

**Australian Securities and Investments Commission
Corporations Act 2001 — Subsection 259C(2) — Exemption**

Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under subsection 259C(2) of the *Corporations Act 2001* (the *Act*).

Title

2. This instrument is ASIC Instrument [12-0904].

Commencement

3. This instrument commences on the day it is signed.

Revocation

4. ASIC Instrument [12-0567] is revoked upon commencement of this instrument.

Exemption

5. Macquarie Group Limited ACN 122 169 279 (Macquarie) is exempt from the operation of section 259C of the Act.

Where exemption applies

6. The exemption applies to the issue or transfer of Macquarie shares or units of shares of Macquarie in any of the following circumstances:
 - (a) an issue to a prescribed controlled entity made under:
 - (i) Exceptions 1, 5, 6, 7 or 14 in Rule 7.2 of the ASX Listing Rules; or
 - (ii) Exception 4 in Rule 7.2 of the ASX Listing Rules on the conversion of convertible securities but only to the extent the convertible securities were issued under an exception specified in sub-subparagraph (i); or
 - (iii) a placement of shares made by Macquarie where:
 - (A) no more than 15% of the shares issued in the placement are allocated to all controlled entities; and
 - (B) participation in the placement by controlled entities is on the same or no more favourable terms as the terms for other participants; or

- (b) a transfer to a prescribed controlled entity:
 - (i) effected on a prescribed financial market and not by way of a special crossing; or
 - (ii) made in accordance with the instructions of a client of an IDPS, an investor in a superannuation fund or an agent of an investor in a superannuation fund, provided that the client or investor is not a controlled entity of Macquarie; or
 - (iii) under or as a result of a transaction with a controlled entity that:
 - (A) where Part 5C.7 of the Act applies to the transaction—does not contravene that Part; or
 - (B) otherwise—would not contravene Chapter 2E of the Act if that Chapter applied as if s214 of the Act were omitted; or
 - (iv) made in accordance with the direction of a client, or agent of a client, where the client is not a controlled entity of Macquarie and the transferee is an entity covered by paragraph (f) of the definition of "prescribed controlled entity" in this instrument:
 - (A) where Part 5C.7 of the Act applies to the transaction—does not contravene that Part; or
 - (B) otherwise—would not contravene Chapter 2E of the Act if that Chapter applied as if s214 of the Act were omitted; or
- (c) a transfer to a controlled entity pursuant to the settlement of a derivative that was entered into for the purpose of satisfying an award or entitlement to an employee under an employee incentive scheme: that:
 - (A) where Part 5C.7 of the Act applies to the transaction—does not contravene that Part; or
 - (B) otherwise—would not contravene Chapter 2E of the Act if that Chapter applied as if s214 of the Act were omitted; or
- (d) a transfer to a controlled entity set out in the Schedule for the purposes of:
 - (i) index arbitrage transactions; or
 - (ii) acquiring Macquarie shares as part of a portfolio of securities to exchange for, or upon the redemption of, interests in an exchange traded fund on behalf of a client; or
 - (iii) acquiring Macquarie shares as part of an exchange for physical transaction (within the meaning of Rule [4800] of the ASX 24

Operating Rules as in force when this instrument is signed) for a client; or

- (iv) index and basket derivative hedging; or
- (v) basket facilitation transactions; or
- (vi) basket securities lending transactions,

where:

- (vii) in relation to transfers for the purposes of the activities in paragraphs 6(d)(i) to 6(d)(v), the transfer is made only in accordance with the market integrity rules and operating rules applicable to the prescribed financial market or is as a result of a transaction between controlled entities; and
 - (viii) in relation to transfers for the purposes of the activities in paragraph 6(d)(vi), the transfer is made pursuant to a securities lending arrangement; or
- (e) an issue to a controlled entity set out in the Schedule made under:
- (i) Exceptions 1, 5, 6, or 7 in Rule 7.2 of the ASX Listing Rules; or
 - (ii) Exception 4 in Rule 7.2 of the ASX Listing Rules on the conversion of convertible securities but only to the extent the convertible securities were issued under an exception specified in sub-subparagraph (i),

with respect to Macquarie shares held by such a controlled entity in connection with the activities in paragraphs 6(d)(i) to 6(d)(vi).

