



**ASIC**  
Australian Securities &  
Investments Commission

## Explanatory Statement

### *ASIC Corporations (Managed Investment Product Consideration) Instrument 2025/629*

### *ASIC Corporations (Amendment and Repeal) Instrument 2025/630*

This is the Explanatory Statement for *ASIC Corporations (Managed investment product consideration) Instrument 2025/629* (**Instrument 2025/629**) and the *ASIC Corporations (Amendment and Repeal) Instrument 2025/630* (the **Amendment and Repeal Instrument**) (collectively, the **ASIC instruments**).

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

#### Summary

1. Instrument 2025/629 applies in relation to managed investment schemes that were registered before 1 October 2013 where the responsible entity has not published on its website notice of its reliance on ASIC Class Order [CO 13/655] or *ASIC Corporations (Discretions for Setting the Issue Price and Withdrawal Price of Interests in Managed Investment Schemes) Instrument 2023/693* (**Instrument 2023/693**).
2. Instrument 2025/629 modifies Chapter 5C and Part 7.9 of the Act to allow a responsible entity to:
  - (a) set the issue price for interests in a registered scheme in certain specified circumstances; and
  - (b) exercise certain discretions in relation to a formula or method in the scheme constitution for determining the issue or withdrawal price for interests, subject to certain requirements.
3. Instrument 2025/629 also provides exemptions from the equal treatment duty under paragraph 601FC(1)(d) of the Act that are consequential on certain of the modifications made by the instrument.
4. Instrument 2025/629 maintains the relief that was previously provided under ASIC Class Order [CO 05/26] *Constitutional provisions about the consideration to acquire interests*, which was later repealed and remade as *ASIC Corporations*

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*(Managed investment product consideration) Instrument 2015/847 (Instrument 2015/847).*

5. Instrument 2015/847 is due to expire on 1 October 2025. ASIC has decided to reissue the relief in Instrument 2015/847 in Instrument 2025/629 on the grounds that the legal, operational, and cost implications of requiring responsible entities of all schemes registered prior to 1 October 2013 to comply with Instrument 2023/693 would be unduly burdensome. ASIC considers that Instrument 2015/847 is operating effectively and efficiently and continues to form a necessary and useful part of the legislative framework.
6. The Amendment and Repeal Instrument repeals Instrument 2015/847, given that it is due to expire on 1 October 2025 and is being remade as Instrument 2025/629. It also makes consequential amendments to *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669 (Instrument 2017/669)* and *ASIC Corporations (Equality of Treatment Impacting on the Acquisition of Scheme Interests and CCIV Shares) Instrument 2023/697 (Instrument 2023/697)*.

#### **Purpose of the ASIC instruments**

7. The purpose of Instrument 2025/629 is to continue the relief provided in Instrument 2015/847.
8. Instrument 2025/629 provides certainty and appropriate flexibility to responsible entities of managed investment schemes registered prior to 1 October 2013 (other than time-sharing schemes), in relation to the pricing of interests. This includes how responsible entities may set the amount of the consideration to acquire interests in the scheme in certain circumstances, and how they may exercise discretions in relation to a formula or method used for determining the issue price or withdrawal amounts.
9. Instrument 2025/629 was issued because Instrument 2015/847 was due to sunset under the *Legislation Act 2003 (Legislation Act)* on 1 October 2025. Under the Legislation Act, legislative instruments (such as class orders) cease automatically, or sunset, after 10 years, unless action is taken to preserve them.
10. The purpose of sunset is to ensure that instruments are kept up to date and only remain in force while they are fit for purpose, necessary, and relevant. ASIC has assessed that Instrument 2015/847 is operating effectively and efficiently and continued to form a necessary and useful part of the legislative framework.
11. Accordingly, Instrument 2025/629 remakes Instrument 2015/847 subject to minor amendments intended to:
  - (a) simplify the requirements to document exercises of discretion affecting the pricing of interests and reduce the level of prescription in those provisions;

