



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2020/355

I, Grant Moodie, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 14 April 2020

Grant Moodie

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2020/355*.

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.

3 Authority

This instrument is made under subsections 926A(2) and 951B(1) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

client:

- (a) in relation to a providing entity—has the same meaning as in section 944A of the Act;
- (b) in relation to a registered tax agent—means a client of the tax agent.

eligible ground, in relation to the early release of benefits that are in a superannuation product or an RSA product, means the ground referred to in:

- (a) subregulation 6.19B(1) of the *Superannuation Industry (Supervision) Regulations 1994*; or
- (b) subregulation 4.22B(1) of the *Retirement Savings Accounts Regulations 1997*.

providing entity has the same meaning as in section 944A of the Act.

registered tax agent has the same meaning as in the *Tax Agent Services Act 2009*.

Regulations means the *Corporations Regulations 2001*.

representative has the meaning given by section 910A of the Act.

tax agent service has the same meaning as in section 90-5 of the *Tax Agent Services Act 2009*.

Part 2—Exemption

5 Timing of giving a Statement of Advice—urgent advice

- (1) A providing entity does not have to comply with section 946C of the Act for the provision of particular advice (the **COVID-19 advice**) to the extent it requires the providing entity to give a client a Statement of Advice any earlier than 30 business days after providing the COVID-19 advice to the client if subsection (2) applies.
- (2) This subsection applies where all of the following are satisfied:
 - (a) the client expressly instructs the providing entity that they require the COVID-19 advice on an urgent basis because of the adverse economic effects of the coronavirus known as COVID-19;
 - (b) the providing entity reasonably considers that the COVID-19 advice sought by the client is required on an urgent basis because of the adverse economic effects of the coronavirus known as COVID-19;
 - (c) if the COVID-19 advice is or includes a recommendation to acquire a financial product and section 1019B of the Act may apply to the acquisition—the providing entity, at the time of providing the COVID-19 advice, gives the client in writing a statement:
 - (i) explaining the nature of the rights that the client may have under section 1019B of the Act if they acquire the product; and
 - (ii) indicating that the client may not receive a Statement of Advice in relation to the COVID-19 advice until after those rights have expired.

Condition

- (3) The providing entity must take all reasonable steps to give the client a Statement of Advice in relation to the COVID-19 advice as soon as practicable after the COVID-19 advice is provided.

6 Licensing exemption—registered tax agents

- (1) A registered tax agent that is neither a financial services licensee nor a representative of a financial services licensee is exempt from subsection 911A(1) of the Act to the extent the tax agent is carrying on a financial services business comprising the provision of financial product advice (the **COVID-19 advice**) in relation to the early release on an

eligible ground of benefits that are in a superannuation product or an RSA product held by a client.

- (2) The exemption applies where all of the following are satisfied:
- (a) the client to whom the COVID-19 advice is provided is a person to whom the tax agent has provided a tax agent service before the commencement of this instrument;
 - (b) the provision of the COVID-19 advice is not in the course of, or because of, any unsolicited contact with the client in relation to the early release of benefits in the product by the tax agent or any person acting on its behalf;
 - (c) the fee charged to the client for providing the COVID-19 advice does not exceed \$300;
 - (d) the tax agent keeps a record of the COVID-19 advice which sets out:
 - (i) brief particulars of the recommendations made and the basis on which the recommendations are made, including:
 - (A) whether, in the tax agent’s opinion, the client satisfies an eligible ground for the early release of benefits in relation to the product; and
 - (B) if the tax agent is of the opinion the client satisfies the eligible ground—based on the client’s relevant personal circumstances (determined having regard to the client’s objectives, financial situation and needs as currently known to the tax agent), whether the client should apply for early release of benefits in relation to the product in part or in full and the reasons why; and
 - (ii) if the recommendation is that the client should apply for early release of benefits in relation to the product:
 - (A) the name of the superannuation product or the RSA product to which the recommendation relates; and
 - (B) the implications to the client of the early release of benefits in relation to the product;
 - (e) the tax agent, at the applicable time, gives the client:
 - (i) a copy of the record of the COVID-19 advice; and
 - (ii) the information that would, if a Statement of Advice were to be given, be required to be in the Statement by paragraphs 947B(2)(d) and (e) of the Act, or 947C(2)(e) and (f) of the Act, as the case requires.

- (3) For the purposes of this section, the **applicable time** for something to be given relating to the COVID-19 advice is the time:
- (a) when, or as soon as practicable after, the COVID-19 advice is provided; and
 - (b) in any event—before the tax agent provides the client with any further financial service in relation to the early release on an eligible ground of benefits that are in a superannuation product or an RSA product held by a client arising out of, or connected with, the COVID-19 advice.

