



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Amendment) Instrument 2022/0940

I, Kate Metz, delegate of the Australian Securities and Investments Commission,
make the following legislative instrument.

Date 11 November 2022

Kate Metz

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1 Name of legislative instrument

This is the *ASIC Corporations (Amendment) Instrument 2022/0940*.

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 <http://www.legislation.gov.au>.

3 Authority

This instrument is made under sections 341, 601QA, 655A, 673, 741, 951B, 1020F and 1243 of the *Corporations Act 2001*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in the Schedule has effect according to its terms.

Schedule 1—Amendments

Part 1

ASIC Corporations (Application Form Requirements) Instrument 2017/241

1 Section 4 (at the end of the definition of *member approved switch arrangement*)

Add:

- ; or (c) a written arrangement between the CCIV and the members of a sub-fund of the CCIV where:
- (i) the arrangement has been entered into as a result of members voting in favour of a resolution to approve the arrangement at a meeting of the members of the sub-fund; and
 - (ii) under the arrangement all members will switch all or part of their shares to shares in another sub-fund of the CCIV.

2 Section 4 (at the end of the definition of *relevant financial product*)

Add:

Note: The definition of “relevant financial product” in subsection 1016A(1) includes a security in a CCIV: section 1241W.

3 Section 4 (at the end of the definition of *switch*)

Add:

- ; or (c) the redemption of shares in a CCIV that are referable to a sub-fund of the CCIV and the reinvestment of the proceeds in shares in another sub-fund of the CCIV.

4 Section 4 (paragraph (b) of the definition of *voluntary switch arrangement*)

Omit “.”, substitute “may be accepted; or”.

5 Section 4 (at the end of the definition of *voluntary switch arrangement*)

Add:

- (c) a written arrangement between the CCIV and a member of a sub-fund of the CCIV that sets out the circumstances in which an application (*switch application*) by the member to switch

from shares in the sub-fund of the CCIV to shares in another sub-fund of the CCIV may be accepted.

6 After section 5A

Insert:

5B Applications to switch between sub-funds of a retail CCIV

Exemption

- (1) A retail CCIV does not have to comply with section 1016A of the Act in relation to the issue of shares (*new shares*) in the retail CCIV that is made in accordance with a voluntary switch arrangement or a member approved switch arrangement.

Where exemption is available

- (2) The exemption in subsection (1) is available to a retail CCIV where the corporate director of the retail CCIV has taken reasonable steps to ensure that:
- (a) in the case of a voluntary switch arrangement—before the time (*relevant time*) of the switch application in relation to the new shares; and
 - (b) in the case of a member approved switch arrangement—before the time (*relevant time*) of the vote on the resolution to approve the arrangement;

the retail CCIV gave, or made available by a nominated electronic means, to the member:

- (c) a Product Disclosure Statement (*Statement*) or Short-Form PDS (*Statement*) for the new shares that was not defective at the relevant time; and

Note: The information contained in a Statement includes any information contained in a Supplementary Statement given at the same time as the Statement or later: sections 1014D and 1017O (as notionally inserted by Part 3 of Schedule 10BA of the *Corporations Regulations 2001*).

- (d) information which describes the switch arrangement.

7 At the end of subsection 9(2)

Add: Note: Part 7.9 applies to CCIVs subject to modifications: see, in particular, section 1241W (which modifies section 1016A).

8 Section 10

Omit “managed investment product and a foreign passport fund product”, substitute “managed investment product, a foreign passport fund product and a security in a CCIV”.

9 At the end of section 11

Add:

Note: Part 7.9 applies to CCIVs subject to modifications: see, in particular, sections 1241W (which modifies section 1016A) and 1241S (which modifies section 1012DAA).

Part 2

ASIC Corporations (Changing Scheme Constitutions) Instrument 2019/700

10 Section 1

Omit “(Changing Scheme Constitutions)”, substitute “(Changing Scheme and Retail CCIV Constitutions)”.

11 Section 3

Omit “subsection 601QA(1)”, substitute “subsections 601QA(1) and 1243(2)”.

12 Section 5 (heading)

Repeal the heading, substitute:

5 Registered scheme – changing the constitution

13 At the end of section 5

Add:

6 Retail CCIV – changing the constitution

Part 8B.3 of the Act applies in relation to a retail CCIV as if section 1223D of the Act were modified or varied by, after subsection (2), inserting the following subsections:

“(2A) If the constitution of a retail CCIV sets out a procedure for varying or cancelling rights of a class of members of the retail CCIV, or rights attached to a class of shares in the retail CCIV, those rights may be varied or cancelled by a resolution under subparagraph (2)(a)(i) or (iii) only if that procedure is complied with.

Passport Rules

(2B) Despite subsection (2), the corporate director of a retail CCIV may modify the constitution of the retail CCIV to the extent the corporate director reasonably considers necessary to ensure the constitution:

- (a) is consistent with section 4 of the Passport Rules for this jurisdiction; and
- (b) specifies a right of withdrawal and contains provisions for making and dealing with

withdrawal requests that are consistent with Division 7.1 of Part 7 of those Rules.

Any modifications made to the constitution under this subsection may be made before a sub-fund of the retail CCIV has a status of being an Australian passport fund but only have operative effect while the Passport Rules for this jurisdiction apply in relation to the fund.

Other scenarios

(2C) Despite subsection (2), the constitution of the retail CCIV may be modified, or repealed and replaced with a new constitution, by the corporate director if at least one of the following is satisfied at the time of the modification, or repeal and replacement:

(a) a meeting of members is unable to be held because the quorum requirement in either subsection 252R(2) or the retail CCIV's constitution is not capable of being satisfied because the retail CCIV has an insufficient number of members;

Note: Section 252R applies in relation to a CCIV and its members subject to the modifications in Subdivision B of Division 6 of Part 8B.3.

(b) every member of the retail CCIV is not entitled to vote at a meeting of members because of section 253E;

Note: Section 253E applies in relation to a CCIV subject to the modifications in Subdivision B of Division 6 of Part 8B.3.

(c) all shares in the retail CCIV were issued in situations that did not require the retail CCIV to give a Product Disclosure Statement.

(2D) The corporate director may only make the modification, or repeal and replacement, under subsection (2C) if, before the modification, or repeal and replacement, both of the following are satisfied:

(a) the corporate director has provided to each member of the retail CCIV, the auditor of the retail CCIV and the auditor of the retail CCIV's compliance plan, all the information that the corporate director reasonably expects to be material to the decision of a member whether to

consent to the modification, or repeal and replacement;

- (b) after the information in paragraph (a) has been provided, every member of the retail CCIV has given their written consent to the modification or repeal and replacement.”.

Part 3

ASIC Corporations (Chapter 5C—Miscellaneous Provisions) Instrument 2017/125

14 Section 3

Omit “subsection 601QA(1)”, substitute “subsections 601QA(1) and 1243(2)”.

15 Section 5 (heading)

Repeal the heading, substitute:

5 Registered scheme – relief to permit constitutional provisions incorporating listing rules by reference

16 Section 6 (heading)

Repeal the heading, substitute:

6 Registered scheme – compliance plan may incorporate provisions from another scheme’s plan as amended from time to time

17 Section 7 (heading)

Repeal the heading, substitute:

7 Registered scheme – related bodies corporate and external members of compliance committee

18 At the end of section 7

Add:

8 Retail CCIV – constitutional provisions for incorporating listing rules by reference

Part 8B.3 of the Act applies in relation to all retail CCIVs as if that Part were modified or varied by inserting the following section after section 1223H:

“1223J Retail CCIV – Incorporating listing rules by reference

“(1) Despite anything in this Subdivision, if:

- (a) a retail CCIV or a sub-fund of a retail CCIV is admitted to the official list of an eligible Australian market or the corporate director of

the retail CCIV is proposing to seek such admission; and

- (b) a retail CCIV is required or permitted for the purposes of the listing rules of the eligible Australian market to include a listing rule consistency provision in its constitution;

the constitution of the retail CCIV may include a listing rule consistency provision.

