

Attachment 8 to CP 365: Draft instrument



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Warrants: Relevant Interests and Associations) Instrument 2023/XXX

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 (Warrants: Relevant Interests and Associations) 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.

3 Authority

This instrument is made under sections 655A and 673 of the Act.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

Part 2—Declaration

5 Warrants: Relevant interests and associations

- (1) Chapters 6 and 6C of the Act apply to all persons as if the following provisions were modified or varied:
- (a) in subsection 12(1) omit “Subject to subsection 16(1),”, substitute “Subject to subsections 16(1) and (1A),”;
 - (b) after subsection 16(1) insert:
 - “(1A) An issuer of a warrant and a holder of the warrant are not associates of each other merely because of the terms of the warrant.

For the purposes of this subsection, *warrant* and *holder* have the respective meanings given by subsection 609(6F).”.

- (2) Chapters 6 and 6C of the Act apply to all persons as if section 609 were modified or varied by as follows:
- (a) omit subsection (6) (including the heading but excluding the note), substitute:
 - “*Market traded options, derivatives and warrants*
 - (6) A person does not have a relevant interest in securities merely because of:
 - (a) a market traded option over the securities; or
 - (b) a right to acquire the securities by a derivative; or
 - (c) a right under a call warrant:
 - (i) to acquire the securities; or
 - (ii) to require the securities to be held in trust.

This subsection stops applying to the relevant interest when the obligation to make or take delivery of the securities arises.

Issuers of call warrants

- (6A) An issuer of a call warrant does not have a relevant interest in securities to which the warrant relates merely because the securities are held in trust under the terms of the warrant, provided the issuer has no power to control the voting or disposal of the securities (other than to enforce the terms of the trust or to retain ownership of the securities if the warrant

expires unexercised or the holder of the warrant defaults) unless and until the warrant expires.

- (6B) If an issuer of a call warrant has a relevant interest in securities because subsection (6A) ceases to apply, the issuer is taken to acquire a relevant interest in the securities at that time, by a transaction in relation to the securities.

Issuers of put warrants

- (6C) An issuer of a put warrant does not have a relevant interest in securities to which the warrant relates merely because:

- (a) the holder of the warrant has an option, under the terms of the warrant, to require the issuer to acquire the securities; or
- (b) under the warrant or a trust securing the obligations of the issuer or the holder under the warrant, the issuer can exercise power to control the voting or disposal of the security, provided the power can only be exercised where:
 - (i) the option under the warrant is exercised; or
 - (ii) the option under the warrant expires unexercised; or
 - (iii) the issuer enforces the terms of the trust; or
 - (iv) the holder defaults under the warrant.

- (6D) If an issuer of a put warrant has a relevant interest in securities because subsection (6C) ceases to apply, the issuer is taken to acquire a relevant interest in the securities at that time, by a transaction in relation to the securities.

Warrant trustees

- (6E) Subsection (2) applies to a person (the *trustee*) who would otherwise have a relevant interest in securities as a trustee under a trust for the purpose of satisfying rights or obligations of the issuer or holder of a warrant to which the securities relate because the trustee:
- (a) holds the securities; or
 - (b) would so hold such securities on trust but for dealing in the securities under a securities lending arrangement in accordance with the terms of the trust deed on ordinary commercial terms:

despite:

- (c) the trustee having any of the following discretions which, under the terms of the trust deed relating to the warrant, may only be exercised on ordinary commercial terms or in an ordinary commercial manner as the case requires:
 - (i) discretions where the issuer or holder of the warrant becomes insolvent or breaches a term of the warrant;
 - (ii) discretions in relation to bonus issues, rights issues, returns of capital, security splits, security consolidations or other reconstructions of capital affecting the securities; or
 - (iii) discretions in relation to a takeover bid for or a compromise or arrangement under Part 5.1 affecting the issuer of the securities but not in relation to voting or disposal of the securities; or
 - (iv) discretions to deal in the securities under a securities lending arrangement; or
- (d) the holder of the warrant not having a presently enforceable or unconditional right of the kind referred to in subsection 608(8).

(6F) In this section:

call warrant means a security or derivative that:

- (a) confers on the holder a right, but not the obligation, to acquire securities by way of transfer; and
- (b) is issued under a Product Disclosure Statement; and
- (c) is admitted to quotation on the financial market operated by ASX Limited or Cboe Australia Pty Ltd.

holder, in relation to a warrant, means a person who has a legal or equitable interest in the warrant.

put warrant means a security or derivative that:

- (a) confers on the holder a right, but not the obligation, to sell securities by way of transfer; and
- (b) is issued under a Product Disclosure Statement; and

- (c) is admitted to quotation on the financial market operated by ASX Limited or Cboe Australia Pty Ltd.

securities lending arrangement means:

- (a) an arrangement under which:
- (i) one entity (the **lender**) agrees that it will:
 - (A) deliver the securities to another entity (the **borrower**) or to an entity nominated by the borrower; and
 - (B) vest title in those securities in the entity to which they are delivered; and
 - (ii) the borrower agrees that it will, after the lender does the things mentioned in subparagraph (i):
 - (A) deliver the securities (or equivalent securities) to the lender or to an entity nominated by the lender; and
 - (B) vest title in those securities (or those equivalent securities) in the entity to which they are delivered; or
- (b) an arrangement under which:
- (i) the securities are held by one entity (the **borrower**) or an entity nominated by the borrower, on behalf of another entity (the **lender**); and
 - (ii) the lender agrees that the borrower may deal in the securities on its own behalf or on behalf of a person;
 - (iii) the borrower agrees that it will at some future time:
 - (A) deliver the securities (or equivalent securities) to the lender or to an entity nominated by the lender; and
 - (B) vest title in those securities (or those equivalent securities) in the entity to which they are delivered.

warrant means a call warrant or a put warrant.”.