

Attachment 2 to CP 236: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Division 4 Financial Products) Instrument 2015/XX

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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Part 1—Preliminary

1 Name of legislative instrument

This instrument is *ASIC Corporations (Division 4 Financial Products) 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.

3 Authority

This instrument is made under subsection 1075A(1) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

AQUA Quote Display Board has the meaning given by the operating rules of ASX.

ASX means ASX Limited.

depository interests means units of beneficial ownership in financial products of the following kind that are issued for the purpose of enabling the financial products to be recorded and transferred in accordance with the operating rules of ASX Settlement Pty Limited:

- (a) securities issued by a foreign company; or
- (b) foreign scheme products.

Division 4 financial product has the meaning given by subregulation 7.11.03(1) of the Regulations.

eligible products means:

- (a) warrants that are:
 - (i) able to be traded on the financial market operated by ASX; or
 - (ii) admitted to the AQUA Quote Display Board.

- (b) interests in a managed investment scheme that is not required to be registered under Chapter 5C of the Act because of an instrument made under section 601QA of the Act and that are:
 - (i) able to be traded on the financial market operated by ASX; or
 - (ii) admitted to the AQUA Quote Display Board.
- (c) shares in, or debentures of, a foreign company that are quoted on the financial market operated by ASX;
- (d) shares and debentures quoted on the financial market operated by ASX that are issued by a body referred to in section 1073C of the Act;
- (e) depository interests in relation to financial products held by CHESSE Depository Nominees Pty Limited in accordance with the operating rules of ASX Settlement Pty Limited.

foreign scheme product means a financial product that:

- (a) is referred to in paragraph 764A(1)(ba) of the Act; and
- (b) relates to a managed investment scheme which is:
 - (i) operated by a foreign company; and
 - (ii) included in the official list of the financial market operated by ASX.

Regulations means the *Corporations Regulations 2001*.

warrant has the meaning given by subregulation 1.0.02(1) of the Regulations.

Part 2—Declaration

5 Application of Division 4 of Part 7.11 of the Act

Division 4 financial products

- (1) Part 7.11 of the Act applies to eligible products as if Division 4 of that Part were modified or varied by, after section 1074B, inserting:

“1074BB Transfers effected through ASX Settlement

- (1) The following financial products are financial products the transfer of which will be effected through ASX Settlement Pty Limited under the regulations:
- (a) warrants that are:
 - (i) able to be traded on the financial market operated by ASX Limited; or
 - (ii) admitted to the AQUA Quote Display Board;
 - (b) interests in a managed investment scheme that is not required to be registered under Chapter 5C because of an instrument made under section 601QA and that are:
 - (i) able to be traded on the financial market operated by ASX Limited; or
 - (ii) admitted to the AQUA Quote Display Board.
 - (c) shares in, or debentures of, a foreign company that are quoted on the financial market operated by ASX Limited;
 - (d) shares and debentures quoted on the financial market operated by ASX Limited that are issued by a body referred to in section 1073C; and
 - (e) depository interests in relation to financial products held by CHESS Depository Nominees Pty Limited in accordance with the operating rules of ASX Settlement Pty Limited.

- (2) In this section:

depository interests means units of beneficial ownership in financial products of the following kind that are issued for the purpose of enabling the financial products to be recorded and transferred in accordance with the operating rules of ASX Settlement Pty Limited:

- (a) securities issued by a foreign company; or

- (b) foreign scheme products.

foreign scheme product means a financial product that:

- (a) is referred to in paragraph 764A(1)(ba); and
- (b) relates to a managed investment scheme which is:
 - (i) operated by a foreign company; and
 - (ii) included in the official list of the financial market operated by ASX Limited.

warrant has the meaning given by subregulation 1.0.02(1) of the regulations.”.

Note 1: Paragraph 7.11.03(1)(b) of the Regulations provides that a financial product is a **Division 4 financial product** if the financial product is declared by ASIC, under section 1075A of the Act, to be a financial product the transfer of which will be effected through ASTC under the Regulations.

Note 2: ASX Settlement Pty Limited was previously known as ASX Settlement and Transfer Corporation Pty Limited (ASTC).

Warrants

- (2) Part 7.11 of the Act applies to warrants that are able to be traded on the financial market operated by ASX Limited and warrants that are admitted to the AQUA Quote Display Board as if subregulations 7.11.03(4) and (5) of the Regulations were omitted.

Rights

- (3) Part 7.11 of the Act applies to Division 4 financial products that are rights (within the meaning of subregulation 7.11.28(4) of the Regulations) as if regulation 7.11.28 of the Regulations were modified or varied as follows:
 - (a) before subregulation (1) insert:
 - “(1A) If a proper ASX Settlement transfer of a Division 4 financial product that is a right takes effect at a particular time, the transferee is taken to have agreed at that time to accept the right subject to the terms and conditions on which the transferor held the right immediately before that time, being the terms and conditions that are applicable as between the issuer in relation to, and the holder for the time being of, the right.”;
 - (b) in subregulation (1) omit “takes effect at a particular time”, substitute “has taken effect, and at that time (the **payment time**) or at a later time (the **payment time**) the transferee makes payment to the issuer in relation to the rights of the application money or, in the case of options, the exercise price”;

- (c) in subregulations (1), (2) and (3) omit “at that time” (wherever occurring), substitute “at the payment time”;
- (d) in subregulation (4) before the definition of **right**, insert:

“**option** means a right that is an assignable option to acquire by way of issue shares or debentures in a company on payment of an exercise price.”.