



**ASIC**

Australian Securities & Investments Commission

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## **ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647**

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

Dated            23 July 2015

Stephen Yen

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## Part 1—Preliminary

### 1 Name of legislative instrument

This instrument is the *ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647*.

### 2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Note: The register may be accessed at <http://www.comlaw.gov.au>.

### 3 Authority

This instrument is made under paragraphs 951B(1)(c) and 1020F(1)(c) of the *Corporations Act 2001*.

### 4 Definitions

In this instrument:

*Act* means the *Corporations Act 2001*.

*Regulations* means the *Corporations Regulations 2001*.

*responsible person* for a Product Disclosure Statement has the same meaning as in subsection 1013A(3) of the Act.

*RSA provider* has the same meaning as in the *Retirement Savings Accounts Act 1997*.

## Part 2—Declaration

### 5 Facilitating electronic delivery of financial services disclosures

#### *Definition of nominated electronic means*

- (1) Parts 7.7 and 7.9 of the Act apply in relation to a financial services licensee, an authorised representative of a financial services licensee, a financial product in relation to which a Product Disclosure Statement, a Supplementary Product Disclosure Statement or a Replacement Product Disclosure Statement is required or prepared, a CGS depository interest, a responsible person for a Product Disclosure Statement, an issuer of a financial product, a trustee of a superannuation entity and an RSA provider as if section 761A were modified or varied by inserting:

“***nominated electronic means***: a document, information, statement or notification (each a ***relevant communication***) is made available by a person (***providing person***) to another person (***receiving person***) by a ***nominated electronic means*** if and only if the following are satisfied:

- (a) the providing person makes the relevant communication available by an electronic means and notifies the receiving person orally or by giving the receiving person a notice in printed or electronic form:
- (i) that the providing person has made the relevant communication available by the electronic means; and
- (ii) how the receiving person can obtain the relevant communications through, or by using, the electronic means;

Note: A notification under paragraph (a) must be made each time a relevant communication is made by a nominated electronic means. A standing notice may be given for the purposes of subparagraph (b)(ii).

- (b) either:
- (i) the receiving person and the providing person have agreed that the relevant communication, or relevant communications of that type, could be made available to the receiving person by the electronic means; or
- (ii) the providing person has given the receiving person a notice in printed or electronic form that states that:

- (A) the providing person may use the electronic means to make the relevant communication, or relevant communications of that type, available to the receiving person unless the receiving person elects, by a means reasonably specified in the notice, not to receive relevant communications by the electronic means; and
  - (B) an election referred to in sub-subparagraph (A) will apply to relevant communications made after the election and, if the receiving person makes the election within 7 days after the providing person has given the notice, to any relevant communications made in the period between the notice being given and the election being made;
- (c) if subparagraph (b)(ii) applies—the receiving person has not made an election referred to in subparagraph (b)(ii) as at the later of:
- (i) the time the providing person gives the notice referred to in paragraph (a);
  - (ii) 7 days after the providing person gives the notice referred to in subparagraph (b)(ii);
- Note: This means that if subparagraph (b)(ii) applies, it can only be determined whether a relevant communication has been given by a nominated electronic means as at the later of these times.
- (d) if the providing person gives a notice referred to in paragraph (a) or subparagraph (b)(ii) in printed or electronic form, the providing person gives the notice to the receiving person:
- (i) personally; or
  - (ii) by sending the notice to the receiving person at an address (including an electronic address) or fax number nominated by the receiving person; or
  - (iii) by making the notice available to the receiving person in any way that is agreed to by the receiving person.”.

*Financial Services Guides and Statements of Advice*

- (2) Part 7.7 of the Act applies in relation to a financial services licensee and an authorised representative of a financial services licensee as if section 940C were modified or varied as follows:
- (a) after subparagraph (1)(a)(ii) insert:

“(iia) made available to the client, or the client’s agent, by a nominated electronic means; or”; and

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

“(iib) made available to the client, or the client’s agent, by a nominated electronic means; or”.