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- (b) provide that schemes that have interests that are quoted on a financial market operated by Cboe Australia Pty Ltd may rely on the relief; and
- (c) ensure the instrument is in line with ASIC's current drafting style.
12. The changes to the documentation requirements for exercises of pricing discretions are consistent with simplifications made in 2023 to those requirements in Class Order [CO 13/657] *Discretions affecting the amount of consideration to acquire interests and withdrawal amount* when it was rolled over into Instrument 2023/693.
  13. Instrument 2023/693 provides similar relief for responsible entities of managed investment schemes that were registered on or after 1 October 2013, or for managed investment schemes that have provided notice of their reliance on that Instrument.
  14. The amendment to extend relief to schemes with interests that are quoted on the financial market operated by Cboe Australia Pty Ltd was made in response to a submission that the relief should be market neutral.
  15. The purpose of the Amendment and Repeal Instrument is to repeal Instrument 2015/847, given that it is due to expire on 1 October 2025 and is being remade as Instrument 2025/629.
  16. The Amendment and Repeal Instrument also makes consequential amendments to Instrument 2017/669 and Instrument 2023/697 to change cross-references to Instrument 2015/847 to Instrument 2025/629.

## **Consultation**

17. On 5 August 2025, ASIC consulted on remaking Instrument 2015/847 in CS 27 *Proposed remake of relief instrument for managed investment product consideration* (CS 27). ASIC proposed to remake Instrument 2015/847, with some minor amendments, for a period of five years to maintain the relief so that its ongoing effect is preserved without any disruption to the entities that rely on it.
18. ASIC received three submissions in response to CS 27, two of which were supportive of our proposal to re-make the relief. The other submission proposed that the relief in Instrument 2015/847 should be allowed to lapse so that all registered managed investment schemes rely on Instrument 2023/693. However, one of the submissions in support of re-making the relief noted that it may not be practicable for some responsible entities to transition to reliance on Instrument 2023/693.
19. ASIC has decided to maintain relief in Instrument 2015/847 for managed investment schemes registered before 1 October 2013 because it may be unduly burdensome to require responsible entities of those schemes to amend the scheme's constitutions and procedures in order to transition to reliance on relief under Instrument 2023/693. Since the responsible entities of these schemes may

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opt in to rely on Instrument 2023/693, we consider that maintaining the relief in Instrument 2015/847 affords these responsible entities appropriate flexibility.

20. ASIC has not consulted on the Amendment and Repeal Instrument on the basis that it simply repeals Instrument 2015/847 and makes consequential amendments to Instrument 2017/669 and Instrument 2023/697.

### **Instrument 2025/629 – application**

21. The relief provided by Instrument 2025/629 only applies in relation to a managed investment scheme that became a registered scheme before 1 October 2013 and in relation to which the responsible entity has not published on its website notice of its reliance on ASIC Class Order [CO 13/655] or Instrument 2023/693: see Part 4 of Instrument 2025/629.

### **Instrument 2025/629 – operation**

#### Part 1 – Preliminary

22. Section 1 provides that the name of Instrument 2025/629 is the *ASIC Corporations (Managed Investment Product Consideration) Instrument 2025/629*.
23. Section 2 provides that Instrument 2025/629 commences on the day after it is registered on the Federal Register of Legislation.
24. Section 3 provides that Instrument 2025/629 is made under subsections 601QA(1) and 1020F(1) of the Act.
25. Section 4 provides a simplified outline of Instrument 2025/629. Its purpose is to assist readers in understanding the substantive provisions. However, the outline is not intended to be comprehensive, and readers should 26. Section 5 provides that in Instrument 2025/629, *Act* means the *Corporations Act 2001*.

#### Part 2 – Declarations

27. Section 6 modifies Chapter 5C by inserting notional sections 601GAA, 601GAB, and 601GAC into the Act.

#### *Section 601GAA – Constitutional provisions about the amount of consideration for the acquisition of interests*

28. Section 6 modifies paragraph 601GA(1)(a) of the Act and inserts notional section 601GAA of the Act to provide in certain circumstances exceptions from the requirement that the constitution make adequate provision for the consideration that is to be paid to acquire an interest in the scheme. These circumstances are:

(a) placements – where:

- (i) the interests are in a class that are quoted on the financial market operated by ASX Limited or Cboe Australia Pty Ltd or, an approved