- (2) In this section:

eligible Australian market means a financial market operated by:

- (a) Sydney Stock Exchange Limited ACN 080 399 220; or
- (b) ASX Limited ACN 008 624 691.

listing rule consistency provision means, in relation to a retail CCIV or a sub-fund of a retail CCIV, and an eligible Australian market, a provision in the constitution of the retail CCIV to the effect that if the retail CCIV or the sub-fund of the retail CCIV is admitted to the official list of the market:

- (a) notwithstanding anything contained in the constitution, if the listing rules of the market prohibit an act being done, the act shall not be done; and
- (b) nothing contained in the constitution prevents an act being done that the listing rules of the market require to be done; and
- (c) if the listing rules of the market require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be); and
- (d) if the listing rules of the market require the constitution to contain a provision and it does not contain such a provision, the constitution is taken to contain that provision; and
- (e) if the listing rules of the market require the constitution not to contain a provision and it contains such a provision, the constitution is taken not to contain that provision; and

- (f) if any provision of the constitution is or becomes inconsistent with the listing rules of the market, the constitution is taken not to contain that provision to the extent of the inconsistency.”.

Part 4

ASIC Corporations (Exposure Period) Instrument 2016/74

19 Section 8

Repeal the section, substitute:

8 Products that are able to be traded on a market

- (1) To avoid doubt, a responsible person does not have to comply with subsection 1016B(1) of the Act in relation to an application made in response to a Product Disclosure Statement for a managed investment product (the *product*) or security in a retail CCIV (referable to a sub-fund) (the *product*) if, at the time of lodgment of the Statement, the product is in a class of products that are able to be traded on a prescribed financial market.
- (2) For the purposes of this section, a class of products is not to be taken as not being able to be traded on a prescribed financial market merely because, at the time of lodgment of the Statement, trading in that class has been suspended.

Part 5

ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251

20 At the end of section 5

Add:

Note: This section does not apply to CCIVs. A CCIV is a company but cannot be wound up or placed in liquidation: see section 1237A.

21 After section 7A

Insert:

7B Winding up of sub-funds of retail CCIVs

- (1) A retail CCIV does not have to comply with Part 2M.3 of the Act in relation to a sub-fund:
 - (a) in relation to a financial year or half-year of the retail CCIV if, as at the day the retail CCIV would otherwise have been required to lodge a report for the sub-fund under that Part for the financial year or half-year, the sub-fund has a liquidator appointed to it; and
 - (b) in relation to any earlier financial year or half-year of the retail CCIV, but only to the extent that Part would have imposed, but for this paragraph, a continuing obligation on the retail CCIV from the date of appointment of the liquidator of the sub-fund.

Note: A company that is required to do an act under Part 2M.3 of the Act within a particular period or before a particular time continues to be subject to an obligation to do the act even after the period has ended or that time has passed: section 1314 of the Act. Paragraph (b) does not affect any liability under that Part that existed at any time before the date of appointment of the liquidator.

Condition

- (2) The retail CCIV must have adequate arrangements in place to answer, within a reasonable period of time and without charge, any reasonable questions asked by a member of the sub-fund about the winding up.

22 Paragraph 8(5)(c)

Omit “or”.

23 At the end of paragraph 8(5)(d)

Add:

; or (e) a retail CCIV, in relation to a sub-fund of the CCIV.

24 Subsection 8A(1)

Before “8(5)(d)”, insert “paragraph”.

Part 6

ASIC Corporations (Foreign Scrip Bids) Instrument 2015/357

25 Subsection 5(3) (heading)

Repeal the heading, substitute:

Interests in managed investment schemes and shares in CCIVs

26 Subsection 5(3)

After “managed investment scheme”, insert “or a share (the *scrip*) in a CCIV”.

27 At the end of subsection 5(5)

Add:

Note: Part 7.9 applies in relation to the issue and sale of shares in a CCIV, subject to modifications: see, in particular, section 1241Q.

Part 7

ASIC Corporations (Registered Schemes—Differential Fees) Instrument 2017/40

28 Section 1

Omit “(Registered Schemes—Differential Fees)”, substitute “(Registered Schemes and CCIVs—Differential Fees)”.

29 Section 3

Omit “subsection 601QA(1)”, substitute “subsections 601QA(1) and 1243(2)”.

30 Section 4 (definition of *differential fee arrangement*)

Repeal the definition, substitute:

differential fee arrangement:

- (a) in relation to a registered scheme, means an arrangement for the charging, rebating or waiving of fees, including entry, exit and periodic fees, by the responsible entity to members of the scheme on a basis that differs from that applying to other members who hold interests of the same class; and
- (b) in relation to a CCIV, means an arrangement for the charging, rebating or waiving of fees, including entry, exit and periodic fees, by the corporate director of the CCIV or the CCIV, as the case may be, to members of a sub-fund of the CCIV on a basis that differs from that applying to other members of the sub-fund who hold shares of the same class referable to that sub-fund.

31 Section 4 (definition of *employee member*)

Repeal the definition, substitute:

employee member:

- (a) in relation to a scheme, means a member of the scheme who is also an employee of the responsible entity of the scheme or a related body corporate; and
- (b) in relation to a CCIV, means a member of the CCIV who is also an employee of:
 - (i) the corporate director of the CCIV; or
 - (ii) a related body corporate of the corporate director.

32 Section 5 (heading)

Repeal the heading, substitute:

5 Registered schemes – differential fees**33 Subsection 5(2)**

After, “differential fee arrangement”, insert “in relation to a registered scheme”.

34 Subsection 5(3)

After, “differential fee arrangement”, insert “in relation to a registered scheme”.

35 At the end of section 6

Add:

7 CCIVs – differential fees

- (1) A corporate director of a CCIV does not have to comply with paragraphs 1224D(2)(b) or (3)(b) of the Act, as the case may be, to the extent they would otherwise prohibit the corporate director or the CCIV from administering a differential fee arrangement.

Characteristics of the member or of their investment

- (2) This instrument applies to a differential fee arrangement in relation to a CCIV under which the fees that may be charged, rebated or waived by the corporate director or the CCIV to members of a sub-fund of the CCIV differ based on any of the following criteria:
 - (a) the total value of, or the number of, shares held by the member, or by the member and associated persons, in one or more of the following:
 - (i) the CCIV (in respect of the sub-fund);
 - (ii) other CCIVs operated by the corporate director or a related body corporate of the corporate director;
 - (iii) other financial products issued by the corporate director or a related body corporate of the corporate director;
 - (b) the total period of time during which the member, or the member and associated persons, has held shares in one or more of the following:

- (i) the CCIV (in respect of the sub-fund);
 - (ii) other CCIVs operated by the corporate director or a related body corporate of the corporate director;
 - (iii) other financial products issued by the corporate director or a related body corporate of the corporate director;
- (c) the member being an employee of the corporate director or a related body corporate of the corporate director in circumstances where the number of votes that may be cast on a resolution of the members of the sub-fund of the CCIV by employee members is no more than 5% of the total votes that may be cast by the members of the sub-fund of the CCIV;
- (d) the member having acquired their shares under a switching facility that involved the member first withdrawing from:
- (i) another sub-fund of the CCIV; or
 - (ii) another CCIV operated by the corporate director or a related body corporate of the corporate director; or
- (e) savings to the CCIV resulting, or reasonably expected by the corporate director to result, from the lower cost of servicing a member of the CCIV because of particular characteristics of that member or of their investment, where the amount of the benefit by way of lower fees charged to that member, or the rebate or waiver of fees provided to that member, is no greater than a reasonable estimate of the amount of the saving or expected saving.

Individual negotiation with wholesale clients

- (3) This instrument also applies to a differential fee arrangement in relation to a CCIV under which the fees that may be charged, rebated or waived by the corporate director or a CCIV to a member that is a wholesale client differs from that applying to other members based on individual negotiation between the corporate director and the member.

