

Attachment to CP 241: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Foreign Licensees and ADIs) 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 (Foreign Licensees and ADIs) 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 paragraphs 926A(2)(b) and 992B(1)(a) of *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

foreign ADI has the meaning given by section 5 of the *Banking Act 1959*.

Part 2—Exemption

5 Relief from financial reports and record keeping for foreign licensees

- (1) A foreign company (the *foreign licensee*) which holds an Australian financial services licence does not have to comply with any of the following:
- (a) paragraph 988A(1)(b) of the Act to the extent that it requires the company to keep financial records in accordance with any of the following:
 - (i) section 988B of the Act;
 - (ii) paragraph 988D(a) of the Act;
 - (iii) any regulations made for the purposes of section 988F of the Act;
 - (b) Subdivisions C and D of Division 6 of Part 7.8 of the Act;
 - (c) if the foreign licensee is a foreign ADI—section 988E of the Act.

Note: The foreign licensee does not have to comply with regulations made for the purposes of sections 989B and 989C because of the exemptions from those provisions.

Conditions of exemption

- (2) A foreign licensee that relies on this exemption must do all of the following:
- (a) the foreign licensee must lodge with ASIC at least once in every calendar year and at intervals of not more than 15 months, a certified copy of:
 - (i) its balance sheet made up to the end of its last financial year;
 - (ii) its cash flow statement for its last financial year;
 - (iii) its profit and loss statement for its last financial yearin such form and containing such particulars which it reasonably believes is required to be prepared by the law for the time being applicable to that foreign licensee in its place of origin.
 - (b) the documents referred to in paragraph (a) must be accompanied by a certified copy of a document setting out the views of the licensee's auditor about the documents in paragraph (a) which it reasonably believes were audited in accordance with the requirements for the time being applicable to the licensee in its place of origin.

Note: Where the licensee is subject to subsection 601CK(1) of the Act, compliance with that subsection will also result in this condition being satisfied.

- (3) A foreign licensee that does not comply with the conditions in subsection (2) may not rely on the exemption in subsection (1).

6 Relief from licensing for foreign ADIs

- (1) A foreign ADI does not have to comply with subsection 911A(1) to the extent it requires the foreign ADI to hold an Australian financial services licence for the provision of a financial service where all of the following apply:
- (a) the service consists only of either or both of the following:
 - (i) dealing in derivatives;
 - (ii) dealing in foreign exchange contracts;
 - (b) the service does not involve the making of a market for derivatives or foreign exchange contracts;
 - (c) the dealing is entered into for the purpose of managing a financial risk that arises in the ordinary course of the foreign ADI's banking business;
 - (d) the dealing is entered into on the foreign ADI's own behalf;
 - (e) the counterparty for the dealing is a person as a wholesale client;
 - (f) the foreign ADI does not hold an Australian financial services licence covering the provision of the service.
- (2) A person does not have to comply with subsection 911B(1) where:
- (a) the person provides a financial service on behalf of a foreign ADI; and
 - (b) if the foreign ADI (rather than the person) provided the service, the foreign ADI would not need a financial services licence because the service would be covered by subsection (1).