

EXPOSURE DRAFT

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Inserts for
**Treasury Laws Amendment (Measures
for Consultation) Bill 2023:
Rationalisation of ending ASIC
instruments (Tranche 2)**

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule 1 Part 1	The day after this Act receives the Royal Assent.	
2. Schedule 1, Part 2	The later of: (a) 1 October 2023; and (b) the day after this Act receives the Royal Assent.	
3. Schedule 1, Parts 3 and 4	The day after this Act receives the Royal Assent.	

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Schedule 1—Rationalisation of ending ASIC instruments

Part 1—Acquisitions of relevant interests in voting shares

Division 1—Amendments

Corporations Act 2001

1 Section 9 (definition of *convertible securities*)

Repeal the definition, substitute:

convertible securities: securities are convertible into another class of securities if the holder may, by the exercise of rights attached to those securities:

- (a) have the other class of securities issued to them; or
- (b) have the securities transform into securities of that other class.

An option may be a convertible security even if it is non-renounceable.

2 Section 9 (definition of *relevant interest*)

Omit “sections 608 and 609”, substitute “sections 608 to 609B”.

3 Section 9 (subparagraph (a)(ii) of the definition of *substantial holding*)

Repeal the subparagraph, substitute:

- (ii) would have a relevant interest but for subsection 609(6) (market traded options and derivatives), 609(7) (conditional agreements) or 609(9B) (securities escrowed under listing rules) or section 609B (securities subject to escrow agreement in connection with initial public offer);

4 Paragraphs 12(2)(b) and (c)

Before “the second person”, insert “subject to subsection (2A),”.

5 After subsection 12(2)

Insert:

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1 (2A) For the purposes of paragraphs (2)(b) and (c), the second person is
2 not an associate of the primary person in relation to a designated
3 body merely because:

4 (a) they have entered or propose to enter into a relevant
5 agreement; and

6 (b) one of them has or will have a right under the relevant
7 agreement (whether the right is enforceable presently or in
8 the future and whether or not on the fulfilment of a
9 condition) to dispose of securities in the designated body or
10 control the exercise of a power to dispose of the securities.

11 **6 Subsection 606(1) (note 2)**

12 Omit “Sections 608 and 609”, substitute “Sections 608 to 609B”.

13 **7 Subsection 609(1)**

14 Repeal the subsection, substitute:

15 *Money lending and financial accommodation*

16 (1) A person does not have a relevant interest in securities merely
17 because of a security interest taken or acquired by the person if:

18 (a) the security interest is taken or acquired:

19 (i) in the ordinary course of the person’s business of the
20 provision of financial accommodation by any means
21 and on ordinary commercial terms; or

22 (ii) for the benefit of one or more other persons in relation
23 to financial accommodation provided by them in the
24 ordinary course of their business of the provision of
25 financial accommodation by any means and on ordinary
26 commercial terms; and

27 (b) the person whose property is subject to the security interest is
28 not an associate of any other person mentioned in this
29 subsection.

30 In this subsection, a reference to a security interest includes a
31 reference to a negative pledge.

32 Note: Sections 11 to 17 define *associate*.

33 **8 Subsection 609(3)**

34 Repeal the subsection, substitute:

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Disposal of securities by financial services licensees

- 1
2 (3) A financial services licensee does not have a relevant interest in
3 securities merely because, in the ordinary course of the licensee's
4 financial services business, a person specifically instructs the
5 licensee to:
6 (a) dispose of the securities on behalf of the person; or
7 (b) enter into a position on behalf of the person under which the
8 licensee has an obligation to make delivery of the securities
9 by dealing in:
10 (i) a warrant within the meaning of the regulations; or
11 (ii) a financial product that, but for the product not being
12 transferable, would be a warrant within the meaning of
13 the regulations.

