



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2023/876

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2023/876*.

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

Summary

1. The instrument makes minor amendments to *ASIC Corporations (Investor Directed Portfolio Services Provided Through a Registered Managed Investment Scheme) Instrument 2023/668 (LI 2023/668)* and *ASIC Corporations (Investor Directed Portfolio Services) Instrument 2023/669 (LI 2023/669)* (the **principal instruments**) in relation to the provisions that allow operators to provide investors with electronic access to investment transaction and holdings information in lieu of quarterly reports.
2. The instrument clarifies that investors may be given electronic access to their investor information (instead of receiving quarterly reports) provided that the investor has agreed (as previously provided for under ASIC Class Orders [CO 13/762] and [CO 13/763] (**2013 Class Orders**)) or if the investor has been notified, and has not opted out of, receiving the information via electronic access.

Purpose of the instrument

3. The instrument amends the principal instruments in order to clarify the operation of the provisions that permit operators to give investors electronic access to information about the investor's investment transactions and holdings.
4. In August 2023, ASIC made the principal instruments. These instruments were made following consultation on ASIC's proposal to remake the 2013 Class Orders (see [Consultation Paper 369 Remaking ASIC class orders on platforms: \[CO 13/762\] and \[CO 13/763\]](#)). Under the Class Orders, operators were required to ensure that investors are given either a quarterly report or if investors agree, continuous electronic access to information about their investments. These options are retained under the principal instruments.
5. In addition to the options under the 2013 Class Orders, a further option was introduced in the principal instruments to allow operators to give investors electronic access to their information, provided the investor had received

reasonable notice (and had not opted out of) obtaining information electronically (**notify and opt-out option**).

6. The principal instruments have been amended to give effect to the intended policy position that the reporting options under the 2013 Class Orders continue unchanged under the principal instruments. The effect of the amendments is to maintain consistency with the 2013 Class Orders by removing the reference to the ability to opt out of electronic access where an investor has agreed to obtain their investment information via electronic access in lieu of receiving quarterly reports. The ability to opt out remains applicable under the notify and opt-out option.

Consultation

7. ASIC undertook formal consultation in [CP 396](#). Since the principal instruments were made in August 2023, ASIC engaged in further consultation with industry stakeholders and received feedback which has informed the further amendments in the instrument to give proper effect to the intended policy position.

Operation of the instrument

8. The instrument amends the principal instruments by replacing notional paragraphs 1013DAB(9)(b) (as inserted by LI 2023/668) and 912AD(27)(b) (as inserted by LI 2023/669) with new notional provisions. Under these provisions, instead of quarterly reports, electronic access to information may be given to members or clients if they have either agreed to obtain information electronically through the IDPS-like scheme or IDPS or have been provided with reasonable notice that they can obtain information electronically and have not opted out of such access. The effect of the amendments ensures that the option to have electronic access by agreement is consistent with the equivalent option that existed under the 2013 Class Orders and retains the notify and opt-out option introduced under the principal instruments.
9. As a result of these amendments, the principal instruments will reflect the policy position that operators may fulfil their quarterly reporting obligations by:
(a) providing quarterly reports; (b) giving electronic access if investors agree; or
(c) giving electronic access if investors receive reasonable notice and have not opted out of such access.
10. The definition of “securities” in section 4 of the principal instruments has been amended to align with the amendments that were made under the [Treasury Laws Amendment \(2023 Law Improvement Package No. 1\) Act 2023](#) to the definition of “securities” in section 92 of the *Corporations Act 2001*.
11. The instrument commences on the day after it is registered on the Federal Register of Legislation.

Incorporation by reference

12. The instrument does not incorporate any matters by reference.

Retrospective application

13. The instrument does not apply retrospectively.

Legislative instrument and primary legislation

14. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because the effect of the instrument is to clarify the requirements contained in the principal instruments. The principal instruments are themselves legislative instruments rather than primary legislation.

Duration of instrument

15. The instrument is an amending instrument. The principal instruments will automatically sunset on 1 October 2028 in accordance with section 50 of the *Legislation Act 2003*. The amendments made by the instrument will cease to have effect when the principal instruments are repealed.

Legislative authority

16. The instrument is made under subsections 341(1), 601QA(1), 655A(1), 673(1), 741(1), 926A(2), 951B(1), 992B(1) and 1020F(1) of the *Corporations Act 2001*.
17. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make an instrument, the power is to be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to amend or repeal the instrument.
18. The instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

19. 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 (Amendment) Instrument 2023/876

Overview

1. The instrument amends the principal instruments by replacing notional subsections 1013DAB(9)(b) (as inserted by LI 2023/668) and 912AD(27)(b) (as inserted by LI 2023/669) with new notional provisions. Under these provisions, instead of quarterly reports, electronic access to information may be given to members or clients if they have either agreed to obtain information electronically through the IDPS-like scheme or IDPS or have been provided with reasonable notice that they can obtain information electronically and have not opted out of such access. The effect of the amendments ensures that the option to have electronic access by agreement is consistent with the equivalent option that existed under the 2013 Class Orders and retains the notify and opt-out option introduced under the principal instruments.
2. The definition of “securities” in section 4 of the principal instruments has been amended to align with the amendments that were made under the [*Treasury Laws Amendment \(2023 Law Improvement Package No. 1\) Act 2023*](#) to the definition of “securities” in section 92 of the *Corporations Act 2001*.

Assessment of human rights implications

3. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

4. 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*.