

Attachment 10 to CP 239: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Market Research and Roadshows) 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 (Market Research and Roadshows) 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 sections 741 and 1020F of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

market research organisation, in relation to a body intending to offer securities or a person intending to make available financial products, means an organisation in the business of conducting market research being an organisation engaged by, but not otherwise associated with, the body or the person for that purpose.

representative, in relation to a financial services licensee, has the meaning given by section 910A of the Act.

Part 2—Exemptions

5 Market research in relation to intended offers of securities

- (1) A body that intends to offer securities, and a market research organisation engaged by the body in relation to that intended offer, do not have to comply with subsection 734(2) of the Act in relation to an advertisement or statement published by either or both of them.
- (2) This section applies where all of the following are satisfied:
 - (a) the securities that are intended to be offered are in a class of securities that are, or are intended to be, quoted on a prescribed financial market;
 - (b) the advertisement or statement contains information in relation to the intended offer of securities for issue or sale to be made under a disclosure document;
 - (c) the body permits the market research organisation to provide the information to persons only to the extent necessary to enable:
 - (i) the organisation to conduct market research; and
 - (ii) those persons to answer questions asked of them by the organisation for the purposes of the research;
 - (d) the body does not permit the market research organisation to disclose to the body the names and contact details of any of the persons contacted for the purposes of the market research;
 - (e) the advertisement or statement is published solely for the purpose of market research by the market research organisation to ascertain:
 - (i) the number of copies of the disclosure document which should be printed in order to meet demand; and
 - (ii) to whom the intended offer should be marketed; and
 - (iii) the type and extent of marketing which should be undertaken;
 - (f) no more than 5,000 advertisements or statements in total are published in connection with the market research.

6 Market research in relation to intended availability of financial products

- (1) A person that intends to make available a financial product or proposed financial product by way of issue, or by way of sale offers which section 1012C will apply, and a market research organisation engaged by the person in relation to that intended availability, do not have to comply

with subsection 1018A(2) of the Act in relation to an advertisement or statement published by either or both of them.

- (2) This section applies where all of the following are satisfied:
- (a) the financial products that are intended to be made available are in a class of financial products that are, or are intended to be, able to be traded on a prescribed financial market;
 - (b) the advertisement or statement contains information in relation to the intended availability of financial products for issue or sale to be made under a Product Disclosure Statement;
 - (c) the person permits the market research organisation to provide the information to other persons only to the extent necessary to enable:
 - (i) the organisation to conduct market research; and
 - (ii) those persons to answer questions asked of them by the organisation for the purposes of the research;
 - (d) the person does not permit the market research organisation to disclose to the person the names and contact details of any of those persons contacted for the purposes of the market research;
 - (e) the advertisement or statement is published solely for the purpose of market research by the market research organisation to ascertain:
 - (i) the number of copies of the Product Disclosure Statement which should be printed in order to meet demand; and
 - (ii) to whom the intended availability should be marketed; and
 - (iii) the type and extent of marketing which should be undertaken;
 - (f) no more than 5,000 advertisements or statements in total are published in connection with the market research.

7 Roadshow presentations of intended offers of securities

- (1) A body does not have to comply with Part 6D.2 and 6D.3 of the Act for any act by the body (whether or not involving an offer of securities for issue or sale and whether or not involving advertising or the publication of a statement) which directly or indirectly refers, or calls to the attention of, a financial services licensee or their representatives, and no other person, to an intended offer of securities for issue or sale by the body to be made under a disclosure document to be lodged with ASIC.
- (2) This section applies where the securities that are intended to be offered are in a class of securities that are, or are intended to be, quoted on a prescribed financial market.

8 Offers by subsidiaries of listed bodies

- (1) A listed body and its officers do not have to comply with subsection 734(2) of the Act in relation to the publication of a statement about an offer or intended offer of securities the issuer of which is a subsidiary or proposed subsidiary of the listed body provided:
 - (a) the statement consists of a notice or report by the listed body, or one of its officers, about its affairs to the relevant market operator; and
 - (b) the statement contains material which is required by law or by the operating rules of the relevant financial market to be contained in the statement and nothing more.

- (2) A listed body or its officers do not have to comply with subsections 1018A(1) and (2) of the Act in relation to the publication of a statement about an offer or intended offer of financial products the issuer of which is a subsidiary or proposed subsidiary of the listed body provided the statements satisfy paragraphs (1)(a) and (b).

Part 3—Declaration

9 Liability of publishers

Chapter 6D of the Act applies to all persons as if subsection 734 were modified or varied as follows:

- (a) in paragraph (7)(d) omit “a newspaper or periodical or on radio or television”, substitute “the media”;
- (b) omit subsection (8) (excluding the heading and the note), substitute:
 - “(8) A person does not contravene subsection (1) or (2) by publishing an advertisement or statement if the person:
 - (a) publishes it in the ordinary course of a media business;
and
 - (b) did not know, and had no reason to suspect, that its publication would amount to a contravention of a provision of this Chapter.”;
- (c) after subsection (9) insert:

“Meaning of media

(9A) For the purposes of this section, *media* consists of:

- (a) newspapers and magazines; and
- (b) radio and television broadcasting services; and
- (c) electronic services (including services provided through the internet) that:
 - (i) are operated on a commercial basis; and
 - (ii) are similar to newspapers, magazines or radio or television broadcasts.”.