8 Conditions

- (1) The corporate director must ensure that:
- (a) where a differential fee arrangement of a kind referred to in subsection 7(2) is in place or is to be offered—a statement of the basis on which the differential fee will be calculated

and which specifies the fees that members will have to bear; and

- (b) where a differential fee arrangement of a kind referred to in subsection 7(3) is in place or is to be offered—a statement of that fact,

is or has been disclosed in a clear, concise and effective manner:

- (c) to existing members of the sub-fund of the CCIV by no later than the date of the first communication by the corporate director to all members of the sub-fund after the date when the differential fee arrangement is first offered; and
 - (d) in any Product Disclosure Statement required by the Act in relation to shares in the CCIV that is in use during the period in which the differential fee arrangement is offered.
- (2) The corporate director must ensure that any differential fee arrangements do not adversely affect the fees paid or to be paid by any member of the sub-fund of the CCIV who is not entitled to the benefit of those fee arrangements.
 - (3) The corporate director must ensure that where a differential fee arrangement of a kind referred to in subsection 7(2) is in place or is to be offered, the arrangement is applied without discrimination to all members of the sub-fund of the CCIV who satisfy the criteria necessary to receive the benefit of the arrangement.

Part 8

ASIC Corporations (Removing Barriers to Electronic Disclosure) Instrument 2015/649

36 Section 2 (note)

Omit “http://www.comlaw.gov.au”, substitute “www.legislation.gov.au”.

37 Section 4

Insert:

simple sub-fund product has the same meaning as in regulation 1.0.02 of the Regulations.

38 Section 5

Repeal the section, substitute:

5 Page length for electronic PDSs

Part 7.9 of the Act applies in relation to a margin loan, a superannuation product to which Subdivision 4.2B of Division 4 of Part 7.9 of the Regulations applies, a simple managed investment scheme to which Subdivision 4.2C of Division 4 of Part 7.9 of the Regulations applies and a simple sub-fund product to which Subdivision 4.2D of Division 4 of Part 7.9 of the Regulations applies as if Schedules 10C, 10D, 10E and 10F to the Regulations were modified or varied by inserting after subclause 1(2) in each of those Schedules:

“(3) The requirement in subclause 1(1) only applies to the extent that material contained in the Statement is of a kind that is able to be printed.”.

Note: Part 7.9 applies in relation to the issue of sale of securities in a CCIV, subject to modifications: see, in particular, section 1241Q.

39 Section 6

Omit “applies and a simple managed investment scheme to which Subdivision 4.2C of Division 4 of Part 7.9 of the Regulations applies”, substitute “applies, a simple managed investment scheme to which Subdivision 4.2C of Division 4 of Part 7.9 of the Regulations applies and a simple sub-fund product to which Subdivision 4.2D of Division 4 of Part 7.9 of the Regulations applies”.

40 Paragraph 6(a) (notional paragraph 1015C(5A)(c) of the Act)

Omit “7.9.11R(2)(a) and 7.9.11Z(2)(a)”, substitute “7.9.11R(2)(a), 7.9.11Z(2)(a) and 7.9.11ZH(2)(a)”.

41 At the end of paragraph 6(d)

Add:

; and (e) Schedule 10F to the Regulations were modified or varied as follows:

(i) in paragraph 2(2)(b) omit “.”, substitute “; and”;

(ii) after paragraph 2(2)(b) insert:

“(c) if the Statement is in an electronic form and some or all of the Statement is of a kind that is not able to be printed:

(i) a description of the electronic means by which the responsible person for the Statement makes the Statement available; and

(ii) a statement that a person who requests a copy of the Statement must nominate one of those electronic means in order to receive a copy of the Statement; and

(iii) if there is another Product Disclosure Statement for the simple sub-fund product that is in use and is able to be printed, a statement that that is the case and that a person may request a copy of that Statement.”.

42 Paragraph 7(c)

Omit “7.9.11P(3)(c)(ii) and 7.9.11X(3)(c)(ii)”, substitute “7.9.11P(3)(c)(ii), 7.9.11X(3)(c)(ii) and 7.9.11.ZF(3)(c)(ii)”.

Part 9

ASIC Corporations (Sale Offers: Securities Issued on Conversion of Convertible Notes) Instrument 2016/82

43 At the end of section 5

Add:

Note: Part 7.9 applies in relation to the issue and sale of securities in a CCIV, subject to modifications in Division 4 of Part 8B.7.

44 Paragraph 7(b)

Repeal the paragraph, substitute:

(b) after subsection (12B), insert:

“Transfer or sale of underlying products issued on conversion of convertible notes

(12C) The regulated person does not have to give the client a Product Disclosure Statement if:

- (a) the relevant product was issued by the issuer of the convertible notes by reason of the conversion of those convertible notes; and
- (b) on the day on which a notice in relation to the convertible notes was given under paragraph (e):
 - (i) financial products in the same class as the relevant product were continuously quoted securities; and
 - (ii) there was no determination in force under subsection 1013FA(3) in respect of the relevant product; and
- (c) trading in financial products in the class of relevant products on the prescribed financial market on which they were quoted was not suspended for more than a total of 5 days during the shorter of the period during which the class of relevant product was quoted, and the period of 12 months before the first day on which the convertible notes were issued; and
- (d) the conversion of the convertible notes did not involve any further offer; and

- (e) the issuer of the convertible notes gave the relevant market operator for the issuer a notice that complied with subsection (12D) on the same day as, or within 2 business days before, the first day on which the convertible notes were issued.
- (12D) A notice complies with this subsection if:
- (a) for the convertible notes—the notice contains all the information investors and their professional advisors would reasonably require to make an informed assessment of:
 - (i) the effect of the offer of the convertible notes on the body; and
 - (ii) the rights and liabilities attaching to the convertible notes offered; and
 - (iii) the rights and liabilities attaching to the convertible notes themselves and the underlying securities; and
 - (b) for financial products in the class of relevant products—the information required to be included in a Product Disclosure Statement for continuously quoted securities as if the notice were a Product Disclosure Statement; and
 - (c) the information in the notice is worded and presented in a clear, concise and effective manner; and
 - (d) where the notice includes a statement by a person, or a statement said in the notice to be based on a statement by a person:
 - (i) the person has consented to the statement being included in the notice in the form and context in which it is included;
 - (ii) the notice states that the person has given this consent; and
 - (iii) the person has not withdrawn this consent before the notice is given to the relevant market operator.
- (12E) If the issuer gives a notice under paragraph (12C)(e) in relation to convertible notes, each financial report or directors' report of the issuer (or if the issuer is the

responsible entity of a registered scheme or a CCIV in respect of a sub-fund, the registered scheme or the sub-fund) required under section 298 in relation to a financial year of the issuer (or scheme or CCIV) during which those convertible notes were on issue must contain the following information:

- (a) the number of convertible notes in that class that have not converted as at the end of the financial year;
- (b) the number of financial products in the class of relevant products into which the convertible notes will convert;
- (c) the price (if any) to be paid on conversion;
- (d) the circumstances in which conversion may occur;
- (e) the remaining liability of the issuer to make payments under convertible notes in that class as at the end of the financial year;
- (f) the average conversion price (if any) paid for any convertible notes in that class that were converted during the financial year and the number of financial products in the class of relevant products into which they converted; and
- (g) any other matters relating to the convertible notes that holders of ED securities of the issuer would reasonably require to make an informed assessment of the financial position of the issuer (or if the issuer is the responsible entity of a registered scheme or a CCIV in respect of a sub-fund, the registered scheme or the sub-fund) and its prospects for future financial years.

Note: Section 298 applies to a retail CCIV subject to modifications: see 1232C.

- (12F) The financial report and directors' report may omit material that would otherwise be required to be included under paragraph (12E)(g) if it is likely to result in unreasonable prejudice to:
- (a) the issuer (or, if the issuer is the responsible entity of a registered scheme or a CCIV in respect of a sub-fund, the registered scheme or the sub-fund); or

- (b) if consolidated financial statements are required – the consolidated entity or any entity (including the issuer or, if the issuer is the responsible entity of a registered scheme, the registered scheme) that is part of the consolidated entity.

If material is omitted, the report must say so.”.

