



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Amendment) Instrument 2018/3

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

Date 28 May 2018

Grant Moodie

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Amendment) Instrument 2018/3*.

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 Authority

This instrument is made under subsections 601QA(1), 655A(1), 673(1) and 1020F(1) of the *Corporations Act 2001*.

4 Schedules

Each instrument that is specified in the Schedule to this instrument is amended as set out in the applicable items in the Schedule.

Schedule 1—Amendments

ASIC Class Order [CO 10/288]

1 Subparagraph 4(b) (including the heading)

Omit the subparagraph and the heading, substitute:

ETF market makers

- (b) a sale by an ETF market maker of interests in, or securities of, an exchange traded fund in the course of making a market in those interests or securities.

2 Paragraph 5 (definition of *AQUA Product Market Making Agent*)

Omit the definition

3 Paragraph 5 (definition of *ETF security*)

Omit the definition

4 Paragraph 5

Insert the following definitions in the appropriate alphabetical order:

ASX means ASX Limited.

Chi-X means Chi-X Australia Pty Ltd.

ETF market maker, in relation to interests in, or securities of, an exchange traded fund that is able to be traded on a financial market operated by ASX or Chi-X, means a person who:

- (a) holds an Australian financial services licence that covers making a market in the interests or securities or is exempt from the requirement to hold such a licence for providing that financial service;
- (b) has entered into an agreement, or is registered, with the relevant market operator to make a market for those interests or securities.

exchange traded fund (or *ETF*) means a scheme or foreign company that satisfies all of the following:

- (a) is:
- (i) a registered scheme or a managed investment scheme that is not required to be registered under Chapter 5C of the Act; or

- (ii) a foreign company which has the economic features of a managed investment scheme and is an open-ended investment company registered with the U.S. Securities and Exchange Commission under the *Investment Company Act 1940* of the United States of America;
- (b) interests in the scheme or securities of the foreign company are in a class that are able to be traded on a financial market operated by ASX or Chi-X;
- (c) the operator of the scheme or foreign company has the power and approval to issue interests or securities in that class on any day that those interests or securities are able to be traded on the relevant financial market;
- (d) the operator of the scheme or foreign company allows applications for and redemptions of interests or securities in that class on any day that those interests or securities are able to be traded on the relevant financial market;
- (e) the price or value of any financial product, index, currency, commodity or other thing that the fund invests in or tracks is continuously disclosed or can be immediately ascertained.

ASIC Class Order [CO 13/655]

5 Subparagraph 4(b) (notional subsections 601GAD(2) and (9) of the Act)

Omit “ASX Limited” (wherever occurring), substitute “ASX”

6 Subparagraph 4(b) (notional subsection 601GAD(10) of the Act)

Insert the following definition in the appropriate alphabetical order:

ASX means ASX Limited.

7 Subparagraph 4(b) (notional subsection 601GAE(2) of the Act)

Omit subparagraph 601GAE(2)(a)(ii), substitute:

- (ii) for exchange traded funds—are in a class of interests that are able to be traded on a financial market operated by ASX or Chi-X; or
- (iii) for managed funds—are in a class of interests that are able to be traded on a financial market operated by ASX,

8 Subparagraph 4(b) (notional subsection 601GAE(2) of the Act)

Omit paragraph 601GAE(2)(b) substitute:

- (b) if it applies when the interests in the scheme are in a class of interests that are able to be traded on a financial market and the scheme is listed on the financial market—be based on the market price of the interests in that class on the market at or around the time of issue.

9 Subparagraph 4(b) (notional section 601GAE)

At the end of notional 601GAE, add the following subsection:

- (4) For the purposes of this section:

ASX means ASX Limited.

Chi-X means Chi-X Australia Pty Ltd.

exchange traded fund means a registered scheme in relation to which all of the following are satisfied:

- (a) interests in the scheme are in a class that are able to be traded on a financial market operated by ASX or Chi-X but the scheme is not listed on either of those markets;
- (b) the responsible entity has the power and approval to issue interests in that class on any day that those interests are able to be traded on the relevant financial market;
- (c) the responsible entity allows applications for and redemptions of interests in that class on any day that those interests are able to be traded on the relevant financial market;
- (d) the price or value of any financial product, index, currency, commodity or other thing that the scheme invests in or tracks is continuously disclosed or can be immediately ascertained;
- (e) the name of the scheme does not contain the expression “managed fund” or “hedge fund”.

managed fund means a registered scheme:

- (a) that satisfies paragraphs (a) to (d) of the definition of **exchange traded fund**; and
- (b) whose name contains the expression “managed fund” or “hedge fund”.

