

Chapter 2

Concluded matters

2.1 This chapter sets out matters which have been concluded following the receipt of additional information from ministers.

2.2 Correspondence relating to these matters is available on the committee's website.¹

Instrument	ASIC Corporations (Short Selling) Instrument 2018/745 [F2018L01356]
Purpose	Provides legislative relief from certain prohibitions on short selling, and exemptions from certain reporting requirements
Authorising legislation	<i>Corporations Act 2001</i>
Portfolio	Treasury
Disallowance	15 sitting days after tabling (tabled Senate 15 October 2018). Notice of motion to disallow must be given by 6 December 2018 ²

Incorporation³

2.3 In [Delegated Legislation Monitor 13 of 2018](#),⁴ the committee requested the Assistant Treasurer's advice as to:

- the manner in which the *Investment Company Act 1940* of the United States of America, a timetable published by ASX Limited, and the official list of ASX limited are incorporated by the instrument;
- where those documents may be accessed free of charge; and

1 See www.aph.gov.au/regords_monitor.

2 In the event of any change to the Senate's sitting days, the last day for the notice would change accordingly.

3 Scrutiny principle: Senate Standing Order 23(3)(a).

4 Senate Standing Committee on Regulations and Ordinances, *Delegated Legislation Monitor 13 of 2018*, pp. 11-12.

- the power in the *Corporations Act 2001* or other Commonwealth legislation that permits the incorporation of documents as in force from time to time.

2.4 The committee also requested that the explanatory statement be amended to include this information.

Assistant Treasurer's response

2.5 The Assistant Treasurer advised:

I note the Committee's concern that while the instrument includes references to the Investment Company Act 1940 of the United States of America, a timetable published by ASX Limited, and the official list of ASX Limited, the Explanatory Statement (ES) to the instrument does not indicate the manner in which they are incorporated, where they may be accessed or the power in the *Corporations Act 2001* or other Commonwealth legislation that permits their incorporation.

I also note the concern regarding which legislative power permits the incorporation of S&P ASX 200 and S&P ASX 300 indexes.

I have raised the Committee's concerns with the Australian Securities Investments Commission, which is responsible for the instrument. ASIC has advised me that it does not consider the above documents and indexes to be incorporated into the instrument. This is because the status of each is dependent on a question of fact, being mere references, rather than affecting the operation of the instrument.

However, ASIC has agreed to update the ES to provide more information on the documents, including where they can be obtained, and the reason for their inclusion.

Committee's response

2.6 The committee thanks the Assistant Treasurer for this response, and notes the Assistant Treasurer's advice that the Australian Securities Investments Commission (ASIC) does not consider the documents identified by the committee to be incorporated. The committee notes the advice that this is because the documents are merely referred to, and do not affect the operation of the instrument.

2.7 The committee also notes the undertaking to update the explanatory statement to provide more information on the documents, including where they can be obtained and the reason for their inclusion.

2.8 The committee has concluded its examination of the instrument.