Note: Subsection 1012DA(12B) is notionally inserted into the Act by *ASIC Corporations (Non-Traditional Rights Issues) Instrument 2016/84*.

Part 10

ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547

45 Section 4 (at the end of the definition of *custodial or depository service*)

Add:

Note: Subsection 766E(3) is modified in relation to CCIVs: see section 1241E.

46 Section 4 (at the end of the definition of *custodian*)

Add:

Note: If the shares are in a CCIV, the register of members must show additional information about the sub-fund of the CCIV to which each share is referable: section 1222ZB.

47 At the end of section 6

Add:

Shares in CCIVs – disclosure and advertising relief

- (4) If a sub-fund of a retail CCIV or a retail CCIV is admitted to the official list of ASX, the retail CCIV does not have to comply with section 1012B or Division 4 of Part 7.9 of the Act in relation to:
- (a) an offer of shares in the retail CCIV referable to the sub-fund for issue under a purchase plan; or
 - (b) an issue of shares in the retail CCIV referable to the sub-fund under a purchase plan.

Note: Part 7.9 applies to CCIVs subject to modifications: see, in particular, section 1241Q.

48 Section 7

Omit “subsections 6(2) and (3)”, substitute “subsections 6(2), (3) and (4)”.

49 At the end of paragraph 7(b)

Add:

Note: Subsection 1012DAA(3) applies to CCIVs subject to modifications: see subsection 1241S(6).

50 At the end of sub-subparagraph 7(f)(ii)(C)

Add:

Note: Chapter 2M applies to CCIVs subject to modifications: see Division 4 of Part 8B.4.

51 At the end of sub-subparagraph 7(f)(ii)(D)

Add:

Note: Subsection 1012DA(7) applies to CCIVs subject to modifications: see subsection 1241S(7).

Part 11

ASIC Corporations (Shorter PDS and Delivery of Accessible Financial Products Disclosure by Platform Operators and Superannuation Trustees) Instrument 2022/497

52 Section 4

Insert:

simple sub-fund means a sub-fund of a retail CCIV in respect of which a simple sub-fund product is referable.

simple sub-fund product has the same meaning as in regulation 1.0.02 of the Regulations.

53 Subsection 5(2) (notional subregulation 7.9.11S(7) (after subparagraph (b)(ii) of the definition of *fund of hedge funds*))

Insert:

(iii) a sub-fund of a CCIV; or

54 Subsection 5(2) (notional subregulation 7.9.11S(7) (definition of *hedge fund*))

Omit “(the derivatives limb)”, substitute “(the *derivatives limb*)”.

55 Subsection 5(2) (notional subregulation 7.9.11S(7) (note to subparagraph (b)(i) of the definition of *hedge fund*))

Omit “A, B and C.)””, substitute “A, B and C.)”.

56 Subsection 5(2) (notional subregulation 7.9.11S(7) (after paragraph (b) of the definition of *interposed entity*))

Insert:

(ba) a CCIV; or

57 Subsection 5(2) (notional subregulation 7.9.11S(7) (definition of *prescribed foreign regulatory authority*))

Omit “10F”, substitute “10G”.

58 After subsection 5(2)

Insert:

Simple sub-funds: multifunds and hedge funds

- (2A) Part 7.9 of the Act applies in relation to a retail CCIV in respect of a simple sub-fund as if regulation 7.9.11ZA of the Regulations were modified or varied by, after subregulation (4), inserting:

Note: Part 7.9 applies to CCIVs subject to modifications: see, in particular, section 1241Q.

- “(5) This Subdivision does not apply to a Product Disclosure Statement to which all of the following apply:
- (a) the Statement covers a financial product which relates to a simple sub-fund;
 - (b) the Statement is prepared or purports to be prepared in accordance with Part 7.9 of the Act as it applies but for this Subdivision;
 - (c) the Statement is set out in a document in which there is also set out one or more other Product Disclosure Statements which:
 - (i) cover a financial product which relates to another sub-fund of the same CCIV or a sub-fund of another CCIV, but not another financial product; and
 - (ii) is prepared or purports to be prepared in accordance with Part 7.9 of the Act as it applies but for this Subdivision.
- (6) This Subdivision does not apply to a simple sub-fund that is a hedge fund or fund of hedge funds.

- (7) In this regulation:

derivative has the same meaning as in regulation 7.9.11S of the Regulations.

Note: Regulation 7.9.11.S is modified by *ASIC Corporations (Shorter PDS and Delivery of Accessible Financial Products Disclosure by Platform Operators and Superannuation Trustees) Instrument 2022/497*.

fund of hedge funds means a sub-fund of a retail CCIV:

- (a) that is promoted by the retail CCIV using the expression and as being a “fund of hedge funds”; or
- (b) in relation to which at least 35% of the assets of the sub-fund are invested in a way that gives rise to economic interests in one or more of the following:
 - (i) a hedge fund; or

- (ii) a managed investment scheme or body, whether operating or carrying on business in or outside this jurisdiction, that would be a hedge fund if the scheme or body were a registered scheme; or
- (iii) a sub-fund of another CCIV; or
- (c) that is promoted by the retail CCIV on the basis that assets of the sub-fund will be invested in a way so that paragraph (b) will apply to it.

hedge fund means a sub-fund of a retail CCIV:

- (a) that is promoted by the retail CCIV using the expression and as being a “hedge fund”; or
- (b) where the retail CCIV (in respect of the sub-fund) is covered by two or more of the following:
 - (i) the retail CCIV (in respect of the sub-fund):
 - (A) deals in financial products in accordance with investment strategies intended to produce a return with low correlation (including no correlation) to each of the prescribed published indexes or any combination of them; or
 - (B) acquires an economic interest in financial products through:
 - (I) three or more interposed entities; or
 - (II) two or more interposed entities if at least one of the entities is an entity that is formed or incorporated outside this jurisdiction or under laws other than Australian laws;

where the retail CCIV (in respect of the sub-fund), or an associate of the retail CCIV, has the capacity to control:

 - (III) the disposal of the products; or
 - (IV) two or more of the interposed entities;

(For the purposes of sub-subparagraph (B), the calculation of the number of interposed entities through which a retail CCIV (in respect of a

sub-fund) acquires an economic interest in a financial product is to be performed by reference to each separate vertical stream of interposed entities);

- (ii) the retail CCIV (in respect of the sub-fund) acquires any of the following for the dominant purpose of making a financial investment:
 - (A) a credit facility;
 - (B) a margin lending facility;
 - (C) a financial product (other than partly-paid securities) the acquisition of which is likely to result in a debt, whether actual, contingent or prospective, owed by the holder of the product to another person;
- (iii) the retail CCIV (in respect of the sub-fund) deals in derivatives excluding dealings covered by one or more of the following sub-subparagraphs:
 - (A) the dealing is for the dominant purpose of managing foreign exchange or interest rate risk associated with the holding of some or all of the assets of the sub-fund; or
 - (B) both of the following apply:
 - (I) the dealing takes place on a financial market;
 - (II) the dealing is for the dominant purpose of managing the financial risk arising from deferring a proposed dealing in another financial product that is not a derivative for a period of less than 28 days; or
 - (C) both of the following apply:
 - (I) the dealing takes place on a financial market;
 - (II) the notional derivatives exposure of the retail CCIV (in respect of the sub-fund) (excluding derivatives

covered by sub-subparagraph (A) or (B)) at any point in time does not exceed 10% of the net asset value of the sub-fund at that time unless the exposure is attributable to circumstances that were not reasonably foreseeable by the corporate director of the retail CCIV and the exposure is for a period of no more than 3 consecutive business days;

(For the purposes of sub-subparagraph (B):

