

# Attachment to CP 266: Draft instrument



**ASIC**

Australian Securities & Investments Commission

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## **ASIC Corporations (Managed Investment Schemes: Interests Not For Money) 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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## Part 1—Preliminary

### 1 Name of legislative instrument

This is *ASIC Corporations (Managed Investment Schemes: Interests Not For Money) Instrument 2016/XX*.

### 2 Commencement

This instrument commences at the same time as the commencement of *ASIC Corporations (Repeal) Instrument 2016/XX*.

### 3 Authority

This instrument is made under subsections 601QA(1), 926A(2), 992B(1) and 1020F(1) of the *Corporations Act 2001*.

### 4 Definitions

In this instrument:

*Act* means the *Corporations Act 2001*.

*cinematograph film* has the meaning given by section 10 of the *Copyright Act 1968*.

*film investment scheme* means a managed investment scheme for the development and/or production of a cinematograph film (including a script or component of a cinematograph film), where each offer or issue of interests in the scheme is made to one or more of the following:

- (a) Australian Broadcasting Corporation;
- (b) Australian Children's Television Foundation;
- (c) Screen Australia;
- (d) Film Victoria;
- (e) Screen NSW;
- (f) Screen Queensland;
- (g) South Australian Film Corporation;
- (h) Special Broadcasting Service Corporation;
- (i) ScreenWest;

- (j) a person whose ordinary business is or includes broadcasting or distributing films and who has a right to license or otherwise exploit the copyright to the cinematograph film to which the offer or issue relates;
- (k) a person to whom a Product Disclosure Statement is not required to be given in respect of the issue other than because of this instrument.

***interests not for money scheme*** means a managed investment scheme arising out of a contract or proposed contract under which every interest in the scheme is issued:

- (a) to members as consideration for or as part of the consideration for any of the following:
    - (i) personal or professional services to be provided by the member or, where the member is not a natural person, by an officer or employee of the member providing such services in the ordinary course of the member's business;
    - (ii) the sale or transfer of or grant of any right to use or exploit present or future intellectual property or know-how of the member resulting from the labour or efforts of the member or, where the member is not a natural person, acquired in the ordinary course of its business;
    - (iii) the sale or transfer of goods imported, manufactured or produced by the member in the ordinary course of its business;
    - (iv) the sale or transfer of, or the entry into or grant of any interest in land where:
      - (A) the member; or
      - (B) a person (other than the issuer or one of its associates) that held an interest in the scheme and from whom the member has acquired the interest in land;has held the interest in land for at least six months before any offer of an interest in the scheme was made;
    - (v) the sale, grant or transfer of any business, or any proprietary interest with respect to a business, owned by the member for at least six months before any offer of an interest in the scheme was made;
- where:
- (vi) no money is to be paid and no financial products are to be transferred by the member in consideration for the interest or

in relation to the grant of the interest, either to the issuer or to any associate of the issuer, unless:

- (A) the payment is a fee for services rendered or a reimbursement of incidental expenses; and
  - (B) the nature of the services or expenses and the applicable cost or means of calculating the applicable cost is separately disclosed to the member before entering into the contract;
- (vii) any right of the member under the terms of the contract to terminate the contract or otherwise take action for default is not dependent upon the approval or other action of persons who have entered into similar contracts with the issuer; and
- (viii) the interest does not relate to any other managed investment scheme; or
- (b) in circumstances, other than in reliance on this instrument, that do not require a Product Disclosure Statement to be given.

***show scheme*** means a managed investment scheme for the development and/or production of a cinematograph film, sound recording, work, or live performance (including a script or component of a cinematograph film, sound recording, work, or live performance), under which every interest in the scheme is issued:

- (a) to members as consideration for or as part of the consideration for any of the following:
  - (i) personal or professional services to be provided by the member or, where the member is not a natural person, by an officer or employee of the member providing such services in the ordinary course of the member's business; or
  - (ii) the sale or transfer of or grant of any right to use or exploit present or future intellectual property or know-how of the member resulting from the labour or efforts of the member or, where the member is not a natural person, acquired in the ordinary course of its business;

where:

- (iii) no money is to be paid and no financial products are to be transferred by the member in consideration for the interest or in relation to the grant of the interest, either to the issuer or to any associate of the issuer, unless:
  - (A) the payment is a fee for services rendered or a reimbursement of incidental expenses; and

- (B) the nature of the services or expenses and the applicable cost or means of calculating the applicable cost is separately disclosed to the member before entering into the contract;
- (iv) any right of the member under the terms of the contract to terminate the contract or otherwise take action for default is not dependent upon the approval or other action of persons who have entered into similar contracts with the issuer; and
- (v) the interest does not relate to any other managed investment scheme; or
- (b) in circumstances, other than in reliance on this instrument, that do not require a Product Disclosure Statement to be given.

**work** has the meaning given by section 10 of the *Copyright Act 1968*.

## **Part 2—Relief for managed investment schemes**

### **5 Film investment scheme**

#### *Exemptions*

- (1) A person does not have to comply with subsection 601ED(5) of the Act in relation to a film investment scheme.
- (2) A person providing financial services in relation to a film investment scheme does not have to comply with subsection 911A(1) of the Act.
- (3) A person does not have to comply with section 992AA and Part 7.9 of the Act in relation to an offer, issue or recommendation to acquire an interest in a film investment scheme.

### **6 Interests not for money scheme**

#### *Exemptions*

- (1) A person does not have to comply with subsection 601ED(5) of the Act in relation to an interest not for money scheme.
- (2) A person providing financial services in relation to an interest not for money scheme does not have to comply with subsection 911A(1) of the Act.
- (3) A person does not have to comply with section 992AA and Part 7.9 of the Act in relation to an offer, issue or recommendation to acquire an interest in a not for money scheme.

### **7 Show scheme**

#### *Exemptions*

- (1) A person does not have to comply with subsection 601ED(5) of the Act in relation to a show scheme.
- (2) A person providing financial services in relation to a show scheme does not have to comply with subsection 911A(1) of the Act.
- (3) A person does not have to comply with section 992AA and Part 7.9 of the Act in relation to an offer, issue or recommendation to acquire an interest in a show scheme.