7. The exemption does not apply unless Macquarie has given to ASIC a deed for the benefit of, and enforceable by, ASIC under which Macquarie undertakes:
- (a) to ensure that a controlled entity does not exercise votes attached to shares issued or transferred in reliance on the exemption in paragraph 6 other than where, in circumstances of an issue or transfer to a prescribed controlled entity of the kind referred to in paragraph (c), (f) or (g) of the definition of ***prescribed controlled entity***, the votes are exercised by the entity in accordance with the directions of a client; and
 - (b) the number of votes attached to all voting shares of Macquarie in respect of which Macquarie or its controlled entities have the power to control voting or disposal, except for Qualifying ESS Shares, does not exceed 5% of the total number of votes attached to all voting shares of Macquarie; and

- (c) in calculating the percentage referred to in paragraph 7(b), include only those Macquarie shares underlying a derivative where Macquarie or its controlled entity has the power to control the voting of those underlying shares; and
- (d) in relation to a prescribed controlled entity of the kind referred to in paragraph (d) of the definition of *prescribed controlled entity* - the aggregate amount of assets in the investment-linked statutory fund's retained profits and shareholder capital accounts that can be invested in Macquarie's shares is no more than 3% of the level of funds in those accounts that are required to satisfy any capital requirements imposed by the Australian Prudential Regulation Authority.

(e) to disclose to ASX:

- (i) within 2 days of the commencement of this instrument and thereafter within 2 business days after the end of 3 months from the date of the last disclosure that was made under this paragraph:
 - (A) the number of voting shares of Macquarie in respect of which it or its controlled entities have the power to control voting or disposal expressed as a percentage of the total number of shares of Macquarie;
 - (B) the number of voting shares of Macquarie that underlie derivatives held by Macquarie or its controlled entities for the purposes of hedging its obligations to employees under an employee incentive scheme expressed as a percentage of the total number of shares of Macquarie; and
 - (C) the number of voting shares of Macquarie in respect of which it or its controlled entities have a net economic exposure expressed as a percentage of the total number of voting shares of Macquarie, excluding any voting shares reported under (B) above; and
- (ii) no later than before the end of two business days after the day on which Macquarie became aware of the movement, any movement of at least 1% in any of the percentages referred to in sub-subparagraph (i),

and, in making the disclosures in (i) and (ii), to include the details set out in subsection 671B(3) of the Act as if section 671B applied;

- (iii) a copy of this instrument within 2 business days of the commencement of this instrument; and

(f) to:

- (i) keep records of acquisitions and disposals of shares of Macquarie and derivatives by it and its controlled entities for a period of at least 12 months after the date of the acquisition or disposal; and
 - (ii) within five business days after receipt of a written request, make those records available for inspection by ASIC; and
- (g) that Macquarie shares will not comprise more than 10% (by value) of any index or basket transaction at the date such transaction is entered into; and
- (h) that the net economic exposure through index arbitrage transactions of the controlled entities to Macquarie voting shares must not exceed 5% of the shares that would form a perfect hedge; and
- (i) that the voting power of controlled entities in Macquarie from shares acquired for index arbitrage transactions must not exceed 0.5% of Macquarie voting shares on issue; and
- (j) that for index and basket derivative hedging, the controlled entities must ensure that all pricing models are created independently of trading staff and have been independently verified. There must also be independent review of market data variables on a daily basis; and
- (k) that for basket securities lending transactions:
 - (i) Macquarie shares must be acquired under a securities lending arrangement; and
 - (ii) Macquarie shares must not be held in excess of 3 trading days except where circumstances outside of the controlled entity's control cause a delay; and
- (l) Macquarie will give a written notice to ASIC within five business days after becoming aware that it has failed to comply with the terms of the deed, other than in an immaterial respect, and setting out the details of the non-compliance;
- (m) Macquarie will clearly disclose the aggregate number and percentage of total voting shares acquired for the purpose of employee share schemes in substantial shareholder notices given by Macquarie in relation to Macquarie shares under Part 6C.1 of the Act; and
- (n) that in relation to a transfer of the kind referred to in paragraph 6(c), the voting shares must either be:
 - a. transferred to the employee or to the trustee of the employee share scheme; or
 - b. if the shares are found to be in excess of the requirements of the employee incentive scheme, sold in a transaction effected on a

prescribed financial market (and not by way of a special crossing) to a person other than a controlled entity of Macquarie,

as soon as practicable and in any event within 14 days of the transfer to the controlled entity, except that where, if there are reasonable grounds to suspect that a transfer or sale of the voting shares within that timeframe would contravene any applicable laws of Australia, the transfer or sale must take place at the earliest time practicable after the time that the transfer or sale would not result in a contravention of those laws.

