

Attachment 4 to CP 225: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Foreign Securities—Small Scale Personal Offers) Instrument 2015

ASIC Legislative Instrument No. XX, 2015

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

Contents

Part 1—Preliminary	3
1 Name of legislative instrument.....	3
2 Commencement	3
3 Authority.....	3
4 Definitions	3
Part 2—Declaration	5
5 Small scale personal offers of foreign securities or interests.....	5

DRAFT

Part 1—Preliminary

1 Name of legislative instrument

This instrument is *ASIC Corporations (Foreign Securities—Small Scale Personal Offers) 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 and 1020F 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 a person who receives an offer or a recommendation to which section 1012A of the Act would apply, in this jurisdiction.

foreign regulatory requirements means laws or operating rules (however described) that are in force in or in part of the primary foreign jurisdiction.

offer of interests in a managed investment scheme means an offer to:

- (a) issue the interests in the managed investment scheme; or
- (b) arrange for the issue of the interests in the managed investment scheme.

primary foreign jurisdiction:

- (a) in relation to a foreign company, means:
 - (i) the place of the approved foreign market on which the securities of the company are quoted; or
 - (ii) if the securities of the company are quoted on more than one approved foreign market—the place of the approved foreign market on which the securities were first quoted; and
- (b) in relation to a managed investment scheme operated by a foreign company, means:
 - (i) the place of the approved foreign market on which interests in the scheme are able to be traded; or
 - (ii) if the interests in the scheme are able to be traded on more than one approved foreign market—the place of the approved foreign market where it is reasonably expected that the most offers of securities will be received.

DRAFT

Part 2—Declaration

5 Small scale personal offers of foreign securities or interests

(1) Chapter 6D of the Act applies to all persons as if the following provisions were modified or varied as follows:

(a) after subsection 708(7) insert:

“Small scale offerings (20 issues in 12 months)

(7A) Personal offers of a body’s securities by the body do not need disclosure to investors under this Part if none of the offers results in a breach of the 20 investors ceiling (see subsection (7C)).

(7B) For the purposes of subsection (7A), a personal offer is one that:

(a) may only be accepted by the person to whom it is made; and

(b) is made to a person who is likely to be interested in the offer, having regard to:

(i) previous contact between the body and that person; or

(ii) some professional or other connection between the body and that person; or

(iii) statements or actions by that person that indicate that they are interested in offers of that kind.

(7C) An offer by a body to issue securities results in a breach of the 20 investors ceiling if it results in the number of people to whom securities of the body have been issued exceeding 20 in any 12 month period.

(7D) In counting issues of the body’s securities for the purposes of subsection (7A), disregard issues that result from offers that:

(a) do not need a disclosure document because of any other subsection of this section;

(b) are not received in Australia; or

(c) are made under a disclosure document.”;

DRAFT

- (b) in subsection 734(1) omit “but for subsection 708(1)”, substitute “but for subsection 708(1) or (7A)”.
- (2) Part 7.9 of the Act applies in relation to all persons as if the following provisions were modified or varied as follows:
- (a) in Division 2, after section 1012E, insert:
 - “1012EA Small scale offerings of interest in managed investment schemes (20 issues in 12 months)**
- (1) Personal offers of interests in a managed investment scheme do not need a Product Disclosure Statement under this Part if:
 - (a) all of the interests in the scheme are issued by the same person (the *issuer*); and
 - (b) none of the offers results in a breach of the 20 purchasers ceiling (see subsection (4)).
 - (2) If subsection (1) applies to an offer of interests in a managed investment scheme, a recommendation to a person to acquire interests in a managed investment scheme in response to a personal offer of that kind does not need a Product Disclosure Statement under this Part.
 - (3) For the purposes of this section, a *personal offer* is one that:
 - (a) may only be accepted by the person to whom it is made; and
 - (b) is made to a person who is likely to be interested in the offer, having regard to:
 - (i) previous contact between the person making the offer and that person; or
 - (ii) some professional or other connection between the person making the offer and that person; or
 - (iii) statements or actions by that person that indicate that they are interested in offers of that kind.
 - (4) An offer of an interest in a managed investment scheme results in a breach of the 20 purchasers ceiling if it results in the number of people to whom the issuer has issued interests in the managed investment scheme exceeding 20 in any 12 month period.

DRAFT

- (5) In counting issues of interests in managed investment schemes issued by the issuer for the purposes of subsection (1), disregard issues that result from offers that:
 - (a) do not need a Product Disclosure Statement (otherwise than because of this section); or
 - (b) are made under a Product Disclosure Statement.
- (6) In counting issues of interests in managed investment schemes issued by the issuer for the purposes of subsection (1), disregard any issues made by a body if:
 - (a) the body was a managed investment scheme (but not a registered scheme) at the time that the offer of interests in the scheme that resulted in the issues was made; and
 - (b) the body became a registered scheme within 12 months after that offer was made; and
 - (c) the offer would not have required a Product Disclosure Statement (otherwise than because of this section) if the managed investment scheme had been a registered scheme at the time that the offer was made.
- (7) If a person relies on subsection (1) to make offers of interests in a managed investment scheme without a Product Disclosure Statement under this Part, the person must not issue, or arrange for the issue of, interests in a managed investment scheme if the issue would result in a breach of the 20 purchasers ceiling (see subsections (4), (5), and (6)).
- (8) For the purposes of this section, an *offer of an interest in a managed investment scheme* is an offer to:
 - (a) issue an interest in the scheme; or
 - (b) arrange for the issue of an interest in the scheme.”;
- (b) in subsection 1018B(1) omit “because of section 1012E.”, substitute “because of section 1012E or 1012EA.”.
- (3) The declarations in subsections (1) and (2) apply to an offer of securities for issue in a foreign company, or an offer of interests in a managed investment scheme by a foreign company, where all of the following are satisfied:
 - (a) the securities are in a class that is quoted on, or the interests in the managed investment scheme are able to be traded on, an approved foreign market and trading in which is not suspended;

DRAFT

- (b) at or before the time the offer is made, Australian offerees are given any document relating to the offer that would have been required to be given to them under the laws of the primary foreign jurisdiction if they received the offer in that jurisdiction;
- (c) if the document referred to in paragraph (b) is not in English, a certified English translation is given;
- (d) any document provided to Australian offerees under paragraph (b) includes or is accompanied by written statements to the effect that:
 - (i) the documents have been prepared for the purposes of compliance with foreign regulatory requirements; and
 - (ii) the documents may not contain all the information required to be contained in disclosure documents under the laws of Australia; and
 - (iii) if applicable, the foreign company is not subject to the continuous disclosure requirements of the Act that apply in Australia;
- (e) the foreign company takes all reasonable steps to ensure that any documentation required in respect of the offer complies with the foreign regulatory requirements.