

Attachment 2 to CP 225: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Foreign Securities— Foreign Scrip Bids) 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

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Part 1—Preliminary

1 Name of legislative instrument

This instrument is *ASIC Corporations (Foreign Securities—Foreign Scrip Bids) 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 sections 741 and 1020F of the *Corporations Act 2001* (the *Act*).

4 Definitions

In this instrument:

adviser means:

- (a) any financial services licensee; or
- (b) any authorised representative of a financial services licensee.

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 holder of securities in the bid class who receives an offer of scrip under a foreign scrip bid in this jurisdiction.

Australian resident, in relation to a foreign scrip bid, means:

- (a) a beneficial owner of securities in the bid 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 issuer of the securities in the bid class; or
 - (II) the jurisdiction of an approved foreign market on which the securities in the bid class are quoted; or
 - (B) a market operator of an approved foreign market on which the securities in the bid class are quoted; or
 - (ii) as otherwise known to the person offering the scrip or its related bodies corporate,
- is in this jurisdiction; or
- (b) if the address of a beneficial owner of securities in the bid class is not included in such publicly available reports or otherwise known to the person offering the scrip or its related bodies corporate—a holder of securities in the bid class whose address, as recorded in the relevant register of members, is in this jurisdiction.

authorised representative has the meaning given by section 761A of the Act.

bid class means the class of securities to which offers of securities under a foreign scrip bid relates.

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eligible foreign country means any of the following countries:

- (a) Canada;
- (b) France;
- (c) Germany;
- (d) Hong Kong;
- (e) Italy;
- (f) Japan;
- (g) Malaysia;
- (h) The Netherlands;
- (i) New Zealand;
- (j) Singapore;
- (k) South Africa;
- (l) Switzerland;
- (m) United Kingdom; and
- (n) United States of America.

foreign scrip bid means an offer for securities in the bid class that may result in:

- (a) the acquisition of control or potential control of, or the acquisition of a substantial interest in:
 - (i) an issuer of securities; or
 - (ii) a managed investment scheme;

where the offer:

- (b) is regulated by or under a law or other rules however described that:
 - (i) apply to the acquisition of:
 - (A) control or potential control of an entity; or
 - (B) a substantial interest in an entity; and
 - (ii) are in force or apply in or in a part of an eligible foreign country; and

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- (c) involves offers being made to acquire all or some of the securities in the bid class held by:
 - (i) all holders of securities in the bid class; or
 - (ii) all such holders other than the person making the offers, that person and their associates or any other person to whom, under the regulatory requirements applicable to the bid, the offers do not have to be made,

where scrip forms all or part of the consideration offered for the securities in the bid class.

register of members means, in relation to an entity, the register of members (however described) of the entity required to be kept under the laws of its place of origin.

relevant regulatory requirements means the laws or rules referred to in paragraph (b) of the definition of *foreign scrip bid*.

securities in the bid class means the securities or interests in a managed investment scheme (as applicable) forming all or a part of the class or classes of securities or interests being bid for.

Part 2—Exemption

5 Disclosure relief for foreign scrip bids

- (1) A person does not have to comply with Part 6D.2 or 6D.3 of the Act where the person offers securities (the *scrip*) for issue or sale as consideration under a foreign scrip bid.
- (2) A person does not have to comply with section 1012B or 1012C of the Act where the person:
 - (a) issues or sells; or
 - (b) makes an offer to issue or sell; or
 - (c) makes an offer to arrange for the issue of,

an interest (the *scrip*) in a managed investment scheme as consideration under a foreign scrip bid.
- (3) An adviser does not have to comply with section 1012A of the Act where the adviser makes a recommendation to acquire an interest (the *scrip*) in a managed investment scheme as consideration under a foreign scrip bid.
- (4) The exemptions in subsections (1), (2) and (3) apply to a foreign scrip bid in respect of which all of the following are satisfied:
 - (a) Australian residents hold not more than 10% of the total number of securities in the bid class, as determined at a time, fixed in writing by the person offering the scrip in the 30 day period immediately before any offers, whether of a cash sum or scrip or a combination of a cash sum and scrip, under the bid are first made;
 - (b) the securities in the bid class are in a class that is quoted on an approved foreign market;

Note: The scrip offered as consideration for the acquisition of securities in the bid class does not have to be in a class that is quoted on an approved foreign market.
 - (c) where the relevant regulatory requirements require a document setting out the terms of, or other information relating to, the foreign scrip bid to be given or made available to offerees:
 - (i) an English version of the document; or
 - (ii) if no English version of the document is available—a version of the document that is given or made available to offerees in the eligible foreign country,

is given or made available to Australian offerees at or before the time the offers of scrip are made; and

- (d) the offers of scrip made to Australian offerees are on terms that are at least as favourable as the offers made to other offerees.
- (5) A person may only rely on the exemptions in subsections (1) and (2) if the person takes all reasonable steps to ensure that the foreign scrip bid is made in accordance with the relevant regulatory requirements.
- (6) An adviser may only rely on the exemption in subsection (3):
 - (a) in the case of an adviser that is not an associate of the person offering the scrip—if the adviser has no reason to suspect that the foreign scrip bid is not made in accordance with the relevant regulatory requirements;
 - (b) in the case of an adviser that is an associate of the person offering the scrip—where the adviser takes all reasonable steps to ensure that the foreign scrip bid is made in accordance with the relevant regulatory requirements.

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