(3) Part 7.7 of the Act applies in relation to a financial services licensee and an authorised representative of a financial services licensee as if regulation 7.7.01 of the Regulations were modified or varied as follows:

(a) in subregulation (2) omit “Financial Services Guide”, substitute “Financial Services Guide, a Supplementary Financial Services Guide”;

(b) after subregulation (2) insert:

“(2A) Subregulation (2) does not apply to a Financial Services Guide, a Supplementary Financial Services Guide or a Statement of Advice that is made available to a person, or a person’s agent, by a nominated electronic means.”.

#### *Product Disclosure Statements*

(4) Part 7.9 of the Act applies in relation to a financial product in relation to which a Product Disclosure Statement, Supplementary Product Disclosure Statement or Replacement Product Disclosure Statement is required or prepared as if subsection 1015C(1) were modified or varied as follows:

(a) in subparagraph (a)(ii) omit “and”, substitute “or”;

(b) after subparagraph (a)(ii) insert:

“(iii) made available to the person, or the person’s agent, by a nominated electronic means; and”.

(5) Part 7.9 of the Act applies in relation to a financial product in relation to which a Product Disclosure Statement, Supplementary Product Disclosure Statement or Replacement Product Disclosure Statement is required or prepared as if regulation 7.9.02A of the Regulations were modified or varied by, after subregulation (1), inserting:

“(1A) For the avoidance of doubt, subregulation (1) does not apply to a Statement that is made available to a person, or a person’s agent, by a nominated electronic means.”.

#### *CGS depository interest statements*

(6) Part 7.9 of the Act applies in relation to a CGS depository interest as if subsection 1020AK(1) were modified or varied as follows:

- (a) in subparagraph (a)(ii) omit “and”, substitute “or”;
- (b) after subparagraph (a)(ii) insert:
  - “(iii) made available to the person, or the person’s agent, by a nominated electronic means; or
  - (iv) made available to the person in any other way that:
    - (A) is agreed to by the person; and
    - (B) allows the regulated person to be satisfied, on reasonable grounds, that the person has received the information statement; or
  - (v) made available to the person’s agent in any other way that:
    - (A) is agreed to by the agent; and
    - (B) allows the regulated person to be satisfied, on reasonable grounds, that the agent has received the information statement; and”.

*Additional information on request*

- (7) Part 7.9 of the Act applies in relation to a responsible person for a Product Disclosure Statement as if subsection 1017A(4) were modified or varied as follows:
  - (a) in paragraph (b) omit “.”, substitute “; or”;
  - (b) after paragraph (b) insert:
    - “(c) by making the information available to the person making the request by a nominated electronic means.”.

*Ongoing disclosures, periodic statements and additional information*

- (8) Part 7.9 of the Act applies in relation to an issuer of a financial product, a trustee of a superannuation entity and an RSA provider as if regulation 7.9.75A of the Regulations were modified or varied as follows:
  - (a) in subregulation (1) omit “a responsible person”, substitute “an issuer”;
  - (b) in paragraph (1)(b) omit “.”, substitute “;”;
  - (c) after paragraph (1)(b) insert:
    - “(c) making the notification available to the holder, or the holder’s agent, by a nominated electronic means.”;

- (d) in paragraph (2)(b) omit “.”, substitute “.”;
- (e) after paragraph (2)(b) insert:
  - “(c) making the periodic statement available to the holder, or the holder’s agent, by a nominated electronic means.”;
- (f) in paragraph (3)(d) omit “.”, substitute “.”;
- (g) after paragraph (3)(d) insert:
  - “(e) making the information available to the person, or the person’s agent, by a nominated electronic means.”.

*Electronic addresses supplied by employers to trustees of standard employer-sponsored superannuation funds*

- (9) Part 7.9 of the Act applies in relation to a trustee of a standard employer-sponsored fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) as if:
  - (a) section 1015C were modified or varied by, after subsection (4), inserting:
    - “(4A) If the regulated person is a trustee of a standard employer-sponsored fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*), the regulated person may instead send the Statement to an electronic address provided by the person’s employer (as at the time the address was provided) if:
      - (a) the employer contributes, or has contributed, to the fund for the benefit of the person in the absence of there being a chosen fund (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) for the person; and
      - (b) the employer provided the electronic address as part of providing contact details for the person in relation to the person’s membership of the fund; and
      - (c) the Statement is accompanied by a statement that, if requested, the regulated person will send the Statement and other communications to another electronic or postal address nominated by the person; and
      - (d) the person has not requested that the issuer send the Statement to another electronic or postal address; and



