

Attachment to CP 270: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Chapter 5C— Miscellaneous Provisions) 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 is *ASIC Corporations (Chapter 5C—Miscellaneous Provisions) 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 601QA(1) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

Part 2—Declarations

5 Procedure in constitution to be followed when varying or cancelling certain rights under paragraph 601GC(1)(a)

Chapter 5C of the Act applies to a responsible entity of a registered scheme as if section 601GC were modified or varied by, in subsection (1), after “rights.” inserting:

“If the constitution of a scheme sets out a procedure for varying or cancelling rights of a class of members of the scheme, or rights attached to a class of interests under the scheme, those rights may be varied or cancelled by a resolution under paragraph (a) only if that procedure is complied with.”.

6 Related bodies corporate and external members of compliance committee

Chapter 5C of the Act applies to a responsible entity of a registered scheme as if section 601JB were modified or varied as follows:

- (a) in subsection (3) after “(2)(a)”, insert “and paragraph (4)(a)”; and
- (b) in subsection (4) after “responsible entity” (wherever appearing), insert “or a related body corporate”.

7 Compliance plan may incorporate provisions from another scheme's plan as amended from time to time

(1) Chapter 5C of the Act applies to a responsible entity of a registered scheme as if section 601HB were modified or varied as follows:

- (a) in subsection (1) after “time”, insert “or from time to time”; and
- (b) in subsection (2) after “time”, insert “or from time to time as the case may be”.

(2) This declaration applies where the compliance plan for the registered scheme (excluding any part incorporated by reference under section 601HB) contains a statement to the effect that the responsible entity will review the appropriateness of the compliance plan when any amendment is made to a part of a compliance plan that is incorporated by reference in it.

8 Relief to permit constitutional provisions incorporating listing rules by reference

Chapter 5C of the Act applies to all persons as if section 601GA were modified or varied by inserting after subsection 601GA(4):

- “(5) Despite subsections (1) to (4), if the registered scheme:
- (a) is admitted to the official list of an eligible Australian market or the responsible entity of the scheme is proposing to seek such admission; and
 - (b) is required or permitted for the purposes of the listing rules of the eligible Australian market to include a provision in its constitution to the effect referred to in subsection (6),

the constitution of the registered scheme may include a provision to that effect.

- (6) The provision referred to in paragraph (5)(b) is to the effect that if the registered scheme is admitted to the official list of the eligible Australian market:
- (a) notwithstanding anything contained in the constitution, if the listing rules of the market prohibit an act being done, the act shall not be done;
 - (b) nothing contained in the constitution prevents an act being done that the listing rules of the market require to be done;
 - (c) if the listing rules of the market require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
 - (d) if the listing rules of the market require the constitution to contain a provision and it does not contain such a provision, the constitution is taken to contain that provision;
 - (e) if the listing rules of the market require the constitution not to contain a provision and it contains such a provision, the constitution is taken not to contain that provision;
 - (f) if any provision of the constitution is or becomes inconsistent with the listing rules of the market, the constitution is taken not to contain that provision to the extent of the inconsistency.

- (7) In this section:

eligible Australian market means a financial market operated by:

- (a) Sydney Stock Exchange Limited ACN 080 399 220; or
- (b) ASX Limited ACN 008 624 691.”