

# Attachment 7 to CP 365: Draft instrument



**ASIC**  
Australian Securities &  
Investments Commission

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## **ASIC Corporations (On-sale Disclosure Relief for Scrip Bids and Schemes of Arrangement) 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 (On-sale Disclosure Relief for Scrip Bids and Schemes of Arrangement) 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 subsections 741(1) and 1020F(1) of the Act.

### 4 Definitions

In this instrument:

*Act* means the *Corporations Act 2001*.

*minimum parcel*, in relation to quoted securities, means:

- (a) if a “marketable parcel” or “minimum parcel” is defined in the rules governing the operation of a prescribed financial market on which the securities are quoted—a marketable parcel or minimum parcel as defined in those rules;
- (b) otherwise—a parcel of the securities valued at not less than \$500 based on the closing price of the securities on the relevant prescribed financial market.

*non-participant* means:

- (a) in relation to a takeover bid—a holder of the target’s securities who has accepted an offer made under a takeover bid and has elected not to acquire scrip consideration as consideration for their acceptance; and
- (b) in relation to a Part 5.1 scheme:
  - (i) a person who has been offered scrip consideration under the Part 5.1 scheme and has elected not to acquire the scrip consideration; or

- (ii) a person who is not offered scrip consideration under a Part 5.1 scheme involving an issue of scrip consideration in exchange for other securities because:
  - (A) the person is a foreign holder of the other securities; or
  - (B) the person would otherwise receive a small parcel of scrip consideration under the terms of the scheme.

***offer for sale*** includes an invitation to purchase.

***Part 5.1 scheme*** means a compromise or arrangement conducted under Part 5.1 of the Act approved at a meeting held as a result of an order under subsection 411(1) or (1A) of the Act.

***scrip consideration*** means securities that are:

- (a) transferred to a nominee under the terms of an off-market bid which are of the kind described in subsection 619(3) of the Act; or
- (b) offered for sale through a security sale facility; or
- (c) offered for sale through a takeover-related small parcel sale facility; or
- (d) issued under a right to acquire securities that has been transferred or offered in accordance with paragraph (a), (b) or (c).

Note: Subsection 619(3) is notionally substituted into the Act by *ASIC Corporations (Takeover Bids) Instrument 2023/XXX*.

***securities*** has the meaning given by subsection 92(3) of the Act.

***security sale facility*** means:

- (a) a facility established in connection with a takeover bid to which both of the following apply:
  - (i) under the terms of the bid:
    - (A) the consideration includes an offer of scrip consideration; and
    - (B) the bidder appoints a nominee and transfers the scrip consideration that are not acquired by non-participants, or the right to acquire the scrip consideration, to the nominee; and
    - (C) the nominee sells the scrip consideration, or the right to acquire the scrip consideration, and distributes to the non-participants their proportion of the proceeds of the sale net of expenses;

- (ii) the terms and conditions of the facility are disclosed in the bidder's statement; and
- (b) a facility established in connection with a Part 5.1 scheme to which both of the following apply:
  - (i) under the terms of the scheme:
    - (A) scrip consideration is to be issued in exchange for other securities; and
    - (B) the scrip consideration, or the right to acquire the scrip consideration, that are not acquired by non-participants are sold and their proportion of the proceeds of the sale net of expenses is distributed to them;
  - (ii) the terms and conditions of the facility are disclosed in the explanatory statement for the scheme.

***small parcel***, in relation to a non-participant in a Part 5.1 scheme, means a parcel of securities which is not a minimum parcel within the meaning of the operating rules of any prescribed financial market on which the securities are quoted, calculated using the highest closing price for the securities published by the financial market during the period:

- (a) beginning on the day a copy of the explanatory statement is registered by ASIC under subsection 412(6) of the Act; and
- (b) ending on the day an office copy of the order of the Court is lodged with ASIC under subsection 411(10) of the Act.

***takeover-related small parcel sale facility*** means a facility through which securities, or the right to acquire securities, are sold in accordance with the requirements of subsection 619(4) of the Act.

Note: Subsection 619(4) is notionally inserted into the Act by *ASIC Corporations (Takeover Bids) Instrument 2023/XXX*.

## **Part 2—Exemption**

### **5 On-sale disclosure relief for scrip bids and schemes of arrangement**

- (1) A person who makes an offer for sale of scrip consideration does not, for that offer, have to comply with:
  - (a) subsection 707(3) of the Act; or
  - (b) subsection 1012C(3) of the Act insofar as it applies to an offer that takes place in the circumstances covered by subsection 1012C(6) of the Act.
- (2) A person who makes a recommendation to acquire scrip consideration does not, for that recommendation, have to comply with subsection 1012A(3) of the Act insofar as it applies to an acquisition by way of a transfer of the scrip consideration in circumstances covered by subsection 1012C(6) of the Act.