

# Attachment 1 to CP 225: Draft instrument



**ASIC**

Australian Securities & Investments Commission

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## **ASIC Corporations (Foreign Securities—Rights Issues) Instrument 2015**

### **ASIC Legislative Instrument No. XX, 2015**

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I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Dated 2015

<signature>

<insert name>

Delegate of the Australian Securities and Investments Commission

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## Part 1—Preliminary

### 1 Name of legislative instrument

This instrument is *ASIC Corporations (Foreign Securities—Rights Issues) Instrument 2015*.

### 2 Commencement

This instrument commences on the day after it is recorded in the Federal Register of Legislative Instruments in electronic form.

Note: The register may be accessed at <http://www.comlaw.gov.au>.

### 3 Authority

This instrument is made under section 741 of the *Corporations Act 2001* (the *Act*).

### 4 Definitions

In this instrument:

***approved foreign market*** means the main board of any of the following financial markets:

- (a) Borsa Italiana;
- (b) Bursa Malaysia;
- (c) Euronext Amsterdam;
- (d) Euronext Paris;
- (e) Frankfurt Stock Exchange;
- (f) Hong Kong Stock Exchange;
- (g) JSE (also known as the Johannesburg Stock Exchange);
- (h) London Stock Exchange;
- (i) NASDAQ Global Market or the NASDAQ Global Select Market;
- (j) New York Stock Exchange;
- (k) NYSE MKT;
- (l) NZX;
- (m) Singapore Exchange;

- (n) SIX Swiss Exchange;
- (o) Tokyo Stock Exchange;
- (p) Toronto Stock Exchange.

**Australian offeree** means an offeree who receives an offer of securities under a pro-rata offer or shortfall offer in this jurisdiction.

**Australian resident**, in relation to a pro-rata offer or shortfall offer of a foreign company, means:

- (a) a beneficial owner of securities in the offer class whose address:
  - (i) as included in publicly available reports of beneficial ownership that have been given to:
    - (A) an agency of a government or other body that performs regulatory functions under the laws of:
      - (I) the place of origin of the foreign company; or
      - (II) the jurisdiction of an approved foreign market on which the securities in the offer class are quoted; or
    - (B) a market operator of an approved foreign market on which the securities in the offer class are quoted; or
  - (ii) as otherwise known to the foreign company,is in this jurisdiction; or
- (b) if the address of a beneficial owner of securities in the offer class is not included in such publicly available reports or otherwise known to the foreign company—a holder of securities in the offer class whose address, as recorded in the relevant register of members, is in this jurisdiction.

**foreign regulatory requirements** means the laws or other rules (however described) that apply to the pro-rata offer or the shortfall offer in the primary foreign jurisdiction.

**primary foreign jurisdiction** means:

- (a) the place of the approved foreign market on which the securities in the offer class are quoted; or
- (b) if securities in the offer class are quoted on more than one approved foreign market—the place of the approved foreign market where it is reasonably expected that the largest numbers of offers will be received under the pro-rata offer.

**offer class** means the class of securities to which offers of securities under a pro-rata offer relates.

**pro-rata offer** means an offer of securities that is made to every person who holds securities in a particular class to issue them, or their assignee, with the percentage of the securities to be issued that is the same as the percentage of the securities in the class that they hold before the offer but disregarding:

- (a) the rounding up or down of the number of securities offered to that holder to a whole number; and
- (b) the fact that the offer is not made to holders in relation to whom, under the foreign regulatory requirements, offers do not have to be made.

**shortfall offer**, in relation to a pro-rata offer, means an offer of securities in the same class as the offer class where:

- (a) the offer is made to persons to whom offers were made under the pro-rata offer; and
- (b) the offer is made no later than 2 months after the first offer is made under the pro-rata offer; and
- (c) either:
  - (i) the securities had first been offered to, but not accepted by, a person under the pro-rata offer; or
  - (ii) the offer is made on the condition that the securities to which the offer relates may only be issued to the person where an offer of securities has first been made to, but not accepted by, another person under the pro-rata offer.

## Part 2—Exemption

### 5 Disclosure relief for rights issues of foreign securities

- (1) A foreign company that makes a pro-rata offer or shortfall offer of securities does not have to comply with Part 6D.2 or 6D.3 of the Act for a pro-rata offer or shortfall offer.
- (2) The exemption in subsection (1) applies where all of the following are satisfied in relation to the offer:
  - (a) the terms of each offer made to an Australian offeree are no less favourable than those extended to other offerees;
  - (b) the number of securities offered to Australian residents is no more than 10% of the number of securities offered to all offerees;
  - (c) the securities to which the offer relates are in a class of securities that were quoted on an approved foreign market at all times in the 3 months before the day the offer is made;
  - (d) trading in that class of securities on the foreign market was not suspended for more than a total of 5 days during the shorter of the following periods:
    - (i) the period during which the class of securities is quoted;
    - (ii) the period of 12 months before the day on which the offer is made;
  - (e) the foreign company takes all reasonable steps to ensure that the offer is made in accordance with the foreign regulatory requirements;
  - (f) the disclosure relating to the offer that is given or made available to Australian offerees:
    - (i) is the same as the disclosure that is given or made available to an offeree located in the primary foreign jurisdiction; and
    - (ii) is in English if an English version of the disclosure is available; and
    - (iii) is given or made available at or before the time the offer is made.