

Attachment 1 to CP 269: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (ASX-listed Schemes On-market Buy-backs) 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>

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Part 1—Preliminary

1 Name of legislative instrument

This instrument is *ASIC Corporations (ASX-listed Schemes On-market Buy-backs) 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 subsections 601QA(1) and 655A(1) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

Part 2—Declaration

5 Requirements for on-market buy-backs

Chapter 5C of the Act applies to a responsible entity as if provisions of that Chapter were modified or varied by, after Part 5C.6, inserting:

“Part 5C.6A—On-market buy-backs by listed schemes

Division 1—Preliminary

601KF Application of this Part

This Part applies to the purchase of interests in a listed managed investment scheme by the responsible entity of the scheme where the purchase takes place in the ordinary course of trading on the financial market of ASX Limited (*ASX*) and the purchase price is paid from scheme property. For the purposes of this Part, such a purchase is referred to as a *buy-back*.

Division 2—Requirements for buy-backs

601KG Constitutional provisions about buy-backs

If the responsible entity of the scheme is to have the power to buy back an interest in the scheme, the power must be specified in the scheme’s constitution.

601KH Procedural requirements for buy-backs

- (1) A responsible entity must not buy back an interest in the scheme otherwise than in accordance with the scheme’s constitution and this section.
- (2) A responsible entity may buy back an interest if it does not materially prejudice the responsible entity’s ability to pay its creditors in relation to liabilities incurred or acquired by it as responsible entity of the scheme.
- (3) A responsible entity that buys back an interest in the scheme:
 - (a) must only buy the interest:
 - (i) in the ordinary course of trading on the financial market of ASX; and
 - (ii) if the buy-back is covered by subsections (5) to (7) or subsection (8); and

Note: A purchase by way of a special or priority crossing, among other types of transactions, is not in the ordinary course of trading.

- (b) if it reasonably believes that it complies with the listing rules of the ASX that apply to buy-backs as if:
- (i) the scheme were a company included in the official list of the financial market of ASX; and
 - (ii) interests in the scheme were shares in the company; and

Note: The listing rules of ASX that apply to buy-backs include:

- Listing Rule 3.8A (company making a buy-back), including Appendix 3C: Announcement of buy-back; Appendix 3D: Change relating to buy-back; Appendix 3E: Daily notification; and Appendix 3F: Final notice; and
- Listing Rule 7.29 (pre-condition for an on-market buy-back); and
- Listing Rule 7.33 (purchase price under an on-market buy-back).

(c) must not dispose of the interest it buys back.

- (4) Immediately after registration of the transfer to the responsible entity of the interests bought back, the interests are cancelled.

Buy-backs within the 10/12 limit

- (5) If the responsible entity proposes to buy back an interest in the scheme within the 10/12 limit, the responsible entity must give a notice to ASX which:
- (a) discloses the responsible entity's intention to buy back interests in the scheme within the 10/12 limit; and
 - (b) sets out:
 - (i) the number of interests in the scheme held by the responsible entity and any associate of the responsible entity; and
 - (ii) the source of funds to pay for any interests bought back.
- (6) The responsible entity:
- (a) must not buy back an interest for at least 14 days after giving the notice; and
 - (b) must start buying back interests:
 - (i) if a date is specified in the notice by which the responsible entity will start to buy back interests—by that date; or

- (ii) otherwise—within 2 months of the date of the notice;
and

Note: If the responsible entity does not start buying back interests within the period referred to in paragraph (b) but the responsible entity wishes to proceed with the buy-back, it will need to give another notice to ASX in accordance with subsection (5).

- (c) must not buy back an interest which would exceed the 10/12 limit except in accordance with subsection (8).
- (7) The responsible entity may buy back an interest in the scheme for a period of 12 months from the date of the giving of the notice. If the responsible entity proposes to buy back an interest in the scheme beyond that period it must give ASX a further notice:
- (a) disclosing the responsible entity's intention to continue to buy back interests; and
 - (b) setting out the matters referred to in paragraph (5)(b).

Each notice extends the period in which the responsible entity may continue to buy back interests in the scheme by 12 months provided it is given to ASX before the expiry of the period covered by the previous notice.

Buy-backs which would exceed the 10/12 limit

- (8) If the responsible entity proposes to buy back an interest in the scheme which would exceed the 10/12 limit it must have:
- (a) obtained, by resolution at a meeting of members of the scheme in the last 12 months, the approval of members of the terms of the proposed buy-back arrangement; and
 - (b) included with the notice of meeting a statement setting out all information known to the responsible entity that was material to the decision how to vote on the resolution other than information that it would be unreasonable to require the responsible entity to disclose because it had previously disclosed the information to the scheme's members.

Interpretation

- (9) The **10/12 limit** for a responsible entity of a scheme proposing to make a buy-back is 10% of the smallest number, at any time during the last 12 months, of interests in the scheme.
- (10) A proposed buy-back would exceed the 10/12 limit if the number of:

- (a) interests in the scheme that have been bought back during the last 12 months; and
- (b) interests that will be bought back if the proposed buy-back is made;

would exceed the 10/12 limit.

601KI Interaction with other provisions of this Chapter

For the avoidance of doubt, subsection 601GA(4) and Part 5C.6 do not apply to a buy-back under this Part.”.

6 Takeovers

Chapter 6 of the Act applies to a responsible entity as if the table in section 611 were modified or varied by, after item 19, inserting:

- “19A An acquisition that results from the responsible entity of a registered scheme buying interests in the scheme in accordance with Part 5C.6A.”.