

***ASIC Corporations (Definition of Approved Foreign Market) Instrument
2017/669 and
ASIC Corporations (Amendment) Instrument 2017/6***

Explanatory Statement

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (*ASIC*) makes the following instruments:

- (a) *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669* under subsections 283GA(1), 601QA(1), 655A(1), 741(1), 926A(2), 992B(1) and 1020F(1) of the *Corporations Act 2001* (the *Act*); and
- (b) *ASIC Corporations (Amendment) Instrument 2017/6* under paragraph 911A(2)(l) subsections 283GA(1), 601QA(1), 655A(1), 741(1), 926A(2), 992B(1) and 1020F(1) of the Act and for the purposes of subsection 257B(7) and item 14(b) of section 611 of the Act.

1. Purpose of instruments

These two instruments operate together to amend 14 of ASIC's legislative instruments in relation to the concept of 'approved foreign market' so that they have a single, consistent definition of 'approved foreign market' (or, in some cases, incorporate this definition within a broader definition of 'eligible foreign market' or 'approved financial market'). The instruments also add Euronext Brussels and Euronext Lisbon to the definition of 'approved foreign market' and update the names of a number of the markets in this definition that have merged or changed name.

2. Background on 'approved foreign markets'

Approved foreign markets and disclosure relief

The concept of 'approved foreign market' is used in a number of ASIC legislative instruments that give certain disclosure relief for securities that are quoted on an approved foreign market. Regulatory Guide 72 *Foreign securities disclosure relief* (**RG 72**) explains the rationale for providing disclosure relief for securities that are quoted on an approved foreign market and the criteria that ASIC takes into account for approving other markets.

Approved foreign financial markets for takeovers and on-market buy backs

ASIC has also approved foreign financial markets for the purposes of subsection 257B(7) (on-market buy-backs) and for the purposes of the takeovers' exemption in item 14(b) of section 611 (downstream acquisitions): see *ASIC Corporations (Approved Foreign Financial Markets – Buy-backs and Takeovers) Instrument 2015/1071* and Regulatory Guide 71 *Downstream Acquisitions*.

The foreign markets that ASIC has approved for the purposes of subsection 257B(7) and item 14(b) of section 611 are the same foreign markets approved for disclosure relief purposes, although before amendments made by these instruments they were called 'eligible financial markets'.

3. Changes required to the list of 'approved foreign markets'

ASIC decided to add Euronext Brussels and Euronext Lisbon to our list of 'approved foreign markets' because they meet the standards referred to in RG 72. We also needed to update the names of some of the approved foreign markets which had merged or changed name, and remove the reference that restricted relief to the 'main boards' and specified secondary boards of approved foreign markets, which are no longer a widely used concepts.¹

Previously, each of the following 13 legislative instruments (**'applicable ASIC legislative instruments'**) contained a definition of 'approved foreign market', 'eligible foreign market', or 'approved financial market'.

- (a) ASIC Class Order [CO 08/10];
- (b) ASIC Class Order [CO 12/752];
- (c) ASIC Class Order [CO 13/655];
- (d) ASIC Class Order [CO 13/760];
- (e) ASIC Class Order [CO 13/761];
- (f) ASIC Class Order [CO 14/1000];
- (g) *ASIC Corporations (Foreign Rights Issues) Instrument 2015/356*;
- (h) *ASIC Corporations (Foreign Scrip Bids) Instrument 2015/357*;
- (i) *ASIC Corporations (Foreign Securities—Publishing Notices) Instrument 2015/359*;
- (j) *ASIC Corporations (Foreign Small-Scale Offers) Instrument 2015/362*;

¹ RG 72 will be amended in due course to include this update.

- (k) *ASIC Corporations (Managed investment product consideration) Instrument 2015/847;*
- (l) *ASIC Corporations (Minimum Bid Price) Instrument 2015/1068;*
- (m) *ASIC Corporations (Consents to Statements) Instrument 2016/72.*

ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669 notionally inserts the new updated definition of 'approved foreign market' into section 9 of the Act for the class of persons purporting to rely on these 13 'applicable ASIC legislative instruments'.