Part 3—Declaration

7 Situations in which Statement of Advice is not required

- (1) Part 7.7 of the Act applies in relation to providing entities as if regulation 7.7.10AE of the Regulations were modified or varied by, in notional section 946B of the Act, inserting the following subsections at the end of that notional section:

“Third situation: Advice required because of COVID-19—early release of superannuation and retirement savings

- (7) The providing entity does not have to give the client a Statement of Advice for the provision of particular advice (the **COVID-19 advice**) if subsection (8) applies.
- (8) This subsection applies where all of the following are satisfied:
 - (a) the COVID-19 advice is in relation to the early release on an eligible ground of benefits that are in a superannuation product or an RSA product held by the client;
 - (b) the provision of the COVID-19 advice is not in the course of, or because of, any unsolicited contact with the client in relation to the early release of benefits in the product by the providing entity or any person acting on its behalf;
 - (c) the fee charged to the client for providing the COVID-19 advice does not exceed \$300.
- (9) The providing entity must keep a record of the COVID-19 advice which sets out:
 - (a) brief particulars of the recommendations made and the basis on which the recommendations are made, including:
 - (i) whether the client satisfies an eligible ground for the early release of benefits in relation to the product; and

- (ii) based on the client's relevant personal circumstances (determined having regard to the client's objectives, financial situation and needs as currently known to the providing entity) whether the client should apply for early release of benefits in relation to the product in part or in full and the reasons why; and
 - (b) if the recommendation is that the client should apply for early release of benefits in relation to the product:
 - (i) the name of the superannuation product or the RSA product to which the recommendation relates; and
 - (ii) the implications to the client of the early release of benefits in relation to the product.
- (10) The providing entity, at the applicable time, must give the client:
- (a) a copy of the record of the COVID-19 advice; and
 - (b) the information that would, if a Statement of Advice were to be given, be required to be in the Statement by paragraphs 947B(2)(d) and (e) of the Act, or 947C(2)(e) and (f), as the case requires.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

- (11) In subsections (8) and (9):
- eligible ground**, in relation to the early release of benefits that are in a superannuation product or an RSA product, means the ground referred to in:
- (a) subregulation 6.19B(1) of the *Superannuation Industry (Supervision) Regulations 1994*; or
 - (b) subregulation 4.22B(1) of the *Retirement Savings Accounts Regulations 1997*.
- (12) For the purposes of subsection (10), the **applicable time** for something to be given relating to the COVID-19 advice is the time:
- (a) when, or as soon as practicable after, the COVID-19 advice is provided; and
 - (b) in any event—before the providing provides the client with any further financial service arising out of, or connected with, the COVID-19 advice.

Fourth situation: Advice required because of COVID-19

- (13) The providing entity does not have to give the client a Statement of Advice for the provision of particular advice (the **COVID-19 advice**) if subsection (14) applies.
- (14) This subsection applies where all of the following are satisfied:
- (a) the client expressly instructs the providing entity that they require the COVID-19 advice because of the adverse economic effects of the coronavirus known as COVID-19;
 - (b) the providing entity reasonably considers that the COVID-19 advice sought by the client is required because of the adverse economic effects of the coronavirus known as COVID-19;
 - (c) either:
 - (i) the providing entity has previously given the client a Statement of Advice in relation to advice (the **previous advice**) that sets out the client's relevant personal circumstances in relation to the previous advice about one or more classes of financial products set out in that Statement; or
 - (ii) an associated providing entity has previously given the client a Statement of Advice in relation to advice (the **previous advice**) that sets out the client's relevant personal circumstances in relation to the previous advice about one or more classes of financial products set out in that Statement; and
 - (d) the COVID-19 advice is in relation to a class of financial products to which the previous advice related.
- Note: Paragraphs 947B(2)(b) and 947C(2)(b) require a Statement of Advice to include information about the basis on which the advice is or was given, which may include the client's relevant personal circumstances, in which case paragraph (c) of this subsection would be satisfied.
- (15) The providing entity must keep a record of the COVID-19 advice which sets out:
- (a) a brief explanation of the changes in the client's relevant personal circumstances in relation to the COVID-19 advice (determined having regard to the client's objectives, financial situation and needs as currently known to the providing entity); and
 - (b) brief particulars of the recommendations made to the client and the basis on which the recommendations are made; and

- (c) brief particulars of the information that would be required by subsection 947D(2) if a Statement of Advice were given to the client; and
 - (d) the statement that would be required by subsection 947D(3) if a Statement of Advice were given to the client.
- (16) The providing entity must:
- (a) at the applicable time, give the client a copy of the record of the COVID-19 advice; and
 - (b) if a copy of the record of the COVID-19 advice is not given to the client when the COVID-19 advice is provided—when the COVID-19 advice is provided, give the client the information that would be required to be in a Statement of Advice by paragraphs 947B(2)(d) and (e), or 947C(2)(e) and (f), as the case requires, and by section 947D, if applicable.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

- (17) For the purposes of paragraph (16)(a), the **applicable time** to give the client a copy of the record of the COVID-19 advice is the time:
- (a) when, or as soon as practicable after, the COVID-19 advice is provided; and
 - (b) in any event—before the providing entity provides the client with any further financial service arising out of, or connected with, the COVID-19 advice.

- (18) In subsection (14):

associated providing entity, in relation to a providing entity, means:

- (a) where the providing entity is a financial services licensee—any person who is an authorised representative of the licensee;
 - (b) where the providing entity is an authorised representative of a financial services licensee—the authorising licensee or any person who is an authorised representative of the licensee.”.
- (2) Part 7.7 of the Act applies in relation to providing entities as if regulation 7.7.10AG of the Regulations were modified or varied by, after “subsection 946B(3A)” (wherever occurring), inserting “or subsection 946B(9) or (15)”.