Interpretation

8. In this instrument:

- (a) ***Advanced Takeover*** means a takeover bid for ordinary shares in Macquarie where acceptances are received with respect to at least half of the bid class securities that are not held for employee share scheme purposes;

ASIC Class Order [CO 02/294] means that class order as in force on the date of this instrument and as amended or replaced from time to time by a disallowable legislative instrument within the meaning of the *Legislative Instruments Act 2003*;

ASX Listing Rules means those rules as in force on the date of this instrument;

ASX24 Operating Rules means the rules of the ASX 24 market with any modification or waivers which ASX may grant to Macquarie;

Basket facilitation transactions means the acquisition of shares in Macquarie as part of a basket of securities for a client;

Basket securities lending transactions means the acquisition of Macquarie shares as part of a basket for a client under a securities lending arrangement;

client means a person to whom the entity provides financial services and does not include Macquarie or its controlled entities;

controlled entity means an entity that is controlled, within the meaning of section 259E of the Act, by Macquarie;

custodian, in relation to an IDPS, has the meaning given by ASIC Class Order [CO 02/294];

derivative means a derivative within the meaning given by section 761D of the Act where the value of the arrangement is ultimately determined, derived from or varies by reference to (wholly or in part) the value of voting shares of Macquarie;

economic exposure means a financial exposure;

- (a) that arises because of an arrangement (including, but not limited to, a derivative but excluding a derivatives over a financial market index or a financial market index fund) in relation to voting shares of Macquarie; and
- (b) the value of which changes as a result of a change in the price or value of voting shares of Macquarie;

Exchange traded fund means a managed investment scheme or a separately managed portfolio of assets managed with the objective of investing in securities in a manner that tracks the performance of a particular financial market index in which Macquarie shares are represented;

IDPS has the meaning given by ASIC Class Order [CO 02/294];

Index and basket derivative hedging means the acquisition of Macquarie shares only for the purpose of managing, avoiding or limiting the financial consequences of issuing to a client warrants within the meaning of regulation 1.0.02(1) or derivatives within the meaning of section 761D of the Act over an index or basket of securities in which Macquarie shares are represented;

Index arbitrage transactions means:

- (a) a sale of securities or managed investment products that are represented in a particular financial market index effected in the ordinary course of trading on a financial market and substantially in accordance with the proportion in which the securities or products are represented in the index, together with an offsetting purchase of:

- (i) derivatives issued over the index; or
- (ii) interests in an exchange traded fund which replicates or substantially replicates the composition of the index,

effected at the same time, or at as nearly the same time as practicable, in the ordinary course of trading on the same or another financial market for the purpose of obtaining a profit from the difference between the aggregate value of the securities or products and the value of the derivatives or interests, where the value of the offsetting purchase is equal to or greater than the aggregate value of the securities or products sold; or

- (b) a purchase of securities or products that are represented in a particular financial market index substantially in accordance with the proportion in which the Macquarie shares are represented in the index, together with an offsetting sale of:

- (i) derivatives issued over the index; or

- (ii) interests in an exchange traded fund which replicates or substantially replicates the composition of the index,

effected at the same time, or at as nearly the same time as practicable, for the purpose of obtaining a profit from the difference between the aggregate value of the securities or products and the value of the derivatives or interests, where the value of the offsetting sale is equal to or less than the aggregate value of the securities or products bought;

life company has the meaning given by the Schedule to the *Life Insurance Act 1995*;

life insurance business has the meaning given by section 11 of the *Life Insurance Act 1995*;

long position means an economic exposure where the value of the arrangement increases with an increase in the price or value of Macquarie voting shares;

managed investment scheme has the meaning given for that term in section 9 of the Act;

operator, in relation to an IDPS, has the meaning given by ASIC Class Order [CO 02/294];

prescribed controlled entity means a controlled entity that is acting in the capacity of:

- (a) a responsible entity of a registered or unregistered managed investment scheme;
- (b) a trustee of a unit trust;
- (c) an operator of an IDPS;
- (d) a life company which carries on a life insurance business of providing investment-linked benefits within the meaning of paragraph 31(b) of the *Life Insurance Act 1995*;
- (e) a trustee of a superannuation fund; or
- (f) a custodian appointed by a prescribed controlled entity referred to in any of paragraphs (a) to (e) of this definition; or
- (g) a sub-custodian appointed by a custodian referred to in paragraph (f).

