



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (mFund) Instrument 2024/18

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

Date 21 March 2024

Kate Metz

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (mFund) Instrument 2024/18*.

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 paragraphs 1020F(1)(a) and (c) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

ASX means ASX Limited ACN 008 624 691.

ASX Operating Rules means the operating rules of the financial market operated by ASX on 21 March 2024.

ASX Settlement means ASX Settlement Pty Limited ACN 008 504 532.

ASX Settlement Operating Rules mean the operating rules of the clearing and settlement facility operated by ASX Settlement on 21 March 2024.

defective has the same meaning as in subsection 1016A(1) of the Act.

mFund means the facility that is operated by ASX and ASX Settlement and that is called, or has been called, the “ASX Managed Fund Settlement Service”.

Part 2—Exemption

5 Exemption in relation to an electronic application made through mFund

- (1) A responsible entity of a registered scheme does not have to comply with subsection 1016A(2) of the Act in relation to the issue of an interest in the scheme to a person (*acquirer*) in response to an electronic application made to the responsible entity on behalf of the acquirer through mFund.
- (2) The exemption in subsection (1) applies where:
 - (a) the application made through mFund contained or was accompanied by an electronic confirmation that a Product Disclosure Statement for the interest with a specified date has been given to the acquirer by a financial services licensee or an authorised representative of a financial services licensee; and
 - (b) the Product Disclosure Statement referred to in the confirmation:
 - (i) has been prepared by the responsible entity; and
 - (ii) was not defective as at the time when the application was made; and
 - (c) the responsible entity has no reason to believe that the requirements of the ASX Operating Rules and ASX Settlement Operating Rules have not been satisfied in relation to the application and the confirmation; and
 - (d) the responsible entity reasonably believes that the Product Disclosure Statement referred to in the confirmation was available free of charge on the website of ASX as at the time the application was made; and
 - (e) mFund is the subject of an exemption under section 791C of the Act.

6 Conditions

A responsible entity that relies on the exemption in section 5 must:

- (a) within 5 business days after the issue of the interest notify the acquirer in writing that:
 - (i) there is a Product Disclosure Statement with the date specified in the electronic confirmation in relation to the acquirer's application that has information about the interest that should have been given to the acquirer; and

- (ii) if the acquirer has not received that Product Disclosure Statement, the acquirer should inform the responsible entity, and the acquirer may obtain an electronic or paper copy from the responsible entity free of charge; and
- (b) notify ASX in writing within 10 business days if it has reason to believe that a person who acquired an interest in the scheme as a retail client as a result of an application through mFund had not been given, before making the application, the Product Disclosure Statement for the interest that was specified in the electronic confirmation in relation to the application; and
- (c) keep for 7 years:
 - (i) records demonstrating that it has complied with the requirements of paragraph 6(a); and
 - (ii) a copy of all applications received through mFund; and
 - (iii) a record of any statement by an acquirer that states or implies that the acquirer was not given, before applying through mFund, the Product Disclosure Statement that was specified in the electronic confirmation in relation to the acquirer's application.

7 Application where there is a Supplementary Product Disclosure Statement

Sections 5 and 6 (other than subparagraph 5(2)(b)(ii)) apply in relation to a Product Disclosure Statement that has been supplemented by one or more Supplementary Product Disclosure Statements as if:

- (a) a reference to a Product Disclosure Statement were a reference to a Product Disclosure Statement and each Supplementary Product Disclosure Statement which supplements it; and
- (b) a reference to the date of a Product Disclosure Statement were a reference to the date of the most recent Supplementary Product Disclosure Statement that supplements it.

Note: In determining whether a Product Disclosure Statement is defective for the purposes of subparagraph 5(2)(b)(ii), information in a Supplementary Product Disclosure Statement that supplements the Product Disclosure Statement is taken to be contained in the Product Disclosure Statement: see the definition of *defective* in subsection 1016A(1) of the Act.

Part 3—Declaration

8 Requirements before transmitting an electronic application through mFund

Part 7.9 of the Act applies in relation to a financial services licensee who, or whose authorised representative, transmits an electronic application for the issue of an interest in a registered scheme through mFund as if that Part were modified or varied by, after subsection 1016A(2), inserting:

“(2A) A financial services licensee must:

- (a) not transmit an electronic application for the issue of an interest in a registered scheme to a person unless; and
- (b) ensure that an authorised representative of the financial services licensee does not transmit such an application unless the financial services licensee has done all things reasonably necessary to ensure that;

each of the following are satisfied:

- (c) the financial services licensee or its authorised representative (as applicable) has:
 - (i) given the person a Product Disclosure Statement for the interest; or
 - (ii) been notified in writing by another financial services licensee or authorised representative (each the ***second providing licensee or representative***) that the second providing licensee or representative has given the person a Product Disclosure Statement for the interest;
- (d) the date of the Product Disclosure Statement is specified in an electronic statement forming part of or accompanying the application;
- (e) the date of the Product Disclosure Statement is the date of the most recent Product Disclosure Statement for the interest that is available on the website of ASX Limited as at the time the application is made.

Note: A person who offers to arrange for the issue of an interest in a registered scheme to a person as a retail client is required to give a Product Disclosure Statement to the person before making the offer: section 1012B.

(2B) Subsection (2A) does not apply where the financial services licensee or its authorised representative believes on reasonable grounds that an issue is not a restricted issue.

- (2C) Subsection (2A) applies in relation to a Product Disclosure Statement that has been supplemented by one or more Supplementary Product Disclosure Statements as if:
- (a) a reference to a Product Disclosure Statement were a reference to a Product Disclosure Statement and each Supplementary Product Disclosure Statement which supplements it; and
 - (b) a reference to the date of a Product Disclosure Statement were a reference to the date of the most recent Supplementary Product Disclosure Statement that supplements it.”.

Part 4—Repeal

9 Repeal

This instrument is repealed at the start of 1 April 2029.