market bid before the bidder’s statement has been sent to any holder of bid class securities.
- (2) For the purposes of subitem 6(b) of the table subsection 635(1), a bidder is eligible to rely on this section if the bidder, no later than the time allowed for sending the original bidder’s statement to persons holding bid class securities under subitem 6(a) of the table in subsection 635(1):
  - (a) lodges with ASIC; and
  - (b) sends to the target; and
  - (c) sends to the operator of each prescribed financial market on which the target’s securities are quoted;

a replacement bidder’s statement and a copy of that replacement bidder’s statement marked to show all changes from the original bidder’s statement.

- (3) In this section and in subsection 635(1):

***replacement bidder’s statement*** means a bidder’s statement that:

- (a) incorporates all the substantive information in an original bidder’s statement and in each supplementary bidder’s statement that was lodged in relation to the original bidder’s statement before, or at the same time as, the time when the replacement bidder’s statement is lodged with ASIC; and
- (b) explains that it replaces the original bidder’s statement and each supplementary statement and states the date or dates that the original bidder’s statement and each supplementary statement were lodged with ASIC; and
- (c) bears a date that is the same as the date that it is lodged with ASIC; and
- (d) sets out or reflects offers under the bid that are on the same terms as those set out in the original bidder’s statement and offer document (if any) lodged with ASIC under item 5 of the table in subsection 635(1).”;

(g) omit subsection 647(3) (excluding the note), substitute:

“(3) A bidder or target must do the following in relation to a supplementary statement:

- (a) for a supplementary bidder’s statement—the bidder must as soon as practicable:
  - (i) lodge the supplementary statement with ASIC; and
  - (ii) if the bid class securities are quoted and the target is listed—send the supplementary statement to the operator of each prescribed financial market on which the target’s securities are quoted; and
  - (iii) if the bid is an off-market bid, the bid class securities are not quoted and the bidder has sent a bidder’s statement under item 6 of the table in subsection 633(1) or item 6 of the table in subsection 635(1)—send the supplementary statement to all holders of bid class securities who have not accepted an offer under the bid.
- (b) for a supplementary target’s statement—the target must as soon as practicable:
  - (i) lodge the supplementary statement with ASIC; and
  - (ii) if the bid class securities are quoted and the target is listed—send the supplementary statement to the operator of each prescribed financial market on which the target’s securities are quoted; and
  - (iii) if the bid is an off-market bid and the bid class securities are not quoted—send the supplementary statement to all holders of bid class securities who have not accepted an offer under the bid.”.