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- foreign market and quotation of the interests in that class is not suspended; and
- (ii) interests are not issued to the responsible entity or an associate except in certain circumstances; and
  - (iii) either:
    - (A) all issues within the previous year do not comprise more than 15% of interests in that class; or
    - (B) members have approved the issue by resolution and the notice of meeting includes details of how the money raised will be used;
- (b) rights issues – where:
- (i) the interests are offered to members not more than 20 business days before the date of the offer and in proportion to the value of each member's interests;
  - (ii) the interests are offered in the same class to all members (except certain foreign members) at the same price and at substantially the same time;
  - (iii) the responsible entity reasonably believes that the amount by which the price of an interest is less than the amount that would otherwise apply under the constitution does not exceed a maximum percentage specified in the constitution; and
  - (iv) interests are only issued to the responsible entity's associates in certain circumstances;
- (c) interest purchase plans – where interests are issued in accordance with *ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547*;
- (d) distribution reinvestment plans – where:
- (i) any distribution of capital or income payable to a member is applied in payment for the issue of interests;
  - (ii) all members (except certain foreign members) can elect to participate and all issues are in the same class, at the same price and issued at substantially the same time; and
  - (iii) the responsible entity reasonably believes that the amount by which the price of an interest is less than the amount that would otherwise apply under the constitution does not exceed a maximum percentage specified in the constitution;

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- (e) negotiated fees – where:
- (i) the responsible entity and a wholesale client agree on an issue price set out in the constitution less a reduction in fees that are payable to the responsible entity for the issue; and
  - (ii) all members have been given a statement that fees may be individually negotiated with wholesale clients; and
  - (iii) each PDS contains a statement that fees may be individually negotiated with wholesale clients; and
  - (iv) the fee reduction does not adversely affect the fees paid by other members who do not have the benefit of a reduction in fees;
- (f) schemes where there is limited or no pooling – where the only contribution that may be used in common with or pooled with any other assets in the scheme are:
- (i) money held in a bank account by the responsible entity on trust; or
  - (ii) not proprietary rights and no income in which a member has any interest is to be paid or worked out by dividing up a pool; or
  - (iii) used in common or pooled between joint tenants or tenants in common where none of the tenants is the responsible entity or an associate of the responsible entity and the tenants are known to each other before being offered an interest;
- (g) forfeited interests – where:
- (i) in accordance with the constitution, interests have been forfeited to the responsible entity on trust for members of the scheme where part of the issue price has not been paid when called; and
  - (ii) on the payment of the outstanding amount, the interest would be in a class of interests quoted on the financial market operated by ASX Limited or Cboe Australia Pty Ltd; and
  - (iii) the sale of the forfeited interests is in accordance with section 254Q of the Act (other than subsections (1), (9), (10) and (13)) as if the interests were shares, the scheme were a company and the responsible entity was each director of the company; and
- (h) stapled securities – where:
- (i) the constitution contains adequate provision for the consideration to acquire the stapled securities; or
  - (ii) the constitution contains provisions about the amount of the consideration to acquire the stapled securities that would be

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permitted by the terms of the provisions notionally inserted by the instrument in relation to the amount of the consideration to acquire interests.

*Section 601GAB – Discretions in constitutional provisions that set the amount of the consideration for the acquisition of interests*

29. Section 6 of Instrument 2025/629 provides an exception from the requirement in paragraph 601GA(1)(a) where the constitution contains a formula or method which complies with paragraph 601GAB(2)(a) or paragraph 601GAB(2)(b) as notionally inserted by Instrument 2025/629.
30. Paragraph 601GAB(2)(a) requires that the formula or method used to determine the consideration to acquire an interest in a scheme be based on the value of scheme property attributable to a particular class less any liabilities attributable to that class that may be met from scheme property divided by the number of interests on issue in that class if the scheme is not traded on a financial market or is traded on the AQUA market of ASX Limited or Cboe Australia Pty Ltd's market for exchange traded products.
31. Paragraph 601GAB(2)(b) requires that if paragraph 601GAB(2)(a) does not apply, then the formula or method used to determine the consideration to acquire an interest in a scheme be based on the market price of the interests of that class on the market at or around the time of issue. The provision applies to interests traded on a financial market other than the AQUA market of ASX Limited or Cboe Australia Pty Ltd's market for exchange traded products—for example, interests in a scheme included in the official list of the financial market operated by ASX Limited.
32. Subsection 601GAB(1) provides that the formula or method may give the responsible entity a discretion to decide a matter that affects the value of a factor included in the formula, decide a matter that is an aspect of the method or determine the amount of an adjustment for the costs in acquiring or disposing of scheme property, for assets of the scheme that are not scheme property or otherwise. Subsection 601GAB(3) clarifies that any discretion permitted under subsection 601GAB(1) must not be exercised on the basis that it will result in a particular amount being set as the amount of consideration.

