



ASIC

Australian Securities & Investments Commission

ASIC Corporations (CSSF-Regulated Financial Services Providers) Instrument 2016/1109

I, Grant Moodie, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 8 November 2016

Grant Moodie

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (CSSF-Regulated Financial Services Providers) Instrument 2016/1109*.

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 Cessation

This instrument ceases to apply on 28 September 2018.

4 Authority

This instrument is made under subsection 926A(2) of the *Corporations Act 2001*.

5 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

address, in relation to a company, means the address of the registered office of the company.

agent means a natural person ordinarily resident in Australia or a company, whose name and address have been provided to ASIC in writing for the purposes of this instrument, and who is authorised to accept on the body's behalf, service of process from ASIC and, in relation to proceedings relating to a financial services law, from any person referred to in subsection 659B(1) of the Act.

CSSF means the Commission de Surveillance du Secteur Financier (the Commission for the Supervision of the Financial Sector) of Luxembourg.

CSSF-regulated financial services provider means a body corporate incorporated in Luxembourg to which all of the following apply:

- (a) the body has a current authorisation given by the CSSF to carry on business in Luxembourg as either:

- (i) an investment company that has adopted a status of self-managed under Part I of the Law relating to UCITS or having effect as if under that Part; or
 - (ii) a management company under Chapter 15 of Part IV of the Law relating to UCITS or having effect as if under that Chapter;
- (b) the body:
- (i) is registered under Division 2 of Part 5B.2 of the Act; or
 - (ii) has an agent at the time the body first purports to rely on this instrument and, from that time, has not failed to have an agent for any consecutive period of 10 business days;
- (c) the body's primary business is the provision of financial services.

CSSF regulatory requirements means the rules that apply in relation to the financial services provided by a CSSF-regulated financial services provider in Luxembourg including:

- (a) any applicable legislation;
- (b) instruments made under that legislation; and
- (c) any relevant policies or other documents (however described) issued by the CSSF.

eligible deposit product means a deposit-taking facility that is not a deposit product as defined in section 761A of the Act.

Law means the Amended Law of 17 December 2010 of Luxembourg concerning undertakings for collective investment.

non-cash payments has a meaning affected by section 763D of the Act.

other foreign regulatory authority means a foreign regulatory authority (other than the CSSF) which regulates financial services and which is established by or for the purposes of a foreign government or legislative body.

UCITS means undertakings for collective investment in transferable securities.

Note: By subsection 761H(1) of the Act, the operation of this instrument in relation to partnerships is affected by section 761F and subsection 769B(4) of the Act.

Part 2—Exemption

6 CSSF-regulated financial services providers

A CSSF-regulated financial services provider does not have to comply with Part 7.6 of the Act (other than Divisions 4 and 8) in relation to the provision of the following financial services in this jurisdiction to wholesale clients:

- (a) providing financial product advice;
- (b) dealing in a financial product;
- (c) making a market for a financial product; and
- (d) providing a custodial or depository service,

in respect of any of the following financial products:

- (e) eligible deposit products;
- (f) derivatives;
- (g) foreign exchange contracts;
- (h) securities;
- (i) debentures, stocks or bonds issued by a government;
- (j) managed investment products;
- (k) interests in a managed investment scheme that is not required to be registered under Chapter 5C of the Act.

7 Conditions

A CSSF-regulated financial services provider that relies on this instrument must:

- (a) before relying on this instrument—give ASIC all of the following:
 - (i) evidence that it satisfies the definition of CSSF-regulated financial services provider;
 - (ii) written notice that it will provide financial services in this jurisdiction in reliance on this instrument;
 - (iii) written consent to the disclosure by the CSSF to ASIC and ASIC to the CSSF of any information or document that the CSSF or ASIC has that relates to the provider;

- (iv) a deed of the body for the benefit of and enforceable by ASIC and the other persons referred to in subsection 659B(1) of the Act that applies notwithstanding that the provider may have ceased to rely, or never have relied, on this instrument, which provides that:
 - (A) the provider submits to the non-exclusive jurisdiction of the Australian courts in legal proceedings conducted by ASIC (including under section 50 of the ASIC Act) and, in relation to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Act and whether brought in the name of ASIC or the Crown or otherwise;
 - (B) the provider covenants to comply with any order of an Australian court in respect of any matter relating to the provision of the financial services;
 - (C) if the provider is not registered under Division 2 of Part 5B.2 of the Act, service of process on the provider in relation to legal proceedings conducted by ASIC (including under section 50 of the ASIC Act) and, in relation to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Act and whether brought in the name of ASIC or the Crown or otherwise can be effected by service on the agent;
 - (D) the provider covenants that, on written request of either the CSSF or ASIC, it will give or vary written consent and take all other practicable steps to enable and assist the disclosure of any information or document that the CSSF or ASIC has relating to the provider as between CSSF and ASIC; and
 - (E) the deed is irrevocable, except with the prior written consent of ASIC;
- (b) before providing financial services in this jurisdiction to a wholesale client—give to the client written disclosure containing prominent statements to the following effect:
 - (i) the provider is exempt from the requirement to hold an Australian financial services licence under the Act in respect of the financial services; and
 - (ii) the provider is regulated by the CSSF under foreign laws, which differ from Australian laws;
- (c) provide each of the financial services in this jurisdiction in a manner which would comply, so far as is possible, with the CSSF regulatory requirements if the financial service were provided in Luxembourg in like circumstances;

- (d) notify ASIC, in writing, no later than 15 business days after the provider becomes aware or should reasonably have become aware, of the details of:
 - (i) each significant change to, including the termination of, any licence or registration applying to the provider relevant to the financial services the provider provides or intends to provide in this jurisdiction; and
 - (ii) each significant exemption or other relief which the provider obtains from the CSSF regulatory requirements relevant to the financial services the provider provides or intends to provide in this jurisdiction; and
 - (iii) each action or investigation of the following kinds taken by any other foreign regulatory authority against the provider in a foreign jurisdiction in relation to financial services provided in the foreign jurisdiction;
 - (A) significant enforcement action;
 - (B) significant disciplinary action; and
 - (C) significant investigation (unless, after having taken reasonable steps to enable written notification to be given to ASIC, the provider is prohibited by law from giving such notification but only to the extent of the prohibition);
- (e) comply with any written notice given by ASIC directing the provider to give to ASIC, within the time specified in the notice, a written statement containing specified information about:
 - (i) the financial services provided by the provider in this jurisdiction; or
 - (ii) the financial service business operated by the provider in this jurisdiction.

8 Circumstances where a provider cannot rely on this instrument

- (1) A CSSF-regulated financial services provider cannot rely on this instrument if ASIC has notified the provider or its agent that the provider is excluded from relying on this instrument and ASIC has not withdrawn the notice.
- (2) A CSSF-regulated financial services provider cannot rely on this instrument if the provider fails to comply with a condition of this instrument and one of the following is satisfied:
 - (a) 15 business days have passed since the provider became aware or should reasonably have become aware of matters giving the provider reason to believe it had failed, other than in an immaterial respect, to comply with the condition without providing

full particulars of the failure to ASIC (to the extent that the provider knows those particulars or would have known them if it had undertaken reasonable enquiries);

- (b) 30 business days have passed from ASIC receiving those particulars from the provider without ASIC notifying the provider that it may continue to rely on this instrument.