



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2021/268

This is the Explanatory Statement for the *ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2021/268* (the **Instrument**).

The Explanatory Statement is approved by the Australian Securities and Investments Commission (**ASIC**).

Summary

1. This Instrument effectively extends the operation of aspects of the temporary relief in *ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2020/355* to allow a Record of Advice (**ROA**) to be provided, rather than a Statement of Advice (**SOA**), in relation to the provision of financial advice and in connection with the adverse economic effects of COVID-19. ASIC Instrument 2020/355 will be repealed on 15 April 2021. The Instrument will extend the relief for a further period of 6 months.
2. The Instrument is a temporary deregulatory measure that facilitates access to timely and affordable COVID-19 advice for existing clients of providing entities. A ‘providing entity’ is an Australian financial services licensee (**AFS licensee**) or an authorised representative of an AFS licensee, that provides personal advice to a retail client.
3. ASIC will continue to monitor the appropriateness of the Instrument, having regard to the ongoing impact of COVID-19.

Purpose of the instrument

4. The Instrument facilitates the provision of affordable and timely financial product advice to clients and reduces the regulatory disclosure burden on providing entities due to the COVID-19 pandemic by continuing the temporary relief in *ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2020/355* that allows an ROA to be provided to existing clients in relation to COVID-19 advice in certain circumstances.
5. The Instrument primarily affects the disclosure obligations for providing entities when giving financial product advice to their clients.

6. The conduct obligations for providing entities continue to apply and are appropriate consumer protection requirements. For example, these conduct obligations include the best interests duty and related obligations in Division 2 of Part 7.7A of Chapter 7 of the *Corporations Act 2001* (the **Act**) and the record keeping requirements in ASIC Class Order [CO 14/923] *Record-keeping obligations for Australian financial services licensees when giving personal advice*.
7. The Instrument allows an ROA, rather than an SOA, to be provided when financial product advice is given under prescribed circumstances. An ROA is generally shorter than an SOA, does not require as much information and is easier and cheaper to prepare. The Instrument specifies the required content of the ROAs and the timing of giving the ROA to the client. The ROA must be given by the providing entity when the financial product advice is provided, or as soon as practicable after the financial product advice is provided to the client.

Consultation

8. Before making this Instrument, ASIC engaged with a targeted range of stakeholders to invite feedback on the measures and the manner in which the temporary relief is granted. The stakeholders included relevant industry associations.
9. The Instrument extends certain aspects of *ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2020/355* for a six-month period. Temporary roll-overs of existing regulatory measures are deemed minor and machinery in nature. Given this, the Instrument does not require a Regulatory Impact Statement.

Operation of the instrument

10. The Instrument commences on the later of 15 April 2021 and the day after the Instrument is registered on the Federal Register of Legislation. The Instrument will be repealed on 15 October 2021. Therefore, the duration of the Instrument will be for a period of 6 months.

Advice required because of COVID-19

11. Subsection 5(1) of the Instrument applies in relation to providing entities as if regulation 7.7.10AE of the *Corporations Regulations 2001* (the **Regulations**) were modified or varied by inserting at the end of notional section 946B of the Act another new situation where an SOA is not required.
12. This ‘third situation’ is where an existing client of a providing entity, or associated providing entity, requires COVID-19 advice. This temporary relief measure allows an ROA to be provided when an SOA would usually be required.
13. This temporary relief aims to address situations where the existing client’s personal circumstances and the basis of the personal advice would have changed significantly due to the adverse economic impact of COVID-19. It also

facilitates advice practices to continue to provide timely personal advice to clients where the client is receiving personal advice from another financial adviser, for example, another financial adviser in the practice or another financial adviser authorised by the AFS licensee who was the original providing entity (see the ‘associated providing entity’ definition in notional section 946B(15) of the Instrument).