14 **9 After subsection 609(9A)**

15 Insert:

16 *Securities escrowed under listing rules*

- 17 (9B) A listed company does not have a relevant interest in securities
18 merely because:
19 (a) those securities are restricted securities within the meaning of
20 the listing rules of a prescribed financial market; and
21 (b) the company applies restrictions, in accordance with those
22 rules, on the disposal of the securities by their holder.
- 23 (9C) The operator of a prescribed financial market does not have a
24 relevant interest in securities merely because:
25 (a) those securities are restricted securities within the meaning of
26 the listing rules of that market; and
27 (b) the operator has the power under those rules to control the
28 exercise of a power to dispose of the securities.

29 **10 After section 609**

30 Insert:

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609A Another situation not giving rise to relevant interests— acceptance facility

Securities the subject of an acceptance facility

- (1) A bidder for a takeover bid does not have a relevant interest in bid class securities merely because those securities are the subject of an acceptance, in relation to a facility, that is given to the operator of the facility if:
- (a) the offer under the takeover bid for those securities has not been accepted; and
 - (b) the facility is covered by subsection (2); and
 - (c) in the case where bid class securities are quoted on a prescribed financial market—for every movement of at least 1% in the aggregate level of the bidder’s voting power and the votes attached to bid class securities the subject of acceptances in relation to the facility, the bidder provides to the relevant market operator, by 9.30 am on the next trading day after the movement, a notice (whether accompanying a notice required to be given under section 671B or otherwise) that meets the requirements of subsection (4) of this section; and
 - (d) in the case where bid class securities are not quoted on a prescribed financial market—the bidder lodges with ASIC a notice that meets the requirements of subsection (4) of this section within 2 business days after the aggregate level of the bidder’s voting power and the votes attached to bid class securities the subject of acceptances in relation to the facility rise or fall above or below a percentage listed in subsection 654C(1).

Facility requirements

- (2) The facility is covered by this subsection if:
- (a) it is the only facility established by the bidder in relation to bid class securities; and
 - (b) the operator of the facility is not the bidder or an associate of the bidder; and
 - (c) the operator holds an Australian financial services licence that covers the provision of financial services of the kind necessary to operate the facility; and
 - (d) a participant in the facility may give the operator acceptances in relation to the facility; and

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- 1 (e) the terms of the facility permit the operator to maintain
2 custody of an acceptance in relation the facility given to the
3 operator by a participant in the facility until:
4 (i) the participant withdraws the acceptance; or
5 (ii) any condition of a kind specified in subsection (3) that
6 is specified in the facility is satisfied; and
7 (f) the terms of the facility provide that the facility:
8 (i) if the bid is unconditional—must be made available to
9 all holders of bid class securities or persons on whose
10 behalf bid class securities are held; or
11 (ii) otherwise—must be made available to all or specified
12 holders of bid class securities or persons on whose
13 behalf bid class securities are held; and
14 (g) in the case where bid class securities are quoted on a
15 prescribed financial market—the terms of the facility provide
16 that the operator of the facility must provide information
17 about acceptances in relation to the facility to the bidder
18 sufficiently regularly to enable the bidder to determine and
19 disclose to the market operator every movement of at least
20 1% in the aggregate level of the bidder’s voting power and
21 the votes attached to securities the subject of acceptances in
22 relation to the facility by 9.30 am on the next trading day
23 after the movement; and
24 (h) in the case where bid class securities are not quoted on a
25 prescribed financial market—the terms of the facility provide
26 that the operator of the facility must provide information
27 about acceptances in relation to the facility to the bidder
28 sufficiently regularly to enable to the bidder to determine and
29 disclose to the target any movement in the aggregate level of
30 the bidder’s voting power and the votes attached to securities
31 the subject of acceptances in relation to the facility above or
32 below a percentage listed in subsection 654C(1) within 2
33 business days after the movement; and
34 (i) the terms of the facility provide that all participants in the
35 facility participate in the facility on the same terms.

