



**ASIC**

Australian Securities & Investments Commission

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## **ASIC Corporations (Share and Interest Sale Facilities) Instrument 2018/99**

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I, Stephen Yen PSM, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date: 1 March 2018

Stephen Yen

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## Part 1—Preliminary

### 1 Name of legislative instrument

This is the *ASIC Corporations (Share and Interest Sale Facilities) Instrument 2018/99*.

### 2 Commencement

This instrument commences on the later of:

- (a) the day after it is registered on the Federal Register of Legislation; and
- (b) commencement of the *ASIC Corporations (Amendment and Repeal) Instrument 2018/98*.

Note: The register may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

### 3 Authority

This instrument is made under subsections 601QA(1), 926A(2) and 1020F(1) of the Act.

### 4 Definitions

In this instrument:

**Act** means the *Corporations Act 2001*.

**approved foreign market** has the meaning given by section 9 of the Act.

Note: The definition of **approved foreign market** is notionally inserted by the *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669*.

**broker** means a participant in a licensed market or approved foreign market with whom the issuer has entered arrangements in relation to the operation of the sale facility or related purchase facility.

**control transaction** means a transaction or proposed transaction that affects the control, or potential control, of:

- (a) where the financial products are shares—the issuer; or
- (b) where the financial products are issued in a managed investment scheme—the managed investment scheme to which those interests relate.

**facility** has, for the purposes of the definitions of **related purchase facility** and **sale facility**, a meaning affected by section 762C of the Act.

**issuer** means the issuer of the financial products that may be issued or disposed of through the sale facility or related purchase facility.

**nominated electronic means** has the same meaning as in section 761A of the Act as notionally modified or varied by the *ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647*.

**participating holder**: see the definitions of **related purchase facility** and **sale facility**.

**register of members** means:

- (a) in relation to a company or registered scheme—the register of members required to be set up and maintained under section 168 of the Act; and
- (b) in relation to a foreign company—the register of members (however described) required to be kept under the laws of its place of origin.

**related purchase facility** means a facility made available in conjunction with a sale facility, through which persons (**participating holders**) who hold financial products in the class of financial products to which the sale facility relates can acquire, by way of transfer, additional financial products in that class.

**sale facility** means a facility through which persons (**participating holders**) who hold financial products in a class of financial products and who have elected to participate in the facility can dispose of financial products in that class.

## Part 2—Exemption

### 5 Exemptions for sale facility and related purchase facility

#### *Operation of a sale facility or a related purchase facility*

- (1) A person (the **operator**) who operates a sale facility or related purchase facility does not have to comply with subsection 601ED(5) of the Act in relation to the facility.

#### *Provision of financial services in relation to a sale facility or related purchase facility*

- (2) An operator providing financial services in relation to a sale facility or related purchase facility does not have to comply with:
  - (a) subsection 911A(1) of the Act for the provision of the following financial services:
    - (i) dealing in an interest in the facility;
    - (ii) the provision of general advice in relation to an interest in the facility; and
  - (b) Divisions 2 to 5 of Part 7.9 of the Act in relation to an interest in the facility; and
  - (c) where the facility is a sale facility—Division 5A of Part 7.9 in relation to an invitation to participate in the facility.

#### *Where exemptions apply*

- (3) The exemptions in subsections (1) and (2) apply where all of the following are satisfied:
  - (a) the financial products that may be acquired or disposed of through the facility:
    - (i) are shares, or interests in a managed investment scheme, that are admitted to quotation on a licensed market (the **relevant market**) or approved foreign market (the **relevant market**); and
    - (ii) are issued by the operator or a related body corporate of the operator;
  - (b) where the facility is a sale facility—under the terms of the facility all of the following apply:

- (i) the financial products (the **relevant financial products**) of participating holders to be disposed of through the facility are pooled;
  - (ii) a broker disposes of the relevant financial products in the ordinary course of trading on the relevant market;
  - (iii) each participating holder is paid their proportion of the proceeds of the disposal, net of expenses, as soon as practicable and in any event within eight weeks after the date on which the operator received the participating holder's election to participate in the facility;
- (c) where the facility is a related purchase facility—under the terms of the facility all of the following apply:
- (i) the money of the participating holders to be used to acquire financial products through the facility is pooled;
  - (ii) a broker acquires the financial products in the ordinary course of trading on the relevant market;
  - (iii) the broker may deduct expenses of acquiring the financial products from the money referred to in subparagraph (i);
  - (iv) each participating holder is allocated their proportion of the financial products purchased;
  - (v) each participating holder has transferred to them the financial products allocated to them within eight weeks after the date on which the operator received the participating holder's election to participate in the facility;
  - (vi) each participating holder may acquire financial products through the facility (aggregated with any other financial products in the same class that were acquired through any previous facility) for consideration totalling no more than \$5,000 in any consecutive 12 month period.

## 6 Conditions

- (1) An operator relying on any of the exemptions in subsections 5(1) and 5(2) must do all of the following:
- (a) give or send to each holder who has been invited to participate in the facility, a document which complies with subsection (2) of this section, by:
    - (i) giving the document to the holder personally; or
    - (ii) sending the document:

- (A) by post to the address for the holder in the register of members or an alternative address (if any) nominated by the holder; or
      - (B) to the fax number or electronic address (if any) nominated by the holder; or
    - (iii) making the document available to the client by a nominated electronic means;
  - (b) take reasonable steps to ensure the facility is not operated during any period where a control transaction has been publicly proposed and has not ended;
  - (c) take reasonable steps to ensure that, where a related purchase facility is made available in conjunction with a sale facility, a participating holder can participate in either, but not both, of the facilities;
  - (d) ensure the facility does not remain open for longer than 12 months.
- (2) The document:
- (a) must contain all of the following:
    - (i) a statement that the facility is open until the expiry date set out in the document;
    - (ii) information about the minimum and maximum number of financial products a participating holder can sell or purchase through the facility;
    - (iii) a statement that the market price of financial products is subject to change from time to time;
    - (iv) information about how to obtain up-to-date information on the market price of the financial products;
    - (v) information about any expenses relating to the sale or purchase of financial products that will be paid by participating holders;
    - (vi) information about:
      - (A) for a sale facility—how the proceeds of sale for financial products disposed of through the facility will be allocated between participating holders; and
      - (B) for a related purchase facility—how the financial products acquired through the facility will be allocated between participating holders;

- (vii) information as to whether:
  - (A) for a sale facility—the amount of money received by a participating holder for a financial product that is disposed of through the facility may be more or less than the actual price that is received by the broker for that financial product; and
  - (B) for a related purchase facility—the amount of money that is paid by a participating holder for a financial product that is acquired through the facility may be more or less than the actual consideration that is paid by the broker for that financial product;
- (viii) information about any other significant characteristics or features of the facility or of the rights and obligations of holders who elect to participate in the facility;
- (ix) information about any alternatives that the holder may have to participating in the facility; and
- (b) must be worded and presented in a clear, concise and effective manner; and
- (c) may be made up of two or more separate documents that are given at the same time and by the same means.

#### *Exclusion*

- (3) An operator cannot rely on this instrument if ASIC has given a notice to the operator (**recipient**) or a related body corporate (**recipient**) of the operator, which states the recipient and its related bodies corporate cannot rely on this instrument and ASIC has not withdrawn the notice.