

# Attachment 1 to CP 236: Draft instrument



**ASIC**

Australian Securities & Investments Commission

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## **ASIC Corporations (Dematerialised Securities: Austraclear) Instrument 2015/XX**

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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>

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## Contents

<b>Part 1—Preliminary</b>	<b>3</b>
1 Name of legislative instrument.....	3
2 Commencement .....	3
3 Authority.....	3
4 Definitions .....	3
<b>Part 2—Exemption</b>	<b>5</b>
5 Dematerialised securities .....	5
6 Operation of a clearing and settlement facility for dematerialised securities.	5

## Part 1—Preliminary

### 1 Name of legislative instrument

This instrument is *ASIC Corporations (Dematerialised Securities: Austraclear) Instrument 2015/XX*.

### 2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Note: The register may be accessed at [www.comlaw.gov.au](http://www.comlaw.gov.au).

### 3 Authority

This instrument is made under subsections 283GA(1), 601QA(1), 741(1) and 1075A(1) of the *Corporations Act 2001*.

### 4 Definitions

In this instrument:

*Act* means the *Corporations Act 2001*.

*dematerialised security*, in relation to the clearing and settlement facility operated by Austraclear Limited, means:

- (a) electronically recorded single party debt obligations under which the rights as between the maker or issuer and any participant of the clearing and settlement facility who deals in them will be equivalent to the rights which would arise under a certificate of deposit issued by a bank;
- (b) electronically recorded two party debt obligations under which the rights as between the drawer, acceptor, any indorser and any participant of the clearing and settlement facility who deals in them will be equivalent to the rights which would arise under a bill of exchange accepted by a bank;
- (c) electronically recorded single party debt obligations under which the rights as between the maker or issuer of the security and any participant of the clearing and settlement facility who deals in them will be equivalent to the rights which would arise under a promissory note or a certificate of deposit issued by a person other than a bank.

*non-participant* means any person who satisfies both of the following:

- (a) is a drawer of a security of the kind mentioned in paragraph (b) of the definition of *dematerialised security*;
- (b) is not a participant of the clearing and settlement facility operated by Austraclear Limited.

***participant*** means a participant of the clearing and settlement facility operated by Austraclear Limited.

## Part 2—Exemption

### 5 Dematerialised securities

- (1) Austraclear Limited, participants and non-participants do not have to comply with Chapter 2L and Parts 6D.2 and 6D.3 of the Act in relation to any offer of debentures for issue or sale, and any issue or sale of debentures, that occurs in the course of:
  - (a) the trading by participants in dematerialised securities of the kind mentioned in paragraphs (a) or (b) of the definition of *dematerialised security* that are deposited into the clearing and settlement facility operated by Austraclear Limited;
  - (b) the drawing by non-participants of dematerialised securities of the kind mentioned in paragraph (b) of the definition of *dematerialised security* that are deposited into the clearing and settlement facility operated by Austraclear Limited.
- (2) Dematerialised securities are exempt from Divisions 2 and 3 of Part 7.11 of the Act.
- (3) This section applies to the extent dematerialised securities are debentures.

### 6 Operation of a clearing and settlement facility for dematerialised securities

Austraclear Limited does not have to comply with Chapter 5C of the Act in relation to the operation of the clearing and settlement facility for dematerialised securities in accordance with the operating rules of the facility.