- (a) a dealing in a derivative for the dominant purpose of managing the financial risk arising from deferring a proposed dealing in another financial product that is not a derivative is taken to be for a period of deferral of 28 days or more if the dealing, and any previous dealing in derivatives that takes place on a financial market, together are for the dominant purpose of managing the financial risk arising from deferring the same proposed dealing in the other financial product for a period of 28 days or more; and
 - (b) a dealing in a derivative for the dominant purpose of managing the financial risk arising from deferring a proposed dealing in another financial product is not taken to satisfy the sub-subparagraph merely because the derivative has a term of 28 days or more.)
- (iv) the retail CCIV (in respect of the sub-fund) sells financial products, whether in or outside this jurisdiction, in relation to which, at the time of the sale:
- (A) the seller does not have a presently exercisable and unconditional right to vest the products in a buyer; or
 - (B) the seller has a presently exercisable and unconditional right to vest the products in a buyer only because of a securities lending arrangement;

- (v) both of the following are satisfied:
- (A) the corporate director of the retail CCIV (in respect of the sub-fund) or a person who manages some or all of the assets of the sub-fund has rights to be paid fees (***performance fees***) substantially based on the performance of those assets whether or not the corporate director of the retail CCIV (in respect of the sub-fund) or the person also has rights to be paid fees substantially based on the gross or net value of all of the assets of the sub-fund;
 - (B) the retail CCIV (in respect of the sub-fund) has made a statement in writing (whether in a Product Disclosure Statement or otherwise) to the effect that performance fees will be payable in the event the corporate director or the person satisfies certain criteria related to the performance of the assets of the sub-fund and has not withdrawn that statement.

For the purposes of subparagraphs (b)(i) to (v), the retail CCIV (in respect of the sub-fund) deals in, acquires or sells a financial product, an economic interest or facility if the retail CCIV (in respect of the sub-fund) does so in relation to the sub-fund (whether directly or through an interposed entity) or the sub-fund is promoted by the retail CCIV on the basis that it will do so.

For the purposes of determining whether a CCIV (in respect of a sub-fund) is covered by two or more subparagraphs of paragraph (b) of this definition, a retail CCIV that deals in derivatives which, but for this provision, results in the retail CCIV being covered by:

- (a) subparagraph (iii) (the ***derivatives limb***); and
- (b) either or both of the following:
 - (i) subparagraph (ii) (the ***leverage limb***);
 - (ii) subparagraph (iv) (the ***short selling limb***);

is taken not to be covered by the leverage limb or the short selling limb unless the retail CCIV is covered by the

leverage limb or the short selling limb for some other reason.

A retail CCIV (in respect of the sub-fund) is taken to be covered by two or more subparagraphs of paragraph (b) of this definition if all of the following apply:

- (a) the retail CCIV (in respect of the sub-fund) and:
 - (i) any other entity (including, for the avoidance of doubt, a registered scheme or foreign entity); or
 - (ii) a sub-fund of any other retail CCIV;
through which the retail CCIV acquires an economic interest in financial products, taken together, would be covered by two or more of those sub-paragraphs;
- (b) the retail CCIV (in respect of the sub-fund), taken alone, would not be covered by two or more of those subparagraphs;
- (c) a reasonable person would conclude that the use of one or more of those other entities or sub-funds as a means through which the retail CCIV (in respect of the sub-fund) acquires an economic interest in financial products is for the sole or dominant purpose of bringing about a result that the retail CCIV (in respect of a sub-fund), taken alone, would not be covered by two or more of those subparagraphs.

interposed entity, in relation to a retail CCIV (in respect of a sub-fund), means an entity that is interposed between the retail CCIV and a financial product in which the retail CCIV (in respect of a sub-fund) has an economic interest, but does not include:

- (a) a registered scheme; or
- (b) a notified foreign passport fund; or
- (c) a CCIV; or
- (d) an entity which:
 - (i) is incorporated, formed or registered in a foreign jurisdiction in relation to which a prescribed foreign regulatory authority regulates financial services; and
 - (ii) either:

- (A) is, or whose operator is, specifically authorised by that regulatory authority to make offers of financial products that comprise rights or interests in the entity to the general public in that foreign jurisdiction; or
- (B) is, or whose operator is, specifically authorised to make offers of financial products that comprise rights or interests in the entity to the general public in another foreign jurisdiction by a prescribed foreign regulatory authority that regulates financial services in that other jurisdiction.

net asset value, in relation to a sub-fund of a retail CCIV, means the value of the assets of the sub-fund less the value of the liabilities of the sub-fund (other than liabilities to members as members of the sub-fund), as they would appear on a balance sheet at the time of calculation made up for lodgment as part of a financial report under Chapter 2M of the Act.

notional derivatives exposure, in relation to a retail CCIV (in respect of a sub-fund), means the absolute sum of:

- (a) the face value of, or the notional amount in respect of, each derivative as at the date on which the derivative is entered into, held by the retail CCIV (in respect of the sub-fund) that gives rise to an exposure (**long exposure**) because the retail CCIV (in respect of the sub-fund) would benefit by an increase in the price or value of the underlying or reference asset to which the derivative relates; and
- (b) the face value of, or the notional amount in respect of, each derivative as at the date on which the derivative is entered into, held by the retail CCIV (in respect of the sub-fund) that gives rise to an exposure (**short exposure**) because the retail CCIV (in respect of the sub-fund) would benefit by a decrease in the price or value of the underlying or reference asset to which the derivative relates;

adjusted as follows:

- (c) if a derivative gives rise to a long exposure and another derivative gives rise to a short exposure, and both derivatives are otherwise on the same terms and relate to an underlying or reference asset of the same

class, the face value of, or notional amount in respect of, each derivative is to be offset against each other.

prescribed foreign regulatory authority has the same meaning as in regulation 7.9.11S of the Regulations.

prescribed published index has the same meaning as in regulation 7.9.11S of the Regulations.

securities lending arrangement has the same meaning as in regulation 7.9.11S of the Regulations.

simple sub-fund means a sub-fund of a retail CCIV in respect of which a simple sub-fund product is referable.”.

59 Subsection 5(3)

Repeal the subsection, substitute:

- (3) Part 7.9 of the Act applies in relation to a responsible entity of a simple managed investment scheme and a retail CCIV in respect of a simple sub-fund as if the Regulations were modified or varied by, after Schedule 10F, inserting:

“Schedule 10G Prescribed foreign regulatory authorities
(subregulations 7.9.11S(7) and 7.9.11ZA(7))

Item	Foreign regulatory authorities
1	Alberta Securities Commission
2	Finanzmarktaufsicht (Financial Market Authority (Austria))
3	Financial Services and Markets Authority (Belgium)
4	British Columbia Securities Commission
5	Financial Supervision Commission (Bulgaria)
6	Cyprus Securities and Exchange Commission
7	Czech National Bank
8	Finanstilsynet (Danish Financial Supervisory Authority)
9	Dubai Financial Services Authority
10	Estonian Financial Supervision Authority
11	Finanssivalvonta (Financial Supervisory Authority (Finland))
12	Autorité des Marchés Financiers (Financial Markets Authority (France))
13	Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Financial Supervisory Authority (Germany))
14	Hellenic Capital Market Commission (Greece)
15	Guernsey Financial Services Commission
16	Securities and Futures Commission (Hong Kong)
17	Pénzügyi Szervezetek Állami Felügyelete (Hungarian Financial Supervisory Authority)
18	Fjármálaeftirlitið (Financial Supervisory Authority (Iceland))
19	Central Bank of Ireland
20	Isle of Man Financial Services Authority
21	Israel Securities Authority

