

# Attachment 3 to CP 262: Draft instrument



**ASIC**

Australian Securities & Investments Commission

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## **ASIC Corporations (Transfers of Division 3 Securities) Instrument 2016/XX**

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

Date 2016

**[DRAFT ONLY – NOT FOR SIGNATURE]**

<signature>

<insert name>

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## Contents

<b>Part 1—Preliminary</b>	<b>3</b>
1 Name of legislative instrument.....	3
2 Commencement .....	3
3 Authority.....	3
4 Definitions .....	3
<b>Part 2—Declaration</b>	<b>4</b>
5 Quoted securities of a foreign company .....	4
6 Transfers of quoted securities of a foreign company.....	4
7 Transfers of options over unissued securities.....	5

## Part 1—Preliminary

### 1 Name of legislative instrument

This is the *ASIC Corporations (Transfer of Division 3 Securities) 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](http://www.legislation.gov.au).

### 3 Authority

This instrument is made under subsection 1073E(1) of the *Corporations Act 2001*.

### 4 Definitions

In this instrument:

*Act* means the *Corporations Act 2001*.

*Division 3 rights* has the meaning given by subregulation 1.0.02(1) of the Regulations.

*Regulations* means the *Corporations Regulations 2001*.

## Part 2—Declaration

### 5 Quoted securities of a foreign company

Division 3 of Part 7.11 of the Act and regulations made for the purposes of section 1073D of the Act apply to shares in, or debentures of, a foreign company that are quoted on the financial market operated by ASX Limited.

### 6 Transfers of quoted securities of a foreign company

Regulations made for the purposes of section 1073D of the Act have effect in relation to the securities specified in section 5 as if the following provisions of the Regulations were modified:

- (a) in regulation 7.11.01 insert the following definitions in the appropriate alphabetical order:

“*absolute beneficial owner*, in relation to Division 3 securities, means one or more beneficiaries of a trust to which a Division 3 security is subject, who has or who together have a presently enforceable and unconditional right to require the trustee of the trust to transfer the Division 3 security to them.”;

“*securities lending arrangement* means an arrangement under which:

- (a) one entity (the *lender*) agrees that it will:
- (i) deliver Division 3 securities to another entity (the *borrower*) or to an entity nominated by the borrower; and
  - (ii) vest title in those Division 3 securities in the entity to which they are delivered; and
- (b) the borrower agrees that it will, after the lender does the things mentioned in subparagraph (i):
- (i) deliver the Division 3 securities (or equivalent securities) to the lender or to an entity nominated by the lender; and
  - (ii) vest title in those Division 3 securities (or those equivalent securities) in the entity to which they are delivered.”;
- (b) after paragraph 7.11.17(4)(a) insert:

“(ba) if a designated broker is given authority by or on behalf of the absolute beneficial owner of Division 3 securities to sell or transfer those Division 3 securities, the designated broker is taken to have authority from the transferor to:

- (i) sell or transfer those Division 3 securities; and
- (ii) execute an instrument of transfer of those Division 3 securities;

on the transferor’s behalf, even if no authority is given by the transferor;”;

(c) in paragraph 7.11.19(2)(f), omit “paragraph 7.11.17(4)(a),”, substitute “paragraph 7.11.17(4)(a) or (ba),”;

(d) omit subregulation 7.11.40(1), substitute:

“(1) A broker must not stamp with a broker’s stamp a document (a **transfer document**) that relates to Division 3 securities and may be used as a sufficient transfer under this Part, unless the transfer document relates to:

- (a) a sale or purchase of the Division 3 securities, in the ordinary course of the broker’s business, for a consideration of not less than their unencumbered market value at the time of the sale or purchase;
- (b) the performance of obligations under a securities lending arrangement; or
- (c) a transfer from or to a broker’s clearing account in accordance with the operating rules of the financial market in which the broker is a participant.”; and

(e) in paragraph 7.11.40(2)(b), omit “paragraph 7.11.17(4)(a),”, substitute “paragraph 7.11.17(4)(a) or (ba),”.

## 7 Transfers of options over unissued securities

Regulations made for the purposes of section 1073D of the Act have effect in relation to Division 3 rights as if the following provisions of the Regulations were modified:

(a) in regulation 7.11.01 insert in the appropriate alphabetical order the following definition:

“**company option** means a Division 3 right that is an assignable option to acquire by way of issue shares or debentures in a company on payment of an exercise price.”.

- (b) after subregulation 7.11.10 insert:

**“7.11.10A Company options**

For the purposes of regulations 7.11.11 to 7.11.14, and of the forms in Schedule 2A, a Division 3 right that is a company option is taken to be a Division 3 asset and not to be a Division 3 right.”;

- (c) before paragraph 7.11.16(1)(a) insert:

“(aa) to have agreed at the execution time to accept the rights subject to the terms and conditions on which the transferor held them immediately before that time, being the terms and conditions that are applicable as between the issuer in relation to, and the holder for the time being of, the rights;”;

- (d) at the beginning of paragraph 7.11.16(1)(a) insert:

“at the time (the *payment time*) at which the transferee subsequently makes payment to the issuer in relation to the Division 3 assets of the application monies or, in the case of company options, the exercise price,”;

- (e) in paragraphs 7.11.16(1)(a) and (b) and subregulation 7.11.16(2), omit “at the execution time” (wherever occurring), substitute “at the payment time”.