ASIC Corporations (Amendment) Instrument 2017/6 amends these 13 instruments by:

- (a) removing the definition of 'approved foreign market' and substituting the definition of approved foreign market that refers to section 9 of the Act, as notionally amended by *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669*; and
- (b) for applicable ASIC legislative instruments that contain a broader definition of 'eligible financial market'² or 'approved financial market'³, amending these definitions to include the updated definition of 'approved foreign market' and continue to include the other relevant markets listed in those definitions.

The instruments also amend a 14th legislative instrument, *ASIC Corporations (Approved Foreign Markets – Buy-backs and Takeovers) 2015/1071*, in the following way: *ASIC Corporations (Amendment) Instrument 2017/6* removes the definition of 'eligible financial market' from instrument *ASIC Corporations (Approved Foreign Markets – Buy-backs and Takeovers) 2015/1071* and substitutes the definition of approved foreign market contained in *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669*. We took a different approach to amending *ASIC Corporations (Approved Foreign Markets – Buy-backs and Takeovers) 2015/1071* because the Act does not give ASIC the power to modify the provisions of Chapter 2J of the Act but under subsection 257B(7) we have the power to declare in writing that a financial market outside Australia is an approved overseas financial market for the purposes of that subsection. ASIC also has the power to approve a body in writing for the purposes of item 14(b) of section 611 of the Act.

² ASIC Class Order [CO 14/1000]

³ *ASIC Corporations (Minimum Bid Price) Instrument 2015/1068*; and *ASIC Corporations (Consents to Statements) Instrument 2016/72*

4. Rationale for including an updated definition of approved foreign market

We consider that it will be simpler for ASIC's stakeholders to understand which markets are included as approved foreign markets where there is an updated, consistent definition that, for most relevant instruments, is contained in one instrument. For ASIC, it will be easier and more efficient to update the definition of approved foreign markets as will be required from time to time in future if the definition is contained in one instrument only (being *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669*) rather than in 14 separate instruments. This approach also removes the risk of inconsistencies between individual instruments.

5. Other amendments

ASIC Corporations (Amendment) Instrument 2017/6 also:

- a) amends the definition of 'eligible foreign country' in *ASIC Corporations (Foreign Scrip Bids) Instrument 2015/357* so that it means a country in which an approved foreign market is being operated;
- b) renames *ASIC Corporations (Approved Foreign Financial Markets) Instrument 2015/1071* so that it is now titled *ASIC Corporations (Approved Foreign Markets – Buy-backs and Takeovers) Instrument 2015/1071*; and
- c) updates the names of several trading markets referred to in the definition of 'approved financial market' in *ASIC Corporations (Consents to Statements) Instrument 2016/72*.

6. Consultation

ASIC did not conduct any public consultation on *ASIC Corporations (Amendment) Instrument 2017/6* or *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669* because the substantive effect of these instruments is to add Euronext Brussels and Euronext Lisbon to ASIC's list of approved foreign markets. The addition of Euronext Brussels and Euronext Lisbon is consistent with ASIC's policy in RG 72, which explains at paragraphs 56 to 58 that ASIC may approve additional foreign markets and sets out the criteria we will take into account for that purpose.

ASIC determined that the other technical changes made by *ASIC Corporations (Amendment) Instrument 2017/6* and *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669* would not benefit from public consultation.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669 and ASIC Corporations (Amendment) Instrument 2017/6

These legislative instruments are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The purpose of *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669* is to add a definition to section 9 of the Act of 'approved foreign market'. The purpose of *ASIC Corporations (Amendment) Instrument 2017/6* is to amend a number of legislative instruments to remove their earlier definition of an 'approved foreign market' and substitute the definition notionally added to section 9 of the Act by instrument 2017/669.

Human rights implications

These legislative instruments do not engage any of the applicable rights or freedoms.

Conclusion

These legislative instrument are compatible with human rights because they do not raise any human rights issues.