*Section 601GAC – Discretions in constitutional provisions about amounts to be paid on withdrawal*

33. Section 6 of Instrument 2025/629 modifies subsection 601GA(4) of the Act and inserts notional section 601GAC of the Act to provide an exception from the requirement that a constitution specify a member's right to withdraw from the scheme and set out adequate procedures for making and dealing with withdrawal requests. The exception, as set out in section 601GAC, applies to the extent that the constitution provides a formula or method that will be paid to a member making a withdrawal and which complies with subsection 601GAC(2) but gives the responsible entity certain discretions.

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34. Subsection 601GAC(2) requires the formula or method to be based on the value of scheme property attributable to a particular class less any liabilities attributable to that class that may be met from scheme property divided by the number of interests on issue in that class.
35. Subsection 601GAC(1) provides that the formula or method may give the responsible entity a discretion to decide a matter that affects the value of a factor included in the formula, decide a matter that is an aspect of the method or make an adjustment to the amount determined by the formula for the costs in acquiring or disposing of scheme property, for assets of the scheme that are not scheme property or otherwise. Subsection 601GAC(3) clarifies that any discretion permitted under subsection 601GAC(1) must not be exercised on the basis that it will result in a particular amount being set as the amount that will be paid to a member making a withdrawal.
36. Section 7 modifies Chapter 5C by inserting subsections 601FC(1AA) and (1AB) of the Act to impose additional requirements on a responsible entity where they exercise a discretion in relation to a formula or method used for determining the issue price or withdrawal amount for interests in a registered scheme.
37. A responsible entity must exercise its discretion in a manner that is consistent with ordinary commercial practice and produces a value or price that is reasonably current at the time of issue or withdrawal (subsection 601FC(1AA)).
38. The responsible entity must only exercise the discretion if it is reasonable to do so (subsection 601FC(1AB)(a)).
39. The responsible entity must also:
- (a) exercise the discretion in accordance with a current written policy or prepare a written explanation of how the discretion was exercised and why such exercise was reasonable (subsection 601FC(1AB)(b));
  - (b) where the discretion is exercised by a nominee, prepare a document identifying the nominee and the discretion exercised by the nominee (subsection 601FC(1AB)(c)); and
  - (c) retain records of documents prepared in relation to the exercise of discretion for seven years (subsection 601FC(1AB)(d)).
40. Section 8 modifies section 1013D to require that, if the responsible entity may exercise a discretion referred to in subsection 601FC(1AB), the Product Disclosure Statement for the product must include statements to the effect that copies of the documents relating to discretions about the pricing of interests are available from the responsible entity at no charge.

### Part 3 – Exemption from duty to treat members equally

41. Section 9 provides an exemption for responsible entities of registered schemes (other than time-sharing schemes) from the requirement to comply with paragraph 601FC(1)(d) of the Act to the extent that complying would prevent



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the responsible entity from not treating members who hold interests of the same class equally and members who hold interests of different classes fairly where such treatment is contemplated by various provisions notionally inserted into the Act by Instrument 2025/629.

#### Part 4– Application

42. Section 10 provides that sections 6 to 9 of Instrument 2025/629 apply in relation to a managed investment scheme registered before 1 October 2013 in relation to which the responsible entity has *not* published on its website:
- (a) a notice that it will rely on Superseded Class Order [SCO 13/655]; or
  - (b) a notice that it will rely on Instrument 2023/693.
43. Responsible entities of managed investment schemes registered before 1 October 2013 may elect to rely on Instrument 2023/693, instead of continuing to rely on the relief in Instrument 2025/629, by publishing such a notice on its website in relation to the scheme (see section 8 in Instrument 2023/693).

#### Part 5 – Repeal

44. Section 11 repeals Instrument 2025/629 at the start of 1 October 2030.

#### **Instrument 2025/629 – incorporation by reference**

45. Instrument 2025/629 incorporates by reference *ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547*, which facilitates the offer of share and interest purchase plans to existing registered holders. The Amendment and Repeal Instrument does not incorporate by reference any documents.

