

Attachment 7 to CP 262: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Exchange-Traded Derivatives: Multiple Issuers) Instrument 2016/XX

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>

Contents

Part 1—Preliminary	3
1 Name of legislative instrument.....	3
2 Commencement	3
3 Authority.....	3
4 Definitions	3
Part 2—Declaration	4
5 Exchange-traded derivatives: Product Disclosure Statements	4

Part 1—Preliminary

1 Name of legislative instrument

This instrument is *ASIC Corporations (Exchange-Traded Derivatives: Multiple Issuers) 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 1020F(1) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

Regulations means the *Corporations Regulations 2001*.

Part 2—Declaration

5 Exchange-traded derivatives: Product Disclosure Statements

Part 7.9 of the Act applies in relation to all persons as if the provisions of that Part were modified or varied as follows:

- (a) at the end of Subdivision B of Division 2, add:

“1012L Obligation to give retail client information about intermediary licensee in relation to issue of derivative

Where a person (the *client*) is given a Product Disclosure Statement or Short-Form PDS for a derivative that is covered by subsection 1013A(5), the intermediary licensee (within the meaning of subsection 1013A(5)) that is taken to be an issuer of the derivative must ensure that the client is given, in writing, the statements and information that would have been required by subsection 1013D(1) but for subsection 1013D(5) at or before the time when:

- (a) the intermediary licensee offers to issue, offers to arrange for the issue of, or makes a recommendation to acquire, the derivative to the client; or
- (b) the derivative is issued under such an offer or as a result of such a recommendation;

if at the relevant time, the client has not already been given such statements and information.

Note: The intermediary licensee may be required to give a Financial Services Guide to a person as a retail client. If the intermediary licensee is giving a Financial Services Guide to the client, the information required by this section may be included in the Financial Services Guide.”;

- (b) after subsection 1013A(4) insert:

“Exchange-traded derivatives: multiple issuers

- (5) A Product Disclosure Statement for a derivative:
- (a) that is entered into, or acquired, on a financial market (the *relevant market*); and
- (b) in relation to which both of the following are, because of subsection 761E(6), taken to be the issuer:
- (i) a financial services licensee (the *intermediary licensee*) who is not a participant in the relevant market; and

- (ii) another financial services licensee (the **market participant**) who is a participant in the relevant market;

may be a document that has only been prepared by the market participant.

- (6) Subsection (5) only applies in relation to an intermediary licensee and a market participant who have entered into a written agreement in relation to the derivative under which the intermediary licensee agrees to take reasonable steps to ensure that a person to whom the intermediary licensee:

- (a) offers to issue the derivative; or
- (b) offers to arrange for the issue of the derivative; or
- (c) makes a recommendation to acquire the derivative;

as a retail client is given:

- (d) a document that includes the statements and information referred to in section 1012L; and
- (e) a Product Disclosure Statement or Short-Form PDS for the derivative that has been prepared by the market participant.

- (7) If a Product Disclosure Statement for the derivative is covered by subsection (5), the market participant is, in this Division, referred to as the **responsible person** for the derivative.”;

- (c) after section 1013D(4) insert:

“Exchange-traded derivatives: multiple issuers

- (5) If the Product Disclosure Statement for a derivative is covered by subsection 1013A(5), the Statement does not have to include any statement or information that would not be required by subsection (1) if the derivative to which the Statement relates were only issued by the responsible person for the derivative, provided it includes statements to the effect that:

- (a) a person may enter (make an **intermediary acquisition**) or acquire (make an **intermediary acquisition**) the derivative to which the Statement relates as a result of an arrangement made by an intermediary licensee (within the meaning of subsection 1013A(5)) or their authorised representative; and

- (b) a person who makes an intermediary acquisition may not have any direct contact or relationship with the market participant; and
 - (c) where a person has made an intermediary acquisition of the derivative:
 - (i) there may be additional risks associated with holding the derivative; and
 - (ii) additional fees and costs may apply; and
 - (iii) additional rights, terms, conditions and obligations may attach to the derivative; and
 - (iv) the person will have access to a dispute resolution system maintained by the intermediary licensee that covers complaints made by holders of the derivative; and
 - (d) further information about the matters mentioned in paragraph (c) may be obtained from the intermediary licensee.”;
- (d) in section 1013E, insert on a new line:
- “If a Product Disclosure Statement for a derivative is covered by subsection 1013A(5), this section is to be applied as if the derivative were only issued by the responsible person for the derivative.”; and
- (e) after subsection 1017I(2) insert:
- “(2A)If the Short-Form PDS:
- (a) is for a derivative and is covered by subsection 1013A(5); and
 - (b) contains for the purposes of paragraph (1)(a) a summary of a Product Disclosure Statement from which any statement or information has been omitted in accordance with subsection 1013D(5);

the Short-Form PDS must also set out statements to the effect of those referred to in paragraphs 1013D(5)(a) to (d).”.

Note: The Short-Form PDS provisions are set out in regulation 7.9.61AA of the Regulations, and Part 3 of Schedule 10BA to the Regulations.