36 *Triggering conditions*

- 37 (3) The following conditions are specified for the purposes of
38 subparagraph (2)(e)(ii):
39 (a) a condition that, no later than the time that all acceptances in
40 relation to the facility are processed, the bidder has:
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- 1 (i) declared the bid free of all conditions; or
2 (ii) stated that the bidder will declare the bid free of all
3 conditions;
4 (b) a condition that the securities in which the bidder and its
5 associates have a relevant interest together with the securities
6 that are the subject of the facility have exceeded a specified
7 percentage of securities in the bid class;
8 (c) a condition that the bidder has notified the operator of the
9 facility in writing that a condition in paragraph (a) or (b) has
10 been satisfied.

11 *Notice requirements*

- 12 (4) For the purposes of paragraphs (1)(c) and (d), a notice meets the
13 requirements of this subsection if the notice:
14 (a) sets out the aggregate number and percentage of bid class
15 securities:
16 (i) in which the bidder and its associates have a relevant
17 interest; and
18 (ii) which are subject of acceptances in relation to the
19 facility; and
20 (b) discloses the breakdown between the 2 categories in
21 subparagraphs (a)(i) and (ii) of this subsection; and
22 (c) includes a statement setting out the preconditions for the
23 operator of the facility releasing the acceptances and warning
24 that the acceptances may be withdrawn by participants in the
25 facility at any time until the preconditions are met.

26 *Definitions*

- 27 (5) In this section:

28 ***acceptance***, in relation to a facility, means an instrument that
29 comprises:

- 30 (a) a participant in the facility's completed acceptance of a
31 bidder's offer for bid class securities; or
32 (b) a participant in the facility's instructions to another person
33 who holds bid class securities on behalf of the participant to
34 accept a bidder's offer for bid class securities.

35 ***participant***, in a facility, means:

- 36 (a) a holder of bid class securities who is specified in the facility;
37 or

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1 (b) a person who is specified in the facility and on whose behalf
2 bid class securities are held.

3 **609B Another situation not giving rise to relevant interests—**
4 **securities subject to escrow agreement in connection with**
5 **initial public offer**

6 *Escrow agreement entered into by body corporate in connection*
7 *with initial public offer*

- 8 (1) A body corporate does not have a relevant interest in securities that
9 are its own securities (the *escrow securities*) merely because, under
10 an agreement entered into by the body corporate with the holder of
11 the escrow securities, the body corporate applies restrictions on the
12 disposal of the escrow securities by the holder if:
- 13 (a) the body corporate enters into the agreement in connection
14 with an offer of securities in the body corporate that are in a
15 class of securities that are to be quoted on a prescribed
16 financial market (the *initial public offer*); and
 - 17 (b) the escrow securities are in the same class of securities as
18 those that are offered under the initial public offer; and
 - 19 (c) the agreement is covered by subsection (3).

20 *Escrow agreement entered into by underwriter, lead manager or*
21 *joint lead managers in connection with initial public offer*

- 22 (2) A person does not have a relevant interest in the escrow securities
23 merely because, under an agreement entered into by the person
24 with the holder of the escrow securities in the ordinary course of
25 the person's business as an underwriter, lead manager or joint lead
26 manager, the person applies restrictions on the disposal of the
27 escrow securities by the holder if:
- 28 (a) the person enters into the agreement in connection with the
29 initial public offer; and
 - 30 (b) the escrow securities are in the same class of securities as
31 those that are covered by the initial public offer; and
 - 32 (c) the agreement is covered by subsection (3).

33 *Agreement requirements*

- 34 (3) An agreement relating to the escrow securities is covered by this
35 subsection if:

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- 1 (a) the agreement does not restrict the exercise of voting rights
2 attaching to the escrow securities; and
- 3 (b) in the case of a takeover bid (including a proportional
4 takeover bid):
- 5 (i) the agreement allows each holder of the escrow
6 securities to accept into the takeover bid where the
7 holders of at least half of the bid class securities that are
8 not subject to escrow have accepted into the bid; and
- 9 (ii) the agreement requires that the escrow securities be
10 returned to escrow if the bid does not become
11 unconditional; and
- 12 (c) the agreement allows the escrow securities to be transferred
13 or cancelled as part of a merger by way of a compromise or
14 arrangement under Part 5.1; and
- 15 (d) the agreement terminates no later than:
- 16 (i) if the person who entered into the agreement is the body
17 corporate mentioned in subsection (1)—2 years after the
18 agreement is entered into; or
- 19 (ii) otherwise—1 year after the agreement is entered into;
20 and
- 21 (e) if the agreement permits the holder to create a security
22 interest in some or all of the escrow securities in favour of a
23 person who does not have a relevant interest in the escrow
24 securities because of subsection 609(1)—the agreement
25 requires that the holder must not create a security interest in
26 favour of the person unless the person has agreed in writing
27 to take or acquire the security interest in the escrow securities
28 subject to the terms of the agreement; and
- 29 (f) if the agreement permits the holder to transfer the holder's
30 interests in the escrow securities to another person—requires
31 that the holder must not do so if:
- 32 (i) the transfer would result in a change in the beneficial
33 ownership of the escrow securities; or
- 34 (ii) the transfer would result in an extension in the period of
35 the agreement; or
- 36 (iii) the transferee does not agree to be subject to the same
37 restrictions on disposal of the escrow securities under
38 the agreement.

11 After subsection 610(3)

39 Insert:
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1 (3A) However, subsection (3) does not apply in relation to a subsidiary
2 acquiring an interest in securities from its holding company with
3 the result that the subsidiary acquires a relevant interest in
4 particular voting shares unless:

- 5 (a) the acquisition results in an increase of another person's
6 voting power in a designated body; and
7 (b) that other person is not a subsidiary of the ultimate holding
8 company.

9 **12 Section 611 (table items 2 and 3, paragraph (d))**

10 Repeal the paragraph, substitute:

11
12 (d) the bid is unconditional or subject only to one or both of the following:

- 13 (i) a condition that relates to the occurrence or non-occurrence of an event
14 referred to in subsection 652C(1) or (2);
15 (ii) a condition that is required under subsection 625(3).

16 **13 Section 611 (table item 6)**

17 Repeal the item, substitute:

Nature of acquirer

- 18
6 An acquisition that results from the exercise by a person of a power,
or the appointment of a receiver, or receiver and manager, under an
instrument or agreement creating or giving rise to a security interest
if:
(a) both of the following apply:
(i) the person's ordinary business includes the provision of
financial accommodation by any means;
(ii) the person took or acquired the security interest in the
ordinary course of their business of the provision of
financial accommodation by any means and on ordinary
commercial terms; or
(b) all of the following apply:
(i) the person took or acquired the security interest for the
benefit of another person;
(ii) the person's ordinary business, or the other person's
ordinary business, includes the provision of financial
accommodation by any means;
(iii) the person took or acquired the security interest in relation
to financial accommodation provided by the other person
in the ordinary course of their business of the provision of
financial accommodation by any means and on ordinary
commercial terms.

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In this item, a reference to a security interest includes a reference to a negative pledge.

1 **14 Section 611 (table item 14)**

2 Repeal the item, substitute:

3

Acquisition through listed company

14 An acquisition that results from another acquisition of relevant interests in voting shares in a body corporate included as a primary listing in the official list of:

(a) a prescribed financial market; or

(b) a foreign body conducting a financial market that is a body approved in writing by ASIC for the purposes of this item.

4 **15 Section 615 (after the heading)**

5 Insert:

6 *Terms of offers relating to all foreign holders of securities*

7 **16 Section 615**

8 Before “The”, insert “(1)”.

9 **17 At the end of section 615**

10 Add:

11 *Terms of offers relating to specified foreign holders of securities*

12 (2) The exception in item 10 of the table in section 611 applies even
13 though the conditions set out in the item are not satisfied in respect
14 of foreign holders of the company’s securities that are specified in
15 the offers if, under the terms of the offers:

16 (a) the company must appoint a nominee for the specified
17 foreign holders of the company’s securities who is approved
18 by ASIC; and

19 (b) the company must issue to the nominee:

20 (i) the securities that would otherwise be issued to the
21 specified foreign holders who accept the offer; or

22 (ii) the right to acquire those securities; and

23 (c) the nominee must sell the securities, or those rights, and
24 distribute to each of the specified foreign holders their
25 proportion of the proceeds of the sale net of expenses.