#### **Amendment and Repeal Instrument – operation**

##### Part 1 – Preliminary

46. Section 1 provides that the name of the Amendment and Repeal Instrument is the *ASIC Corporations (Amendment and Repeal) Instrument 2025/629*.
47. Section 2 provides that the Amendment and Repeal Instrument commences on the day after it is registered on the Federal Register of Legislation.
48. Section 3 provides that the Amendment and Repeal Instrument is made under subsections 283GA(1), 601QA(1), 655A(1), 741(1), 926A(2), 992B(1), 1020F(1) and 1100ZK(2) of the Act.
49. Section 4 sets out that each instrument specified in the Schedule is amended, repealed, or has effect according to the applicable items in the Schedule.

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## Schedule 1 – Amendments

50. Item 1 in Schedule 1 amends section 4 (notional definition of *applicable ASIC legislative instrument*) in *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669* to replace “*ASIC Corporations (Managed investment product consideration) Instrument 2015/847*” with “*ASIC Corporations (Managed investment product consideration) Instrument 2025/629*”.
51. Item 2 in Schedule 1 amends section 8 in *ASIC Corporations (Equality of Treatment Impacting on the Acquisition of Scheme Interests and CCIV Shares) Instrument 2023/697* to replace “*ASIC Corporations (Managed investment product consideration) Instrument 2015/847*” with “*ASIC Corporations (Managed investment product consideration) Instrument 2025/629*”.

## Schedule 2 – Repeals

52. Item 1 in Schedule 2 repeals the whole of Instrument 2015/847.

### **Retrospective application**

53. Instrument 2025/629 and the Amendment and Repeal Instrument do not have retrospective application.

### **Legislative instrument and primary legislation**

54. The subject matter and policy implemented by Instrument 2025/629 is more appropriate for a legislative instrument rather than primary legislation because:
- (a) the modifications made by Instrument 2025/629 are specific amendments designed to ensure the application of primary legislation is consistent with the intended policy and the enabling provisions in the primary legislation;
  - (b) Instrument 2025/629 preserves the effect of Instrument 2015/847, which was otherwise due to sunset on 1 October 2025; and
  - (c) following consultation, ASIC considered that Instrument 2015/847 was operating effectively and efficiently to achieve its objectives and continued to form a necessary and useful part of the legislative framework.

### **Duration of the instrument**

55. ASIC considers that five years is the appropriate duration for Instrument 2025/629.

### **Legislative authority**

56. Instrument 2025/629 is made under subsections 601QA(1) and 1020F(1) of the Act.

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57. The Amendment and Repeal Instrument is made under subsections 283GA(1), 601QA(1), 655A(1), 741(1), 926A(2), 992B(1), 1020F(1) and 1100ZK(2) of the Act.
  58. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make any 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 repeal or amend any such instrument.
  59. Instrument 2025/629 and the Amendment and Repeal Instrument are disallowable legislative instruments.

#### **Statement of Compatibility with Human Rights**

60. 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 (Managed Investment Product Consideration) Instrument 2025/629***

### ***ASIC Corporations (Amendment and Repeal) Instrument 2025/630***

#### Overview

1. *ASIC Corporations (Managed investment product consideration) Instrument 2025/629* (Instrument 2025/629) continues the relief in *ASIC Corporations (Managed Investment Product Consideration) Instrument 2015/847* (Instrument 2015/847).
2. Instrument 2025/629 modifies Chapter 5C and Part 7.9 of the Act to allow a responsible entity to:
  - (a) set the issue price for interests in a registered scheme in certain specified circumstances; and
  - (b) exercise certain discretions in relation to a formula or method in the scheme constitution for determining the issue or withdrawal price for interests, subject to certain requirements.
3. Instrument 2025/629 also provides exemptions from the equal treatment duty under paragraph 601FC(1)(d) of the Act that are consequential on certain of the modifications made by this instrument.
4. *ASIC Corporations (Amendment and Repeal) Instrument 2025/630* repeals Instrument 2015/847, as the relief previously provided by Instrument 2015/847 is now provided by Instrument 2025/629. It also makes consequential amendments to other ASIC legislative instruments to update cross-references to Instrument 2015/847.

#### Assessment of human rights implications

5. The ASIC instruments do not engage any of the applicable rights or freedoms.

#### Conclusion

6. The ASIC instruments are 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*.