- 22 Commissione Nazionale per le Società e la Borsa (Italian Companies and Exchange Commission)
- 23 Financial Services Agency (Japan)
- 24 Jersey Financial Services Commission
- 25 Finanšu un kapitāla tirgus komisija (Financial and Capital Market Commission (Latvia))
- 26 Finanzmarktaufsicht (Financial Market Authority Liechtenstein)
- 27 Bank of Lithuania
- 28 Commission de Surveillance du Secteur Financier (Luxembourg)
- 29 Securities Commission Malaysia
- 30 Malta Financial Services Authority
- 31 Autoriteit Financiële Markten (Dutch Authority for the Financial Markets (the Netherlands))
- 32 Financial Markets Authority (New Zealand)
- 33 Finanstilsynet (Financial Supervisory Authority of Norway)
- 34 Ontario Securities Commission
- 35 Securities and Exchange Commission of Pakistan
- 36 Polish Financial Supervision Authority (Poland)
- 37 Comissão do Mercado de Valores Mobiliários (Portuguese Securities Market Commission)
- 38 Autorité des Marchés Financiers (Québec)
- 39 Financial Supervisory Authority (Romania)
- 40 Monetary Authority of Singapore
- 41 Národná banka Slovenska (National Bank of Slovakia)
- 42 Financial Sector Conduct Authority (South Africa)
- 43 Comisión Nacional del Mercado de Valores (National Securities Market Commission (Spain))
- 44 Finansinspektionen (Financial Supervisory Authority (Sweden))
- 45 Securities and Commodities Authority (United Arab Emirates)
- 46 Financial Conduct Authority (United Kingdom)
- 47 U.S. Securities and Exchange Commission

”

Part 12

ASIC Corporations (Top-up Product Disclosure Statements Relief) Instrument 2016/1054

60 At the end of section 5

Add:

6 Top-up Product Disclosure Statements relief for CCIVs

- (1) A share in a CCIV, referable to a sub-fund, is exempt from sections 1012A, 1012B and 1012C of the Act where an offer to issue, to arrange for the issue of, or to sell, or an issue of, or a recommendation to acquire, the share is made to a person who holds shares in the same class, referable to the same sub-fund, for which the person has paid at least \$500,000.

Note: Section 1012C applies in relation to a CCIV subject to modifications: see section 1241R.

- (2) In working out the amount paid for a share, disregard any amount to the extent it was paid out of money lent by the person offering the share or any associate of that person.

Part 13

ASIC Class Order [CO 13/656]

61 Section 1

Omit “subsection 601QA(1)”, substitute “subsections 601QA(1) and 1243(2)”.

62 Section 4 (heading)

Repeal the heading, substitute:

Exemption — Equality of treatment for responsible entity of a registered scheme

63 After section 4

Insert:

Exemption – Equality of treatment for corporate director of a retail CCIV

4A. A corporate director of a retail CCIV does not have to comply with paragraph 1224D(2)(b) of the Act to the extent that it would prevent the corporate director from doing any or all of the following:

- (a) not making an offer of shares to a member of the retail CCIV (a **non-resident**) with a registered address outside Australia, New Zealand and, in the case of an Australian passport fund, each host economy of the fund, if the corporate director:
 - (i) where the sub-fund of the retail CCIV is not included in the official list of the financial market operated by ASX Limited and the offer is renounceable—appoints a nominee to sell the rights to acquire the shares that are not offered to the non-residents and distribute to each non-resident their proportion of the proceeds of sale net of expenses; or
 - (ii) in any other case—determines that it would be unreasonable to make the offer to the non-resident having regard to each of the following:
 - (A) the number of members of the retail CCIV in the place (the **relevant place**) where the

- registered address of the non-resident is situated;
- (B) the number and the value of the shares that may be issued to non residents in the relevant place;
 - (C) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to making the offer in the relevant place;
- (b) offering shares to some members of a sub-fund of the retail CCIV (the *priority offerees*) who would be acquiring as wholesale clients at an earlier time than other members where:
- (i) the terms of the offer require the priority offerees to notify the corporate director of their acceptance of the offer by a date that occurs before another date by which other members of the sub-fund are to notify their acceptance; and
 - (ii) under the terms of the offers shares will not be issued to the priority offerees before the earliest date on which shares may be issued to the other members of the sub-fund; and
 - (iii) shares are only issued to the priority offerees in accordance with the terms of the offers required by subparagraphs (i) and (ii);
- (c) dealing with complaints made by members of a sub-fund of the retail CCIV who acquire a share as wholesale clients differently from complaints by other members of the sub-fund;
- (d) offering and issuing shares in accordance with *ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547*.

Part 14

ASIC Class Order [CO 13/721]

64 Section 1

Omit “subsections 601QA(1), 1020F(1), 655A(1) and 673(1)”, substitute “subsections 601QA(1), 655A(1), 673(1), 1020F(1) and 1243(2)”.

65 Section 4 (heading)

Repeal the heading, substitute:

Exemption—Unequal treatment in withdrawal from an ETF—responsible entities

66 Paragraph 5(b)

Omit “minimum parcel;”, substitute “minimum parcel.”.

67 Paragraph 5(c)

Repeal the paragraph.

68 After section 5

Insert:

Exemption—Unequal treatment in withdrawal from an ETF—corporate directors

5A. The corporate director of an exchange traded fund does not have to comply with paragraph 1224D(2)(b) of the Act to the extent that it would prevent the corporate director from permitting only authorised participants to withdraw from the fund.

Where the exemption applies

5B. The exemption applies where all of the following are satisfied:

- (a) there is a Product Disclosure Statement in relation to shares in the exchange traded fund that are or will be able to be traded on a financial market operated by ASX or Cboe that contains statements to the effect that:
 - (i) the corporate director will not treat members of the fund who hold shares of the same class equally to the extent that it restricts withdrawal from the fund to authorised participants; and

- (ii) except in exceptional circumstances only authorised participants may withdraw from the fund, but other members of the fund may sell their shares on the financial market operated by ASX or Cboe; and
- (iii) when shares in the exchange traded fund are suspended from trading on the financial market operated by ASX or Cboe for more than 5 consecutive trading days, members of the fund have a right to withdraw from the fund and receive payment for their shares in money within a reasonable time of request unless any of the following apply:
 - (A) the fund is being wound-up;
 - (B) section 1230H (about when a sub-fund is liquid) does not apply to the fund;
 - (C) the CCIV suspends withdrawals in accordance with the constitution of the fund;
- (b) the constitution of the CCIV, in respect of a sub-fund that is an exchange traded fund, does not permit a withdrawal fee per share in the fund to be payable by a member who is not an authorised participant that is greater than the withdrawal fee per share that would generally be payable by an authorised participant receiving redemption proceeds in cash while shares in the exchange traded fund are quoted when withdrawing the minimum parcel.

Note: Paragraph 5B(b) applies regardless of whether the withdrawal fees for the fund are calculated on a per share basis or otherwise.

69 Section 6 (heading)

Repeal the heading, substitute:

Exemption—Unequal treatment in provision of information to authorised participants—responsible entities

70 Section 7

Repeal the section, substitute:

7. The exemption applies where there is a Product Disclosure Statement in relation to interests in the exchange traded fund that are or will be able to be traded on a financial market operated by ASX or Cboe that contains a statement to the effect that the responsible entity will provide information about the index that

the fund aims to track as its investment strategy and the number and identity of securities in the fund to authorised participants before other members.

71 After section 8

Insert:

Exemption—Unequal treatment in provision of information to authorised participants—corporate directors

8A. A corporate director of an exchange traded fund does not have to comply with paragraph 1224D(2)(b) of the Act to the extent that it would prevent the corporate director from providing information to authorised participants before other members about:

- (a) the index the fund aims to track as its investment strategy; and
- (b) assets of the fund specifying:
 - (i) the number and class of securities and any other property required to acquire securities in the fund acquired by authorised participants on the trading day that first ends after the information is provided; and
 - (ii) the number and class of securities and any other property required to acquire securities in the fund disposed of by participants on the trading day that first ends after the information is provided.

Where the exemption applies

8B. The exemption applies where there is a Product Disclosure Statement in relation to shares in the exchange traded fund that are or will be able to be traded on a financial market operated by ASX or Cboe that contains a statement to the effect that the corporate director will provide information about the index that the fund aims to track as its investment strategy and the number and identity of shares in the fund to authorised participants before other members;

Conditions

8C. The corporate director must:

- (a) publicly disclose any information which has been disclosed to authorised participants as permitted by the exemption before the commencement of the trading

day after the day on which such disclosure was made to authorised participants; and

- (b) take reasonable steps to ensure that the following information is publicly available and updated every 15 minutes during each trading day:
 - (i) where the exchange traded fund has only one class of shares—the indicative net asset value per share in the exchange traded fund; or
 - (ii) otherwise—the indicative net asset value per share for each class of shares.