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1 **18 Subsection 671B(7)**

2 Repeal the subsection, substitute:

3 *Relevant interests not excluded*

4 (7) For the purposes of this section, a person has a relevant interest in
5 securities if the person would have a relevant interest in the
6 securities but for subsection 609(6) (market traded options), 609(7)
7 (conditional agreements) or 609(9B) (securities escrowed under
8 listing rules) or section 609B (securities subject to escrow
9 agreement in connection with initial public offer).

10 **Division 2—Repeals**

11 *ASIC Class Order [CO 13/520]*

12 **19 The whole of the instrument**

13 Repeal the instrument.

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Part 2—Constitutions of registered schemes

Corporations Act 2001

20 Section 9

Insert:

able to be traded, in relation to a market, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

21 After section 601FC

Insert:

601FCA Duties of responsible entity in relation to exercise of discretion on acquisition of scheme interests or withdrawal from scheme

- (1) This section applies in relation to the exercise of a discretion by the responsible entity of a registered scheme if:
- (a) both:
 - (i) the constitution of the scheme meets the requirements of subsection 601GD(1) (about formulas and methods for determining the amount of consideration to acquire interests in the scheme); and
 - (ii) subsection 601GD(6) applies in relation to the discretion; or
 - (b) both:
 - (i) the constitution of the scheme meets the requirements of subsection 601GE(1) (about formulas and methods for determining the terms of any payment or removal of liability arising from withdrawal from the scheme); and
 - (ii) subsection 601GE(5) applies in relation to the discretion.
- (2) The responsible entity must not exercise the discretion on the basis that it will result in a particular amount being set as the amount:
- (a) of the consideration to acquire the interest in the scheme; or
 - (b) that will be paid to the member making the withdrawal.

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- 1 (3) If the discretion relates to working out the value of scheme
2 property, the responsible entity must ensure that the manner in
3 which the discretion is exercised is, as far as practicable:
4 (a) consistent with ordinary commercial practice for valuing
5 property of the relevant kind; and
6 (b) consistent with producing a value or price that is reasonably
7 current at the time of the issue of the acquired interest or the
8 withdrawal.
- 9 (4) If:
10 (a) subsection 601GD(6) applies in relation to the discretion, as
11 mentioned in paragraph (1)(a) of this section; and
12 (b) the discretion relates to working out the market price of
13 interests in the scheme which are able to be traded on a
14 financial market; and
15 (c) the scheme is listed on that financial market;
16 the responsible entity must ensure that the manner in which the
17 discretion is exercised is, as far as practicable:
18 (d) consistent with ordinary commercial practice for working out
19 the market price of interests of the same kind; and
20 (e) consistent with producing a value or price that is reasonably
21 current at the time of the issue of the acquired interest.
- 22 (5) A duty of the responsible entity under this section overrides any
23 conflicting duty an officer or employee of the responsible entity
24 has under Part 2D.1.
- 25 (6) A responsible entity who contravenes subsection (2), (3) or (4), and
26 any person who is involved in a responsible entity's contravention
27 of that subsection, contravenes this subsection.
- 28 Note 1: Section 79 defines *involved*.
29 Note 2: Subsection (6) is a civil penalty provision (see section 1317E).

22 At the end of Part 5C.3

31 Add:

32 **601GD Formulas and methods in constitutional provisions about** 33 **consideration for acquisition of interests**

- 34 (1) For the purposes of paragraph 601GA(1)(a), the constitution of a
35 registered scheme is taken to make adequate provision for the

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1 consideration that is to be paid to acquire an interest in the scheme
2 if:

- 3 (a) the constitution provides a formula or method that is to be
4 used to determine the amount of the consideration to acquire
5 the interest; and
6 (b) the requirements of subsection (3) of this section are satisfied
7 in relation to the formula or method.

