

Attachment 1 to CP 262: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Low Volume Financial Markets) Instrument 2016/XX

I, <insert name>, delegate of the Minister for Small Business and Assistant Treasurer, make the following legislative instrument.

Date 2016

[DRAFT ONLY – NOT FOR SIGNATURE]

<signature>

<insert name>

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Part 1—Preliminary

1 Name of legislative instrument

This instrument is *ASIC Corporations (Low Volume Financial Markets) Instrument 2016/XX*.

2 Commencement

This instrument commences on the later of:

- (a) the date of its gazettal; and
- (b) 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 791C(1) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

low volume financial market means a financial market on which:

- (a) no more than 100 completed transactions are entered into; and
- (b) the value of the transactions entered into does not exceed \$1.5 million;

in the 12 month period commencing on the date the financial market was named in the register or any subsequent 12 month period.

register means the register of entities that is established and kept by ASIC for the purposes of section 791C of the Act in relation to low volume financial markets.

Part 2—Exemption

5 Exemption from the requirement to hold an Australian market licence

- (1) A low volume financial market that is named on the register is exempt from the operation of Part 7.2 of the Act.
- (2) An operator of a low volume financial market must comply with the conditions in relation to the market.
- (3) A failure to comply with a condition does not have the effect that the market is not exempt from the operation of Part 7.2 of the Act.

Note: ASIC may remove the name of a financial market from the register. If ASIC takes such action, the financial market is no longer exempt from the operation of Part 7.2 of the Act from the day its name is removed.

6 Conditions

Operating a financial market

- (1) The operator must ensure that it and its associates:
 - (a) do not operate more than 2 financial markets to which this instrument applies; and
 - (b) do not operate a licensed market.

Financial products

- (2) The operator must ensure that the financial products able to be traded on the financial market satisfy the following:
 - (a) the financial products must be issued by the same person who must be either the operator or an issuer who has appointed the operator to operate the financial market; and
- Note: This paragraph applies to each financial market. If the operator operates 2 financial markets to which this instrument applies, the issuer of the financial products that are able to be traded on one market need not be the same as the issuer of the financial products that are able to be traded on the other market, provided those issuers are either the operator of the markets or an issuer who has appointed the operator.
- (b) the financial products are of a kind mentioned in paragraphs 764A(1)(a), (b) or (ba) of the Act; and
 - (c) the financial products are not able to be traded on a licensed market.

Facilities for execution of orders

- (3) The operator must ensure that the financial market does not have a mechanism for:

- (a) the automatic execution of orders; or
- (b) the automatic formation of contracts between market users that enter into a transaction through the market.

Settlement service

- (4) The operator of the financial market must not handle the purchase money for the settlement of a transaction entered into through the market unless the operator holds an Australian financial services licence that authorises it to deal in the financial product to which the transaction relates.

Information to be given to new users

- (5) Before a person uses the financial market for the first time, the operator of the market must give a written notice to the person containing statements to the following effect:
 - (a) the market is covered by an exemption under section 791C of the Act;
 - (b) the operator of the market is not licensed under Part 7.2 of the Act;
 - (c) the operator is not subject to the legal obligations that apply to the operator of a licensed market, including the requirement, to the extent that it is reasonably practicable to do so, to do all things necessary to ensure that the market is a fair, orderly and transparent market.

ASIC to be informed of changes to market

- (6) The operator of the financial market must inform ASIC, in writing, of any significant change to the operation of the market as soon as practicable after the change occurs.

Notifying ASIC about non-compliance with conditions

- (7) The operator of the financial market must notify ASIC in writing if the operator fails to comply with any of the conditions in this instrument. The operator must notify ASIC as soon as practicable after the operator becomes aware of the failure.

Assistance to ASIC

- (8) The operator of the financial market must comply with a request from ASIC to assist in monitoring and supervising compliance with the conditions, including giving ASIC a copy of any records about the operation of the market and allowing ASIC access to any premises of a facility by means of which the market is conducted.

Annual report

- (9) The operator of the financial market must give a written report to ASIC within 45 days after each anniversary of the date it was named in the register which includes the following information:
- (a) the total number and total value (calculated by reference to sale price) of transactions carried out on the market in each month during the 12 months immediately before the date of the anniversary; and
 - (b) the number of users of the market in the 12 months immediately before the anniversary.