72 Section 9 (heading)

Repeal the heading, substitute:

Exemption—Ongoing disclosure for ETFs and managed funds—responsible entities

73 After section 10

Insert:

Exemption—Ongoing disclosure for ETFs and managed funds—CCIVs

10A. Where a sub-fund of a CCIV is an exchange traded fund or a managed fund whose shares are in a class of shares that are able to be traded on a financial market operated by ASX or Cboe, the CCIV does not have to comply with section 1017B of the Act for as long as the conditions in section 10B are met.

Note: Section 1017B of the Act applies to a CCIV subject to the modifications set out in Division 4 of Part 8B.4: see sections 1241 and 1241Z.

Conditions

10B. The CCIV must:

- (a) comply with section 675 of the Act as if the CCIV were an unlisted disclosing entity; and
- (b) include statements in any Product Disclosure Statement for shares in the CCIV (in respect of the sub-fund) to the effect that the CCIV will comply with the continuous disclosure requirements of the Act as if the CCIV were an unlisted disclosing entity.

Note: Section 675 has a modified operation in relation to securities in a CCIV: see section 1240F.

74 Section 11 (notional subsection 609(19A) of the Act) (heading)

Repeal the heading, substitute:

ETFs—registered schemes

75 Section 11 (notional subsection 609(19E) of the Act) (definition of *trading day*)

Omit “.”.

76 Section 11 (after notional subsection 609(19E) of the Act)

Insert:

ETFs—sub-funds

(20A) A member of a sub-fund of a CCIV who is an authorised participant in relation to the sub-fund does not have a relevant interest in securities that form part of the assets of the sub-fund merely because the sub-fund has an acquisition and withdrawal facility, provided that:

- (a) the sub-fund is an exchange traded fund; and
- (b) the current PDS contains a statement to the effect that the investment strategy for the sub-fund is to make investments that are expected to result in the value of a share in the sub-fund changing in proportion to the value of a published index of securities, ignoring the effect of fees and other costs (including taxes) in relation to the sub-fund; and
- (c) the current PDS contains a statement to the effect that at the time the investment strategy for the sub-fund disclosed in the current PDS was first published in a Product Disclosure Statement for shares in the sub-fund, there were reasonable grounds to believe that implementation of the investment strategy would not be likely to lead to the assets of the sub-fund including securities in a class of securities that:
 - (i) would represent more than 10% by value of the assets of the sub-fund; and
 - (ii) were, or would result in the CCIV having a relevant interest in, securities in:
 - (A) a listed company; or
 - (B) an unlisted company, other than a CCIV, with more than 50 members; or

(C) a listed body that is formed or incorporated in Australia; or

(D) a listed scheme.

(20B) If subsection (20A) applies in relation to a member and the member makes a withdrawal request under the acquisition and withdrawal facility:

- (a) subsection (20A) stops applying in relation to any securities that the member would receive if the CCIV transferred securities to the member in accordance with the withdrawal request; and
- (b) the member is taken to acquire a relevant interest in those securities at that time through a transaction in relation to the securities entered into by the member.

(20C) If:

- (a) other than because of subsection (20B), a member has a relevant interest in securities that form part of the assets of the sub-fund because subsection (20A) has stopped applying in relation to the sub-fund; and
- (b) the member makes a withdrawal request in relation to the shares in the sub-fund;

then for the purposes of section 606, at the time of the withdrawal request:

- (c) the member is taken to acquire a relevant interest in any securities that the member would receive if the CCIV transferred securities to the member in accordance with the withdrawal request; and
- (d) the member is taken to have acquired the relevant interest through a transaction entered into by the member in relation to those securities; and
- (e) the member's voting power is taken to have increased from what it would have been before the withdrawal request if the votes attached to those securities were disregarded to what it was after the withdrawal request (taking the votes attached to those securities into account).

(20D) If, in the previous 6 months:

- (a) a member's voting power has increased because subsection (20A) stopped applying in relation to securities; and
- (b) the member has not been taken to acquire a relevant interest in the securities under subsection (20B) or (20C);

the increase in voting power is to be disregarded in determining the member's, or any other person's, voting power for the purposes of item 9 of the table in section 611.

(20E) In subsections (20A) to (20D) and in this subsection:

acquisition and withdrawal facility means, in relation to a sub-fund of a CCIV, a facility that the CCIV has stated in the current PDS that it intends to offer on each trading day on which shares in the sub-fund are traded on the financial market operated by ASX which allows:

- (a) a person who is an authorised participant to acquire a share in the sub-fund by contributing to the sub-fund; and
- (b) a member who is an authorised participant to request that the CCIV satisfy a withdrawal request in relation to shares in the sub-fund by transferring to the member;

consideration that predominantly comprises a parcel of securities, the composition of which in relation to an acquisition and a withdrawal is published by or on behalf of the responsible entity from time to time.

Note: The composition of the parcel of securities may be different for an acquisition and a withdrawal.

ASX means ASX Limited.

authorised participant means, in relation to a sub-fund of a CCIV, a person who:

- (a) has an agreement with the CCIV in relation to making applications to acquire and withdraw shares in the sub-fund; and
- (b) is, or who has engaged to act on its behalf, a participant (within the meaning of section 761A) in relation to a financial market, to acquire and dispose of shares in the sub-fund.

Cboe means Cboe Australia Pty Ltd.

current PDS, in relation to a sub-fund, means the most recently lodged Product Disclosure Statement relating to shares in the sub-fund.

exchange traded fund (or ETF) means a sub-fund of a CCIV in relation to which all of the following are satisfied:

- (a) shares in the sub-fund are in a class that are able to be traded on a financial market operated by ASX or Cboe, but the sub-fund is not listed on either of those markets;
- (b) the CCIV has the power and approval to issue shares in that class on any day that those shares are able to be traded on the relevant financial market;
- (c) the CCIV allows applications for and redemptions of shares in that class on any day that those shares 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 sub-fund invests in or tracks is continuously disclosed or can be immediately ascertained;
- (e) the name of the sub-fund 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.”.

77 At the end of section 11

Add:

Note: Chapter 6 applies to a CCIV subject to the modifications set out in Part 8B.7: see section 1240.

78 Paragraph 12(a) (notional section 671AA of the Act)

Omit “subsection 609(19A) applies as if paragraph 609(19A)(c) were omitted”, substitute “subsections 609(19A) and 609(20A) apply as if paragraphs 609(19A)(c) and 609(20A)(c) were omitted”.

79 Paragraph 12(b) (notional subsection 671B(7A) of the Act) (heading)

Repeal the heading, substitute:

ETFs—registered schemes

80 Paragraph 12(b) (notional subsection 671B(7B) of the Act)

Omit “”; and”.

81 Paragraph 12(b) (at the end of notional subsection 671B(7B) of the Act)

Add:

ETFs—sub-funds

(7C) If a member of a sub-fund of a CCIV that has an acquisition and withdrawal facility does not have a relevant interest in securities that form part of the assets of the sub-fund because of subsection 609(20A) (as affected by section 671AA), then for the purposes of this section and the definition of **substantial holding** in section 9, the member is taken to have a relevant interest in the securities that would be transferred to the member if:

- (a) the member made a withdrawal request under the acquisition and withdrawal facility for all their shares in the sub-fund, other than any shares in relation to which the member has a relevant interest in securities that form part of the assets of the sub-fund because of subsection 609(20B); and

Note: Subsection 609(20B) may give a member a relevant interest in securities that form part of the assets of the sub-fund if the member has made a withdrawal request in relation to some or all of their shares in the sub-fund.

- (b) the numbers and classes of securities transferred to the member under the facility for each share in the sub-fund were the same as the numbers and classes of securities most recently disclosed to the member by the CCIV in relation to a withdrawal request for a share under the facility.

(7D) In subsection (7C), **acquisition and withdrawal facility** has the same meaning as in subsection 609(20E).”; and

82 Paragraph 12(c) (notional subsection 672B(1AA) of the Act)

Omit “.”.

