



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Managed Investment Schemes: Interests Not For Money) Instrument 2016/1107

About this compilation

Compilation No. 1

This is a compilation of *ASIC Corporations (Managed Investment Schemes: Interests Not For Money) Instrument 2016/1107* as in force on 24 March 2017. It includes any commenced amendment affecting the legislative instrument to that date.

This compilation was prepared by the Australian Securities and Investments Commission.

The notes at the end of this compilation (the *endnotes*) include information about amending instruments and the amendment history of each amended provision.

Contents

Part 1—Preliminary	3
1 Name of legislative instrument	3
3 Authority	3
4 Definitions	3
Part 2—Relief for managed investment schemes	7
5 Film investment scheme	7
6 Interests not for money scheme	7
7 Show scheme	7
Endnotes	8
Endnote 1—Instrument history	8
Endnote 2—Amendment history	8

Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Managed Investment Schemes: Interests Not For Money) Instrument 2016/1107*.

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 such a 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; or
- (k) in circumstances, other than because of this instrument, that do not require a Product Disclosure Statement to be given.

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 a person (***participant***) as consideration for or as part of the consideration for any of the following:
 - (i) personal or professional services to be provided by the participant or, where the participant is not a natural person, by an officer or employee of the participant providing such services in the ordinary course of its 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 participant resulting from the labour or efforts of the participant or, where the participant 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 participant 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 participant; or
 - (B) a person (other than the issuer or one of its associates) that held an interest in the scheme and from whom the participant has acquired the interest in land;

has held the interest in land for at least 6 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 participant for at least 6 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 participant 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 participant before entering into the contract; and

- (vii) any right of the participant 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 because of this instrument, that do not require a Product Disclosure Statement to be given;

but does not include a scheme if all interests in the scheme have been issued in the circumstances referred to in paragraph (b).

offer includes an invitation to make an offer.

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 such a film, recording, work, or performance), under which every interest in the scheme is issued:

- (a) to a person (*participant*) as consideration for or as part of the consideration for any of the following:
 - (i) personal or professional services to be provided by the participant or, where the participant is not a natural person, by an officer or employee of the participant providing such services in the ordinary course of its 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 participant resulting from the labour or efforts of the participant or, where the participant 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 participant 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 participant before entering into the contract;

- (iv) any right of the participant 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;
 - (v) the interest does not relate to any other managed investment scheme; or
- (b) in circumstances, other than because of 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 an interest in 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 interests not for money scheme.
- (2) A person providing financial services in relation to an interest in an interests 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 an interests 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 an interest in 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.

Endnotes

Endnote 1—Instrument history

Instrument number	Date of FRL registration	Date of commencement	Application, saving or transitional provisions
2016/1107	2/12/2016 (see F2016L01855)	6/12/2016	
2017/65	23/3/2017 (see F2017L00284)	24/3/2017	-

Endnote 2—Amendment history

ad. = added or inserted am. = amended LA = *Legislation Act 2003* rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Section 2	rep. s48D LA
Section 4 (definition of <i>interests not for money scheme</i> , paragraph (b))	rs. 2017/65