- 8 (2) Subsection (1) of this section does not limit the circumstances in
9 which, for the purposes of paragraph 601GA(1)(a), the constitution
10 of a registered scheme is taken to make adequate provision for the
11 consideration that is to be paid to acquire an interest in the scheme.

12 *Bases of formulas and methods*

- 13 (3) For the purposes of paragraph (1)(b) of this section, the result of
14 using the formula or method to determine the amount of the
15 consideration to acquire the interest (the *acquired interest*) must be
16 that the amount of the consideration is equal to:

- 17 (a) if the formula or method applies when the acquired interest is
18 in a class of interests that are not able to be traded on a
19 financial market—the amount worked out under
20 subsection (4); or
21 (b) if the formula or method applies when the acquired interest is
22 in a class of interests that are able to be traded on a financial
23 market:
24 (i) if the market is a financial market operated by ASX
25 Limited or CBOE Australia Pty Ltd, and the scheme is
26 not listed on that financial market—the amount worked
27 out under subsection (4); or
28 (ii) otherwise—the amount worked out under
29 subsection (5).

30 Note: A reference to interests in a particular class includes a reference to all
31 interests in the scheme if there are no separate classes of interest: see
32 subsection 57(2).

- 33 (4) For the purposes of paragraph (3)(a) or subparagraph (3)(b)(i), the
34 amount is:

- 35 (a) the value of scheme property attributable to interests in that
36 class at the time of issue of the acquired interest; less
37 (b) any liabilities that under the constitution may be met from
38 that property attributable to interests in that class;
39 divided by the number of interests on issue in that class.

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- 1 (5) For the purposes of subparagraph (3)(b)(ii), the amount is the
2 market price of the interests in that class on the market at or around
3 the time of issue of the acquired interest.

4 *Discretions*

- 5 (6) For the purposes of subsections (1) to (5), disregard a discretion:
6 (a) that the constitution gives to the responsible entity of the
7 scheme; and
8 (b) the exercise of which would affect the amount of
9 consideration that, under the constitution, is to be paid to
10 acquire an interest in the scheme.

11 Example 1: A discretion to decide a matter that affects the value of a factor that is
12 included in the formula, or is an aspect of the method.

13 Example 2: A discretion to take account of costs in acquiring or disposing of
14 scheme property.

15 Note 1: Such a discretion must be exercised only in accordance with the duties
16 of the responsible entity, including the duties set out in
17 sections 601FC and 601FCA.

18 Note 2: The responsible entity may appoint an agent or otherwise engage a
19 person to do anything it is authorised to do in connection with the
20 scheme: see subsection 601FB(2).

21 **601GE Formulas and methods in constitutional provisions about**
22 **amounts to be paid on withdrawal**

23 *Formulas and methods*

- 24 (1) For the purposes of paragraphs 601GA(4)(a) and (b), the
25 constitution of a registered scheme is taken to:
26 (a) specify the right of a member to withdraw from the scheme;
27 and
28 (b) set out adequate procedures for making and dealing with a
29 withdrawal request;
30 if:
31 (c) the constitution provides a formula or method that is to be
32 used to work out an amount that will be paid to a member
33 making a withdrawal; and
34 (d) the requirements of subsection (3) of this section are satisfied
35 in relation to the formula or method.

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- 1 (2) Subsection (1) of this section does not limit the circumstances in
2 which, for the purposes of subsection 601GA(4), the constitution
3 of a registered scheme is taken to:
4 (a) specify the right of a member to withdraw from the scheme;
5 or
6 (b) set out adequate procedures for making and dealing with a
7 withdrawal request.

8 *Bases of formulas and methods*

- 9 (3) For the purposes of paragraph (1)(d) of this section, the result of
10 using the formula or method to work out an amount that will be
11 paid to a member making a withdrawal must be that the amount to
12 be paid is equal to the amount worked out under subsection (4).
- 13 (4) For the purposes of subsection (3), the amount is:
14 (a) the value of scheme property attributable to interests in the
15 relevant class; less
16 (b) any liabilities that under the constitution may be met from
17 that property attributable to interests in that class;
18 divided by the number of interests on issue in that class
19 immediately before the withdrawal.