83 Paragraph 12(c) (at the end of notional subsection 672B(1AA) of the Act)

Add:

(1AB) If a member of a sub-fund of a CCIV does not have a relevant interest in securities that form part of the assets of the sub-fund because of subsection 609(20A) (as affected by section 671AA), then for the purposes of this section and section 672DA, the member is taken to have a relevant interest in securities that the member has a relevant interest in for the purposes of section 671B because of subsection 671B(7A).”.

84 Section 13 (definition of *authorised participant*)

Repeal the definition, substitute:

authorised participant means, in relation to an exchange traded fund, a person who:

- (a) has an agreement with the responsible entity of that fund or CCIV (in respect of the sub-fund) in relation to making applications to acquire and withdraw interests or shares in the fund; and
- (b) is, or has engaged to act on its behalf, a participant (within the meaning of section 761A of the Act) in relation to a financial market, to acquire and dispose of interests in the registered scheme or shares in the sub-fund.

85 Section 13

Insert:

constitution, in relation to a sub-fund of a CCIV (including a sub-fund that is an ETF), means the constitution of the CCIV.

corporate director, in relation to a sub-fund of a CCIV (including a sub-fund that is an ETF), means the corporate director of the CCIV.

86 Section 13 (definition of *exchange traded fund*)

Repeal the definition, substitute:

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

- (a) interests in the scheme or shares in the sub-fund are in a class that are able to be traded on a financial market operated by ASX or Cboe, but the scheme or sub-fund is not listed on either of those markets;
- (b) the responsible entity or CCIV has the power and approval to issue interests or shares in that class on any day that those interests or shares are able to be traded on the relevant financial market;
- (c) the responsible entity or CCIV allows applications for and redemptions of interests or shares in that class on any day that those interests or shares 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 or sub-fund invests in

or tracks is continuously disclosed or can be immediately ascertained;

- (e) the name of the scheme or sub-fund does not contain the expression “managed fund” or “hedge fund”.

87 Section 13

Insert:

indicative net asset value per share means:

- (a) for an exchange traded fund, the total assets of the exchange traded fund less the total liabilities of the exchange traded fund (disregarding any liability to a member of the exchange traded fund as a member), divided by the number of shares in the exchange traded fund; and
- (b) for a class of shares in an exchange traded fund, the total assets attributable to that class of shares less the total liabilities attributable to that class of shares (disregarding any liability to a member of the exchange traded fund as a member), divided by the number of shares in that class.

88 Section 13 (definition of *managed fund*)

After “a registered scheme”, insert “or sub-fund of a CCIV”.

89 Section 13 (definition of *minimum parcel*)

Repeal the definition, substitute:

minimum parcel means the smallest number or value of interests or shares in an exchange traded fund that are generally permitted to be withdrawn from the exchange traded fund by an authorised participant while interests or shares in the exchange traded fund are quoted.

90 Section 13

Insert:

withdrawal fee per share means, in relation an exchange traded fund, the fee that is payable in relation to a withdrawal from the fund divided by the number of shares in the fund to which the withdrawal relates.

91 The whole of the instrument

Omit every occurrence of “Chi-X”, substitute “Cboe”.

Part 15

ASIC Class Order [CO 13/1200]

92 Section 8

After “registered scheme” (first occurring), insert “or sub-fund of a CCIV”.

93 At the end of paragraph 8(b)

Add:

Note: Part 7.9 of the Act applies to a CCIV subject to the modifications set out in Division 4 of Part 8B.7.

94 Paragraph 8(c)

Repeal the paragraph, substitute:

- (c) after paragraph (5)(f), insert:
 - “(fa) if the financial product is an interest in a registered scheme or sub-fund whose first financial year ended on or before the end of the reporting period, information about the performance of the scheme or sub-fund relative to the investment objectives of the scheme or sub-fund that the issuer reasonably believes is sufficient for the holder to make an informed assessment of the performance of the scheme or sub-fund for the following periods:
 - (i) the period of 1 year ending at the end of the most recent financial year of the scheme or sub-fund;
 - (ii) if the scheme or sub-fund has been registered for less than 5 years at the end of the most recent financial year of the scheme or sub-fund, the period starting on the date of registration of the scheme or sub-fund and ending at the end of that financial year;
 - (iii) if the scheme or sub-fund has been registered for at least 5 years at the end of the most recent financial year of the scheme or sub-fund, the period of 5 years ending at the end of that financial year;”;

95 Paragraph 8(d) (notional subregulations 7.9.16O(8A) and (8B) of the Regulations)

After “scheme” (wherever occurring), insert “or sub-fund”.

96 Paragraph 8(d) (notional subregulations 7.9.16O(8D) and (8E) of the Regulations)

Repeal the notional subregulations, insert:

(8D) In this section:

first financial year means:

- (a) in relation to a registered scheme – the financial year for the scheme referred to in subsection 323D(1);
- (b) in relation to a sub-fund of a CCIV – the period that starts on the day on which the sub-fund is registered and lasts for 12 months or the period (not longer than 18 months) determined by the corporate director of the CCIV.

financial year means, in relation to a sub-fund of a CCIV:

- (a) the first financial year; or
- (b) for subsequent financial years – the period which starts at the end of the previous financial year, and lasts for 12 months.

interest in a sub-fund of a CCIV (including a sub-fund that is an ETF), means a share in the CCIV that is referable to the sub-fund.

most recent financial year means, in relation to a registered scheme or sub-fund of a CCIV an interest in which is the subject of a periodic statement, the most recent financial year of the scheme or sub-fund that ended on or before the end of the reporting period covered by the periodic statement.

stapled security means two or more financial products (which may include securities), including at least one interest in a registered scheme or sub-fund of a CCIV:

- (a) that under the constitution of the registered scheme or CCIV must be transferred together; and
- (b) where there are no financial products in the same class as those financial products which may be transferred separately; and
- (c) where one or more of the financial products is a share of a body corporate, the body corporate has not issued any share that may be transferred separately; and

- (d) where one or more of the financial products is an interest in a managed investment scheme or sub-fund, no interests in that scheme or sub-fund may be transferred separately.

stapled security entity means, in relation to a stapled security, the registered scheme or sub-fund and each other scheme or sub-fund or body, an interest in which, or a security of which, is a component of the stapled security.

- (8E) In this section, the investment objectives of:
 - (a) a registered scheme or sub-fund for a period are the investment objectives for the scheme or sub-fund that were disclosed most recently before the beginning of the period in any of the following:
 - (i) a Product Disclosure Statement for an interest in the scheme or sub-fund that was lodged with ASIC;
 - (ii) a continuous disclosure notice provided by the responsible entity of the scheme or the CCIV (in respect of the sub-fund); and
 - (b) stapled security entities for a period are the investment objectives for the stapled security entities that were disclosed most recently before the beginning of the period in any of the following:
 - (i) a Product Disclosure Statement or disclosure document in relation to a stapled security that was lodged with ASIC;
 - (ii) a continuous disclosure notice provided by the responsible entity of a scheme or the CCIV (in respect of the sub-fund) that is a stapled security entity or by a body that is a stapled security entity.”.

97 Section 9 (definition of *exchange traded fund* (or *ETF*))

Repeal the definition, substitute:

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

- (a) interests in the scheme or sub-fund are in a class that are able to be traded on a financial market operated by ASX or Cboe but the scheme or sub-fund is not listed on either of those markets;

- (b) the responsible entity or CCIV 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 or CCIV 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 the financial product, index, currency, commodity or other thing that the scheme or sub-fund invests in or tracks is continuously disclosed or can be immediately ascertained;
- (e) the name of the scheme or sub-fund does not contain the expression “managed fund” or “hedge fund”.

98 Section 9

Insert:

interest in a sub-fund of a CCIV (including a sub-fund that is an ETF), means a share in the CCIV that is referable to the sub-fund.

99 Section 9 (definition of *managed fund*)

After “scheme”, insert “or sub-fund of a CCIV”.

100 The whole of the instrument

Omit every occurrence of “Chi-X”, substitute “Cboe”.