14. The Instrument specifies in notional subsections 946B(10) - (11) that an SOA is not required to be provided where all of the following are satisfied:
 - (a) the providing entity reasonably considers the advice is required because of the adverse economic effects of COVID-19;
 - (b) the client must be an existing client who was previously given an SOA by the providing entity (or an associated providing entity); and
 - (c) the COVID-19 advice being provided must be in relation to one or more classes of financial product(s) in relation to which the client was previously given personal advice by the providing entity (or associated providing entity), e.g. if the client was previously only given personal advice about managed investments, they cannot now be given personal advice about risk insurance in an ROA under this relief measure.
15. The previous temporary relief in *ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2020/35* also included a requirement that the client expressly instruct the adviser that the personal advice is required because of the adverse economic effects of COVID-19. This requirement has been dispensed with in the Instrument because ASIC’s surveillances have not observed any consumer harm to which this requirement was originally directed.
16. The Instrument specifies in notional subsection 946B(15) that an ‘associated providing entity’ means:
 - (a) where the providing entity is an AFS licensee—any person who is an authorised representative of the AFS licensee;
 - (b) where the providing entity is an authorised representative of an AFS licensee—the authorising AFS licensee or any person who is an authorised representative of the authorising AFS licensee.
17. The ‘associated providing entity’ requirement is to allow flexibility for financial advice businesses to meet the needs of existing clients in an efficient and cost-effective manner, while ensuring there is a reasonable nexus to the previous providing entity, e.g. limiting it to financial advisers from the same AFS licensee or the same authorised representative practice.
18. The providing entity must keep a record of the COVID-19 advice. The content requirements of this ROA is specified in notional subsection 946B(12) in the Instrument. The ROA must include, among other things, a brief explanation of the changes in the client’s relevant personal circumstances since the previous personal advice. A failure to comply with this requirement is an offence. The

offence consequences is intended to replicate the offence consequences in relation to records of further advice required under subsection 946B(3A) as notionally inserted by regulation 7.7.10AE of the Regulations.

19. The providing entity must give a copy of this ROA to the client when the COVID-19 advice is provided, or as soon as practicable after the COVID-19 advice is provided. In any event, a copy of the ROA must be given before any further financial service is provided by the providing entity.
20. When giving the COVID-19 advice, the providing entity must disclose any actual or potential conflicts of interest, commissions and remuneration that might influence the providing entity in providing the COVID-19 advice, and if applicable, any replacement financial product disclosures.
21. Section 5(2) of the Instrument makes consequential notional modifications to regulation 7.7.10AG of the Regulations. These consequential changes apply the liability provisions in Division 7 of Part 7.7 of the Act relating to disclosure documents to the ROA required under this Instrument. These consequential changes are intended to replicate the same consequences in relation to records of further advice required under subsection 946B(3A) as notionally inserted by regulation 7.7.10AE of the Regulations.

Legislative authority

22. This Instrument is made under subsection 951B(1) of the Act.
23. Subsection 951B(1) provides that ASIC may declare that Part 7.7 applies in relation to a class of persons as if specified provisions of Part 7.7 were omitted, modified or varied as specified in the declaration.
24. This Instrument is a disallowable legislative instrument.

Legislative instrument and primary legislation

25. The subject matter and policy implemented by the Instrument is more appropriate for a legislative instrument rather than primary legislation. The Instrument uses powers given by Parliament to ASIC, which allow ASIC to affect the operation of Chapter 7, and specifically Part 7.7, of the Act to respond quickly and temporarily to issues with financial product advice in connection with or arising from COVID-19.

Statement of Compatibility with Human Rights

26. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2021/268

Overview

1. *ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2021/268* implements a temporary deregulatory measure to facilitate the provision of timely and affordable financial product advice to retail clients because of the adverse economic impact of COVID-19. The Instrument is intended to reduce the regulatory disclosure burden on financial advisers that give personal advice to retail clients about financial products during this time.

Assessment of human rights implications

2. This Instrument does not engage any of the applicable rights or freedoms.

Conclusion

3. This Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.