

Attachment to CP 258: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Registered Schemes: Differential Fees) Instrument 2016/XX

I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 2016

<signature>

<insert name>

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Part 1—Preliminary

1 Name of legislative instrument

This instrument is *ASIC Corporations (Registered Schemes: Differential Fees) Instrument 2016/XX*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under subsection 601QA(1) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

associated person, in relation to a member, means:

- (a) a spouse, parent, child, brother or sister of the member; or
- (b) a company which has no member other than the member or a person mentioned in paragraph (a); or
- (c) a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* which has no member other than the member or a person mentioned in paragraph (a); or
- (d) a trust which has no beneficiary other than the member or a person mentioned in paragraph (a) or (b); or
- (e) an entity controlled by the member or a person mentioned in paragraph (a) or (b), and includes an entity jointly controlled by the member and a person mentioned in paragraph (a) or (b).

differential fee arrangement means an arrangement for the charging, rebating or waiving of fees, including entry, exit and periodic fees, by the responsible entity to members of the scheme on a basis that differs from that applying to other members who hold interests of the same class.

employee member, in relation to a scheme, means a member of the scheme who is also an employee of the responsible entity of the scheme or a related body corporate.

wholesale client has the meaning given by section 761G of the Act.

Part 2—Exemption

5 Differential fees

- (1) A responsible entity of a registered scheme does not have to comply with paragraph 601FC(1)(d) of the Act to the extent it would otherwise prohibit the responsible entity from administering a differential fee arrangement.

Characteristics of the member or of their investment

- (2) This instrument applies to a differential fee arrangement under which the fees that may be charged, rebated or waived by the responsible entity to members of the scheme differ based on any of the following criteria:
- (a) the total value of, or the number of, interests held by the member, or by the member and associated persons, in one or more of the following:
 - (i) the scheme;
 - (ii) other registered schemes operated by the responsible entity or a related body corporate;
 - (iii) other financial products issued by the responsible entity or a related body corporate of the responsible entity;
 - (b) the total period of time during which the member or the member and associated persons has held interests in one or more of the following:
 - (i) the scheme;
 - (ii) other registered schemes operated by the responsible entity or a related body corporate;
 - (iii) other financial products issued by the responsible entity or a related body corporate of the responsible entity;
 - (c) the member being an employee of the responsible entity or a related body corporate in circumstances where the number of votes that may be cast on a resolution of the scheme's members by employee members is no more than 5% of the total votes that may be cast by the scheme's members;
 - (d) the member having acquired their interests under a switching facility that involved the member first withdrawing from another registered scheme operated by the responsible entity or a related body corporate of the responsible entity; or

- (e) savings to the scheme resulting, or reasonably expected by the responsible entity to result, from the lower cost of servicing a member of the scheme because of particular characteristics of that member or of their investment, where the amount of the benefit by way of lower fees charged to that member, or the rebate or waiver of fees provided to that member, is no greater than a reasonable estimate of the amount of the saving or expected saving.

Individual negotiation with wholesale clients

- (3) This instrument also applies to a differential fee arrangement under which the fees that may be charged, rebated or waived by the responsible entity to a member that is a wholesale client differs from that applying to other members based on individual negotiation between the responsible entity and the member.

6 Conditions

- (1) The responsible entity must ensure that:
 - (a) where a differential fee arrangement of a kind referred to in subsection 5(2) is in place or is to be offered—a statement of the basis on which the differential fee will be calculated and which specifies the fees that members will have to bear; and
 - (b) where a differential fee arrangement of a kind referred to in subsection 5(3) is in place or is to be offered—a statement of that fact,

is or has been disclosed in a clear, concise and effective manner:
 - (c) to existing members of the scheme by no later than the date of the first communication by the responsible entity to all members after the date when the differential fee arrangement is first offered; and
 - (d) in any Product Disclosure Statement required by the Act in relation to interests in the scheme.
- (2) The responsible entity must ensure that any differential fee arrangements do not adversely affect the fees paid or to be paid by any member of the scheme who is not entitled to the benefit of those fee arrangements.
- (3) The responsible entity must ensure that where a differential fee arrangement of a kind referred to subsection 5(2) is in place or is to be offered, the arrangement is applied without discrimination to all members who satisfy the criteria necessary to receive the benefit of the arrangement.