- (e) the regulated person has no reasonable grounds for believing that the electronic address is not a current electronic address for the person.
- (4B) If, within 14 days after sending a Statement to a person at an electronic address in accordance with subsection (4A), a trustee of a standard employer-sponsored fund has reasonable grounds for believing that the electronic address is not a current electronic address for the person, the trustee must give the Statement to the person:
- (a) within 14 days after having the reasonable grounds; and
  - (b) in accordance with this section.”; and
- (b) section 1017B were modified or varied by, after subsection (3), inserting:
- “(3A) If the issuer is a trustee of a standard employer-sponsored fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*), the issuer may instead notify the holder by sending the notice to an electronic address provided by the holder’s employer (as at the time the address was provided) if:
- (a) the employer contributes, or has contributed, to the fund for the benefit of the holder in the absence of there being a chosen fund (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) for the holder; and
  - (b) the employer provided the electronic address as part of providing contact details for the holder in relation to the holder’s membership of the fund; and
  - (c) the notice is accompanied by a statement that, if requested, the issuer will send the notice and other communications to another electronic or postal address nominated by the holder; and
  - (d) the holder has not requested that the issuer send the notice to another electronic or postal address; and
  - (e) the issuer has no reasonable grounds for believing that the electronic address is not a current electronic address for the holder.
- (3B) If, within 14 days after sending a notice to a person at an electronic address in accordance with subsection (3A), a trustee of a standard employer-sponsored fund has reasonable grounds for believing that the electronic address is not a

current electronic address for the person, the trustee must give the notice to the person:

- (a) within 14 days after having the reasonable grounds; and
- (b) in accordance with subsection (3).”; and
- (c) section 1017D were modified or varied by, after subsection (6), inserting:

“(6A) If the issuer is a trustee of a standard employer-sponsored fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*), the issuer may instead give the periodic statement by sending it to an electronic address provided by the holder’s employer (as at the time the address was provided) if:

- (a) the employer contributes, or has contributed, to the fund for the benefit of the holder in the absence of there being a chosen fund (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) for the holder; and
- (b) the employer provided the electronic address as part of providing contact details for the holder in relation to the holder’s membership of the fund; and
- (c) the periodic statement is accompanied by a statement that, if requested, the issuer will send the periodic statement and other communications to another electronic or postal address nominated by the holder; and
- (d) the holder has not requested that the issuer send the periodic statement to another electronic or postal address; and
- (e) the issuer has no reasonable grounds for believing that the electronic address is not a current electronic address for the holder.

(6B) If, within 14 days after sending a periodic statement to a person at an electronic address in accordance with subsection (6A), a trustee of a standard employer-sponsored fund has reasonable grounds for believing that the electronic address is not a current electronic address for the person, the trustee must give the periodic statement to the person:

- (a) within 14 days after having the reasonable grounds; and
- (b) in accordance with subsection (6).”; and

- (d) section 1017DA were modified or varied by, after subsection (3C) (as notionally inserted by regulation 7.9.60A and Part 14 of Schedule 10A to the Regulations), inserting:

“(3D) If a trustee of a standard employer-sponsored fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) is required to provide information to a person in accordance with regulations dealing with how the information is to be provided, the trustee may instead send the information to an electronic address provided by the person’s employer (as at the time the address was provided) if:

- (a) the employer contributes, or has contributed, to the fund for the benefit of the person in the absence of there being a chosen fund (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) for the person; and
  - (b) the employer provided the electronic address as part of providing contact details for the person in relation to the person’s membership of the fund; and
  - (c) the notification is accompanied by a statement that, if requested, the trustee will send the information and other communications to another electronic or postal address nominated by the person; and
  - (d) the person has not requested that the trustee send the information to another electronic or postal address; and
  - (e) the trustee has no reasonable grounds for believing that the electronic address is not a current electronic address for the person.
- (3E) If, within 14 days after sending information to a person at an electronic address in accordance with subsection (3D), a trustee of a standard employer-sponsored fund has reasonable grounds for believing that the electronic address is not a current electronic address for the person, the trustee must provide the information to the person:
- (a) within 14 days after having the reasonable grounds; and
  - (b) in accordance with regulations dealing with how the information is to be provided.”.