ASIC Class Order [CO 13/721]**10 Paragraph 4 (heading)**

Omit “AQUA exchange traded fund”, substitute “ETF”

11 Paragraph 4

Omit “AQUA exchange traded fund”, substitute “exchange traded fund”

12 Subparagraph 5(a)

Omit “AQUA exchange traded fund that are admitted or are to be admitted to Trading Status as ETF Securities”, substitute “exchange traded fund that are or will be able to be traded on a financial market operated by ASX or Chi-X”

13 Sub-subparagraph 5(a)(ii)

Omit “AQUA market”, substitute “financial market operated by ASX or Chi-X”

14 Sub-subparagraph 5(a)(iii)

Omit “AQUA exchange traded fund”, substitute “exchange traded fund”

15 Sub-subparagraph 5(a)(iii)

Omit “AQUA market”, substitute “financial market operated by ASX or Chi-X”

16 Sub-subparagraph 5(a)(iii)

Omit “Trading Days,”, substitute “trading days,”

17 Subparagraph 5(b)

Omit “AQUA exchange traded fund” (twice occurring), substitute “exchange traded fund”

18 Paragraph 6

Omit “AQUA exchange traded fund”, substitute “exchange traded fund”

19 Subparagraph 6(b)

Omit “Trading Day” (twice occurring), substitute “trading day”

20 Subparagraph 7(a)

Omit “AQUA exchange traded fund that are admitted or are to be admitted to Trading Status as ETF Securities”, substitute “exchange traded fund that are or will be able to be traded on a financial market operated by ASX or Chi-X”

21 Subparagraph 8(a)

Omit “Trading Day”, substitute “trading day”

22 Subparagraph 8(b)

Omit “Trading Day:”, substitute “trading day:”

23 Sub-subparagraph 8(b)(i)

Omit “AQUA exchange traded fund” (twice occurring), substitute “exchange traded fund”

24 Paragraph 9 (including the heading)

Omit, substitute:

Exemption—Ongoing disclosure for ETFs and managed funds

9. A responsible entity of:

- (a) an exchange traded fund whose interests are in a class of interests that are able to be traded on a financial market operated by ASX or Chi-X; or
- (b) a managed fund whose interests are in a class of interests that are able to be traded on a financial market operated by ASX,

does not have to comply with section 1017B of the Act for as long as the conditions in paragraph 10 are met.

25 Paragraph 10

Omit “AQUA exchange traded fund” (twice occurring), substitute “scheme”

26 Subparagraph 10(b)

Omit “fund”, substitute “scheme”

27 Paragraph 11 (heading to notional subsection 609(19A) of the Act)

Omit “*ETF securities*”, substitute “*ETFs*”

28 Paragraph 11 (notional paragraph 609(19A)(a) of the Act)

Omit, substitute:

- (a) the scheme is an exchange traded fund; and

29 Paragraph 11 (definition of *acquisition and withdrawal facility* in notional subsection 609(19E) of the Act)

Omit “Trading Day”, substitute “trading day”

30 Paragraph 11 (definition of *acquisition and withdrawal facility* in notional subsection 609(19E) of the Act)

Omit “ASX Limited (ACN 008 624 691), substitute “ASX”

31 Paragraph 11 (definition of *authorised participant* in notional subsection 609(19E) of the Act)

Omit “is either a Trading Participant or has engaged a Trading Participant to act on its behalf”, substitute “is, or who has engaged to act on its behalf, a participant (within the meaning of section 761A) in relation to a financial market,”

32 Paragraph 11 (respective definitions of *ETF Security, Trading Day, Trading Participant* and *Trading Status* in notional subsection 609(19E) of the Act)

Omit the definitions

33 Paragraph 11 (notional subsection 609(19E) of the Act)

Insert the following definitions in the appropriate alphabetical order:

ASX means ASX Limited.

Chi-X means Chi-X Australia Pty Ltd.

exchange traded fund (or *ETF*) means a registered scheme in relation to which all of the following are satisfied:

- (a) interests in the scheme are in a class that are able to be traded on a financial market operated by ASX or Chi-X but the scheme is not listed on either of those markets;
- (b) the responsible entity has the power and approval to issue interests in that class on any day that those interests are able to be traded on the relevant financial market;
- (c) the responsible entity allows applications for and redemptions of interests in that class on any day that those interests are able to be traded on the relevant financial market;
- (d) the price or value of any financial product, index, currency, commodity or other thing that the scheme invests in or tracks is continuously disclosed or can be immediately ascertained;
- (e) the name of the scheme does not contain the expression “managed fund” or “hedge fund”.

trading day, in relation to a financial market, means any day that financial products are able to be traded on the market.

