

# Attachment 2 to CP 286: Draft instrument



**ASIC**

Australian Securities & Investments Commission

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## **ASIC Corporations (Factoring Arrangements) Instrument 2017/XX**

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

Date 2017

**[DRAFT ONLY—NOT FOR SIGNATURE]**

<signature>

<insert name>

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## Part 1—Preliminary

### 1 Name of legislative instrument

This is the *ASIC Corporations (Factoring Arrangements) Instrument 2017/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 paragraphs 926A(2)(a), 992B(1)(a) and 1020F(1)(a) of the *Corporations Act 2001*.

### 4 Definitions

In this instrument:

*Act* means the *Corporations Act 2001*.

*eligible person* means a person who:

- (a) is or proposes to be the purchaser of debt obligations under the terms of a factoring arrangement; or
- (b) provides a financial service in relation to a factoring arrangement.

*factoring arrangement* means an arrangement under which a person acquires debt obligations, such as receivables, at a discount.

## Part 2—Exemption

### 5 Exemption from licensing, hawking and disclosure obligations

- (1) An eligible person does not have to comply with:
- (a) subsection 911A(1) of the Act for the provision of any of the following financial services:
    - (i) dealing in derivatives that are factoring arrangements;
    - (ii) providing financial product advice in relation to derivatives that are factoring arrangements; and
- Note: *ASIC Corporations (Effect of Licensing Exemptions) Instrument 2015/1115* provides relief from subsection 911B(1) of the Act to a person who provides financial services on behalf of a person who does not need an Australian financial services licence because of an exemption under section 926A of the Act.
- (b) section 992A of the Act in relation to the making of an offer to issue a factoring arrangement; and
  - (c) Part 7.9 of the Act in relation to a recommendation to acquire, or an offer or issue of, or making an offer to arrange the issue of, a factoring arrangement.

### 6 Where exemption is available

The exemption in subsection 5(1) is available where the eligible person:

- (a) gives the terms and conditions of the factoring arrangement in writing to each retail client to whom the factoring arrangement is issued before the arrangement is issued; and
- (b) establishes and maintains an internal dispute resolution system that:
  - (i) complies with Australian Standard AS ISO 10002-2006 *Customer satisfaction—Guidelines for complaints handling in organizations (ISO 10002:2004 MOD)* published by SAI Global Limited on 5 April 2006; and
  - (ii) covers complaints made by retail clients against the person in connection with the provision of financial services that relate to factoring arrangements.