

Attachment 1 to CP 232: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Application Form and Cooling-off Period Relief—Intra-fund Transfers) Instrument 2015/XX

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—Exemption	4
5 Relief from application form requirements	4
Part 3—Declaration	4
6 Relief from the cooling-off period.....	4

Part 1—Preliminary

1 Name of legislative instrument

This instrument is *ASIC Corporations (Application form and cooling-off period relief – Intra-fund transfers) Instrument 2015*.

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 <http://www.comlaw.gov.au>.

3 Authority

This instrument is made under subsection 1020F(1) of the *Corporations Act 2001* (the *Act*).

4 Definitions

In this instrument:

intra-fund transfer means in relation to a regulated superannuation fund:

- (a) a disposal of an interest in the fund and the acquisition of an interest in the fund of a different class in substitution for the interest disposed of; or
- (b) any other circumstance where a person's membership of the fund in relation to a financial product or a sub-plan changes to membership of the fund in relation to another financial product or another sub-plan.

Product Disclosure Statement has the meaning given by section 761A of the Act.

regulated superannuation fund has the meaning given by section 19 of the *Superannuation Industry (Supervision) Act 1993* (the ***SIS Act***).

RSE licence means a licence granted under section 29D of the SIS Act.

superannuation product has the meaning given by paragraph 764A(1)(g) of the Act.

Part 2—Exemption

5 Relief from application form requirements

- (1) A trustee of a regulated superannuation fund (the *fund*) does not have to comply with section 1016A of the Act in relation to the issue of a superannuation product in the course of an intra-fund transfer within the fund.
- (2) The exemption in subsection (1) is only available where the declaration in subsection 6(1) of this instrument applies.

Part 3—Declaration

6 Relief from the cooling-off period

- (1) Part 7.9 of the Act applies in relation to a superannuation product issued in the course of an intra-fund transfer as if section 1019A were modified or varied by:

- (a) in subparagraph (1)(b)(i) omitting “issue;” and substituting “issue (other than an issue of a superannuation product in the course of an intra-fund transfer within a regulated superannuation fund);”; and
- (b) after subsection (1) inserting:

“(1A) In subsection (1):

intra-fund transfer means in relation to a regulated superannuation fund:

- (a) a disposal of an interest in the fund and the acquisition of an interest in the fund of a different class in substitution for the interest disposed of; or
- (b) any other circumstance where a person’s membership of the fund in relation to a financial product or a sub-plan changes to membership of the fund in relation to another financial product or another sub-plan;

regulated superannuation fund has the meaning given by section 19 of the *Superannuation Industry (Supervision) Act 1993*.”.

- (2) The declaration in subsection (1) applies where all of the following are satisfied:

- (a) the trustee of the fund holds an RSE licence that is subject to conditions to the following effect:
 - (i) the governing rules of the fund must contain a provision to the effect that the benefits of a member of the fund must not be transferred by way of an intra-fund transfer without the member's consent unless;
 - (A) the transfer is to a section, division or plan of the fund which confers on the member equivalent rights to the rights that the member had under the original section, division or plan in respect of the benefits; or
 - (B) the transfer could, in the absence of any condition on the RSE's licence, have lawfully been made without the member's consent; and
 - (ii) the trustee must not transfer the benefits of a member of the fund by way of an intra-fund transfer unless the member consents to the transfer or the transfer is of one of the types referred to in subparagraph (i)(A) or (i)(B);
- (b) the governing rules of the fund contain the provision referred to in subparagraph (a)(i);
- (c) the trustee has not obtained the member's consent for the intra-fund transfer; and
- (d) the trustee has taken all reasonable steps to ensure that:
 - (i) the condition on its RSE licence referred to in subparagraph (a)(ii) has been satisfied in relation to the intra-fund transfer; and
 - (ii) one of the following applies:
 - (A) each interest in the fund that is, immediately before the disposal, in the same class as the interest disposed of in the course of the intra-fund transfer, is also disposed of and substituted at substantially the same time and no further interests in that class are issued; or
 - (B) where the intra-fund transfer is otherwise than by way of the disposal of and substitution of an interest—each person who has a membership of the fund in relation to a financial product (the *original product*) of the same class or the same sub-plan (the *original sub-plan*) to which the intra-fund transfer relates changes to membership of the fund in relation to another financial product or another sub-plan at substantially the same time and no person subsequently becomes a member of

the fund in relation to the original product or original sub-plan; and

- (iii) at least 30 days before the superannuation product is issued to a person in the course of the intra-fund transfer, the person is given:
 - (A) a notice in relation to the proposed transfer in accordance with section 1017B of the Act; and
 - (B) a Product Disclosure Statement for the product.