- 34 Subparagraph 12(a) (heading to notional section 671AA of the Act)**
Omit “ETF securities”, substitute “ETFs”
- 35 Subparagraph 12(b) (heading to notional subsection 671B(7A) of the Act)**
Omit “ETF securities”, substitute “ETFs”
- 36 Paragraph 13 (definition of AQUA exchange traded fund)**
Omit the definition
- 37 Paragraph 13 (definition of ASX)**
Omit “(ACN 008 624 691)”
- 38 Paragraph 13 (definition of authorised participant)**
Omit “AQUA exchange traded fund”, substitute “exchange traded fund”
- 39 Paragraph 13 (paragraph (c) of the definition of authorised participant)**
Omit “is either a Trading Participant or has engaged a Trading Participant to act on its behalf”, substitute “is, or who has engaged to act on its behalf, a participant (within the meaning of section 761A of the Act) in relation to a financial market,”
- 40 Paragraph 13 (definition of ETF Security)**
Omit the definition
- 41 Paragraph 13 (definition of indicative net asset value per interest)**
Omit “AQUA exchange traded fund” (wherever occurring), substitute “exchange traded fund”
- 42 Paragraph 13 (definition of minimum parcel)**
Omit “AQUA exchange traded fund” (wherever occurring), substitute “exchange traded fund”
- 43 Paragraph 13 (respective definitions of Trading Participant and Trading Status)**
Omit the definitions
- 44 Paragraph 13 (definition of Trading Day)**

Omit the definition, substitute:

trading day, in relation to a financial market, means any day that financial products are able to be traded on the market.

45 Paragraph 13 (definition of *withdrawal fee per interest*)

Omit “AQUA exchange traded fund”, substitute “exchange traded fund”

46 Paragraph 13

Insert the following definitions in the appropriate alphabetical order:

Chi-X means Chi-X Australia Pty Ltd.

exchange traded fund (or **ETF**) means a registered scheme in relation to which all of the following are satisfied:

- (a) interests in the scheme are in a class that are able to be traded on a financial market operated by ASX or Chi-X but the scheme is not listed on either of those markets;
- (b) the responsible entity has the power and approval to issue interests in that class on any day that those interests are able to be traded on the relevant financial market;
- (c) the responsible entity allows applications for and redemptions of interests in that class on any day that those interests are able to be traded on the relevant financial market;
- (d) the price or value of any financial product, index, currency, commodity or other thing that the scheme invests in or tracks is continuously disclosed or can be immediately ascertained;
- (e) the name of the scheme does not contain the expression “managed fund” or “hedge fund”.

managed fund means a registered scheme:

- (a) that satisfies paragraphs (a) to (d) of the definition of **exchange traded fund**; and
- (b) whose name contains the expression “managed fund” or “hedge fund”.

ASIC Class Order [CO 13/1200]

47 Recitals

Omit “**Paragraphs 1020F(1)(a) and 1020F(1)(c)—Exemption and Declaration**”, substitute “**Paragraph 1020F(1)(c)—Declaration**”

48 Paragraph 1

Omit “paragraphs 1020F(1)(a) and”, substitute “paragraph”

49 Paragraphs 4 to 7 (including the heading and subheadings)

Omit the paragraphs, heading and subheadings

50 Subparagraphs 8(a) and (b)

Omit the subparagraphs, substitute:

- (a) a quoted ED security; or
- (b) an interest in:
 - (i) an exchange traded fund whose interests are in a class of interests that are able to be traded on a financial market operated by ASX or Chi-X; or
 - (ii) a managed fund whose interests are in a class of interests that are able to be traded on a financial market operated by ASX;

51 Paragraph 9 (definitions of *AQUA Product and Trading Status*)

Omit the definitions

52 Paragraph 9

Insert the following definitions in the appropriate alphabetical order:

ASX means ASX Limited.

Chi-X means Chi-X Australia Pty Ltd.

exchange traded fund (or ***ETF***) means a registered scheme in relation to which all of the following are satisfied:

- (a) interests in the scheme are in a class that are able to be traded on a financial market operated by ASX or Chi-X but the scheme is not listed on either of those markets;
- (b) the responsible entity has the power and approval to issue interests in that class on any day that those interests are able to be traded on the relevant financial market;

- (c) the responsible entity allows applications for and redemptions of interests in that class on any day that those interests are able to be traded on the relevant financial market;
- (d) the price or value of any financial product, index, currency, commodity or other thing that the scheme invests in or tracks is continuously disclosed or can be immediately ascertained;
- (e) the name of the scheme does not contain the expression “managed fund” or “hedge fund”.

managed fund means a registered scheme:

- (a) that satisfies paragraphs (a) to (d) of the definition of ***exchange traded fund***; and
- (b) whose name contains the expression “managed fund” or “hedge fund”.