

# Attachment 15 to CS 36: Draft instrument



**ASIC**  
Australian Securities &  
Investments Commission

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## **ASIC Corporations (Minimum Bid Price) Instrument 2026/<Number>**

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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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## Contents

<b>Part 1—Preliminary</b>	<b>3</b>
1 Name of legislative instrument .....	3
2 Commencement .....	3
3 Authority .....	3
4 Schedules .....	3
5 Simplified outline of this instrument .....	3
6 Definitions .....	4
<b>Part 2—Declaration</b>	<b>5</b>
7 Minimum bid price .....	5
<b>Part 3—Repeal</b>	<b>8</b>
8 Repeal .....	8
<b>Schedule 1—Repeals</b>	<b>9</b>
<i>ASIC Corporations (Minimum Bid Price) Instrument 2015/1068</i> .....	9

## Part 1—Preliminary

### 1 Name of legislative instrument

This is the *ASIC Corporations (Minimum Bid Price) 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](http://www.legislation.gov.au).

### 3 Authority

This instrument is made under subsection 655A(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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Section 621 of the Act requires that the minimum consideration for securities under a takeover bid must equal or exceed the maximum consideration the bidder or an associate has provided or agreed to provide in the 4 months before the date of the bid (commonly referred to as the ‘minimum bid price’).

This instrument modifies section 621 to:

- (a) permit a bidder to offer less than the minimum bid price where there is a decrease in the value of the target’s quoted securities due to a share split or dividend; and
- (b) permit a bidder to offer less than the minimum bid price to certain bodies corporate in the bidder’s wholly-owned group, and certain nominees and bare trustees for those bodies; and
- (c) where the consideration offered includes quoted securities, permit a bidder to ascertain their value at a time chosen by the bidder within 5 business days before the date of the bid.

Various requirements apply in relation to the permitted actions.

## **6 Definitions**

In this instrument:

*Act* means the *Corporations Act 2001*.

## Part 2—Declaration

### 7 Minimum bid price

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

(a) after paragraph 619(2)(d) insert:

“(da) any differences in the offers attributable to the fact that the bidder may offer a lower amount or value of consideration to a person mentioned in any of the paragraphs in subsection 621(3B) than would otherwise be required to be offered;”;

(b) after subsection 621(3) insert:

“(3A) Despite subsection (3), if the securities in the bid class under a takeover bid are quoted securities, the consideration offered for securities in the bid class may be less than the minimum consideration required under subsection (3) to the extent of a decrease in the value of securities in the bid class provided both of the following are satisfied:

(a) the decrease resulted from the target:

- (i) declaring a cash dividend; or
- (ii) converting its shares into a larger number under section 254H;

(b) the date on which the operator of the market on which the bid class securities are quoted changes the basis of quotation of the securities to signify that trading in that class no longer carries the entitlement to the dividend or larger number of shares, is:

- (i) after the date the relevant purchase or agreement is made; and
- (ii) on or before the date of the bid.

Note: If bid class securities are quoted on more than one approved financial market, paragraph (b) applies in relation to whichever market operator first changes the basis of quotation.

(3B) Despite subsection (3) the bidder may offer consideration for securities in the bid class under a takeover bid that is less than the minimum consideration required under subsection (3) if the consideration is offered to any of:

- (a) a wholly-owned subsidiary of the bidder;
- (b) where the bidder is a wholly-owned subsidiary—its holding company or the holding company’s wholly-owned subsidiaries; or

- (c) a nominee or bare trustee of bid class securities for the bidder or bodies referred to in paragraphs (a) or (b);

provided that, if the offer is made to a body referred to in paragraphs (a) or (b) or to its nominee or bare trustee—the bidder has first obtained the written consent of the body for it or its nominee or bare trustee to receive the offer, and such consent acknowledges that the value of the consideration being offered is less than the value that would otherwise be required by subsection (3).”;

- (c) after subsection 621(4) insert:

“(4A) Despite subsection (4), if the consideration offered for securities in the bid class under a takeover bid includes quoted securities, the bidder may ascertain the value of the quoted securities as at any time of its choosing within the 5 business days before the date of the bid, provided all of the following are satisfied:

- (a) the quoted securities are valued by calculating the volume weighted average market price of those securities in the ordinary course of trading on the approved financial market during the 2 full trading days before the chosen time;
- (b) the period of trading on which the valuation is based does not start until at least 5 trading days have elapsed after the first day that the bidder has sent a copy of the bidder’s statement and offer document:
  - (i) to the target under item 3 of subsection 633(1); and
  - (ii) to each approved financial market on which the target’s securities are quoted;
- (c) the bidder’s statement required to be sent by item 6 of subsection 633(1) includes the following information:
  - (i) the value of the quoted securities ascertained under paragraph (a);
  - (ii) details of the valuation method required to be applied by paragraph (a), including the trading days on which the valuation is based.

- (4B) For the purposes of subsections (3A) to (4A):

***approved financial market*** means:

- (a) a declared financial market; and

Note: ***declared financial market*** is defined in section 9D. 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.

(b) an approved foreign market.

Note: The definition of *approved foreign market* is notionally inserted in section 9 by *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669*.

*quoted security* means a security in a class of securities that is quoted on an approved financial market.”.

## **Part 3—Repeal**

### **8 Repeal**

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



## **Schedule 1—Repeals**

### ***ASIC Corporations (Minimum Bid Price) Instrument 2015/1068***

#### **1 The whole of the instrument**

Repeal the instrument.