20 *Discretions*

- 21 (5) For the purposes of subsections (1) to (4), disregard a discretion:
22 (a) that the constitution gives to the responsible entity of the
23 scheme; and
24 (b) the exercise of which would affect the amount that, under the
25 constitution, will be paid to a member making a withdrawal
26 from the scheme.

27 Example 1: A discretion to decide a matter that affects the value of a factor that is
28 included in the formula, or is an aspect of the method.

29 Example 2: A discretion to take account of costs in acquiring or disposing of
30 scheme property.

31 Note 1: Such a discretion must be exercised only in accordance with the duties
32 of the responsible entity, including the duties set out in
33 sections 601FC and 601FCA.

34 Note 2: The responsible entity may appoint an agent or otherwise engage a
35 person to do anything it is authorised to do in connection with the
36 scheme: see subsection 601FB(2).

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1 **23 Subsection 1317E(3) (after table item dealing with**
2 **subsection 601FC(5))**

3 Insert:

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subsection 601FCA(6)	duties of responsible entity in relation to exercise of discretion on acquisition of scheme interests or withdrawal from scheme	corporation/scheme
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1 **Part 3—Exemptions from requirement to provide**
2 **Financial Services Guide**

3 **Division 1—Main amendments**

4 *Corporations Act 2001*

5 **24 After subsection 941C(2)**

6 Insert:

7 *Dealing in financial products in ordinary course of operation of*
8 *superannuation entity*

9 (2A) The providing entity does not have to give the client a Financial
10 Services Guide if:

- 11 (a) the providing entity is the trustee of a superannuation entity;
12 and
13 (b) the client is a member (within the meaning of the
14 *Superannuation Industry (Supervision) Act 1993*) of the
15 superannuation entity; and
16 (c) the financial service is a dealing by the trustee in financial
17 products in the ordinary course of operation of the
18 superannuation entity.

19 *Dealing in financial products in ordinary course of operation of*
20 *registered scheme*

21 (2B) The providing entity does not have to give the client a Financial
22 Services Guide if:

- 23 (a) the providing entity is the responsible entity of a registered
24 scheme; and
25 (b) the client is a member the scheme; and
26 (c) the financial service is a dealing by the responsible entity in
27 financial products in the ordinary course of operation of the
28 scheme.

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1 **Division 2—Repeals**

2 *ASIC Corporations (Superannuation and Schemes:*
3 *Underlying Investments) Instrument 2016/378*

4 **25 The whole of the instrument**

5 Repeal the instrument.

EXPOSURE DRAFT

1 **Part 4—Precontractual statements and information**
2 **statements**

3 *National Consumer Credit Protection Act 2009*

4 **26 At the end of section 16 of the National Credit Code**

5 Add:

6 *Alternative ways of giving statements to debtors*

- 7 (8) The regulations may specify ways in which a credit provider may
8 give a document to a debtor for the purposes of this section
9 (without limiting the ways in which the credit provider may give
10 the document to the debtor).

11 *Mandatory requirements relating to giving statements to debtors*

- 12 (9) The regulations may specify:
- 13 (a) the way in which a credit provider must give a document to a
14 debtor for the purposes of this section; or
 - 15 (b) a way in which a credit provider must not give a document to
16 a debtor for the purposes of this section; or
 - 17 (c) other requirements relating to a credit provider giving a
18 document to a debtor for the purposes of this section.
- 19 (10) The giving of a document by a credit provider to a debtor for the
20 purposes of this section is to be disregarded if:
- 21 (a) the giving of the document is not in the way (if any) specified
22 for the purposes of paragraph (9)(a); or
 - 23 (b) the giving of the document is in a way (if any) specified for
24 the purposes of paragraph (9)(b); or
 - 25 (c) any requirements specified for the purposes of
26 paragraph (9)(c) in relation to the giving of the document are
27 not satisfied.