Prescribed financial market has the meaning given by s9 of the Act;

Qualifying ESS Shares means a Macquarie voting share:

- (a) that was not acquired in reliance on an exemption given under s259C(2) of the Act;
- (b) that was acquired for the purposes of an award under an employee share scheme (ESS) where:
 - i. subject to paragraphs (b)iv. and (b)v. of this definition, the share is allocated to a particular employee;
 - ii. the employee can direct the voting of the share allocated to them under the ESS;
 - iii. Macquarie has provided ASIC with an undertaking in the deed referred to at paragraph 7 that it will ensure that: (A) the employee can direct acceptance of an offer with respect to the share allocated to them under the ESS into an Advanced Takeover; and (B) the ESS will not prevent the transfer or cancellation of the share under a merger by scheme of arrangement under Part 5.1 of the Act (if approved by the requisite majorities and the Court). The shares can be returned to the ESS if the Advanced Takeover does not become unconditional;
 - iv. any voting shares in Macquarie that are acquired for the purpose of an award to an employee under the ESS which are not allocated for that purpose on or before the proposed final grant date for that award, must be:
 - a. allocated or retained in connection with another employee incentive award or sold, within 31 days of the proposed final grant date of the first mentioned award; or
 - b. allocated or retained in connection with another employee incentive award or sold, within 60 days of the proposed final grant date of the award, if the first mentioned award was not made due to circumstances outside Macquarie's control,

where, if there are reasonable grounds to suspect that an allocation, retention or sale of voting shares within the timeframe specified in subparagraphs iv.a. or iv.b. would contravene any applicable laws of Australia, the reallocation, retention or sale must take place at the earliest time practicable after the time that the allocation, retention or sale would not result in a contravention of those laws; and
 - v. where a power held by Macquarie or its controlled entity to control disposal of the voting share becomes presently exercisable:

- A. as a result of an employee forfeiting their entitlement to voting shares under an ESS, subject to subparagraph B those shares must be reallocated or retained in connection with another employee incentive award or sold, within 60 days of the employee's entitlement being forfeited; and
 - B. where there are reasonable grounds to suspect that a reallocation, retention or sale of voting shares in Macquarie within the timeframes specified by subparagraph v.A would contravene any applicable laws of Australia, the reallocation, retention or sale must take place at the earliest time practicable after the time that the reallocation, retention or sale would not result in a contravention of those laws;
- (c) that was acquired at a time when there are no unallocated voting shares except as referred to in paragraph (b)iv and (b)v of this definition, unless the amount equal to the number of shares to be acquired for the ESS plus the number of those unallocated shares does not exceed the aggregate of:
- i. a genuine estimate of the total number of voting shares to be acquired in connection with all extant awards Macquarie and its controlled entities have offered to make under that scheme; and
 - ii. 0.1% of Macquarie's voting shares; and
- (d) over which Macquarie and its controlled entities do not have the power to control or influence the control of voting and have the power to control the disposal of, or influence the control of disposal of, only in the following circumstances and then only in accordance with the rules of the relevant ESS:
- i. in the event of forfeiture by an employee of their entitlements under the ESS;
 - ii. to facilitate the payment or the reimbursement of payment of tax or stamp duty;
 - iii. where applicable laws preclude or restrict the issue or transfer of shares to an employee;
 - iv. where an employee is under a legal, physical or mental disability, in which case the shares will be transferred to a person to be held for the benefit of the employee;
 - v. in connection with the appointment of a new trustee under the ESS; or

- vi. to transfer or sell the shares to, or in accordance with a direction of, the employee;

relevant interest has the meaning given by Part 6.1 of the Act

securities lending arrangement has the meaning given by section 1020AA of the Act;

short position means an economic exposure where the value of the arrangement increases with a decrease in the price or value of Macquarie voting shares;

special crossing has the meaning given by the operating rules of the prescribed financial market as in force as at the date of this instrument;

statutory fund has the meaning given by section 29 of the *Life Insurance Act 1995*;

- (b) for the purposes of sub-subparagraph 7(e)(i), the number of shares of Macquarie in respect of which it or its controlled entities have a **net economic exposure** to voting shares of Macquarie will be the number of voting shares of Macquarie that is represented by the difference between the number of such shares referenced under any long position and the number referenced under any short position held by Macquarie or any of its controlled entities; and
- (c) for the purposes of sub-subparagraph 7(e)(ii), there is a **movement of at least 1%** in a percentage referred to in sub-subparagraph 7(e)(i) if the percentage increases or decreases by one or more percentage points from the percentage last disclosed under subparagraph 7(e).

Schedule

- (a) Macquarie Bank Limited ACN 008 583 542;
- (b) Macquarie Securities (Australia) Limited ACN 002 832 126;
- (c) Belike Nominees Pty Limited ACN 008 604 966;
- (d) Woodross Nominees Pty Limited ACN 054 813 080;
- (e) Nanway Nominees Pty Limited ACN 003 337 675;
- (f) Buttonwood Nominees Pty Limited ACN 002 865 830;
- (g) Bond Street Custodians Limited ACN 008 607 065; or
- (h) Macquarie Investment Management Limited ACN 002 867 003.

Dated this 11th day of July 2012

A handwritten signature in black ink, appearing to read 'R Howitt', written in a cursive style.

Signed by Rachel Howitt
as delegate of the Australian Securities and Investments Commission