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ASIC

Australian Securities &
Investments Commission

TAKEOVERS INVOLVING STAPLED SECURITIES

The Australian Securities and Investments Commission (ASIC) has announced it is developing a policy in relation to takeovers involving offers for stapled securities (a security that is stapled to another security).

ASIC National Takeovers Coordinator Richard Cockburn said there is an increasing number of Australian companies with stapled securities, including stapling of shares in Australian companies to overseas entities.

“In some instances, the effect of the stapling can be to disadvantage bidders for the Australian company or companies, with the result that those companies are less likely to be the target of takeover activity,” Mr Cockburn said.

ASIC considers that it is in the best interest of an efficient and competitive market for the takeover hurdles created by a stapled security structure to be minimised.

Accordingly, ASIC has granted relief to facilitate a takeover involving shares in an Australian company which are stapled to shares in a foreign incorporated company.

ASIC has granted relief which modifies the Corporations Law to clarify that, although the shares the subject of the takeover offers are stapled securities, the shares the subject of the offers are the shares in the Australian company.

ASIC considers that the grant of this relief will add certainty to the proposed takeover offers, while maintaining the shareholder protection under Australian law.

Listed stapled securities generally trade as one security so when determining a takeover price, a bidder will need to have regard to the value of both stapled securities.

Bidders can be disadvantaged if, during the course of a takeover, the securities are unstapled or a fundamental change in the structure or financial circumstances of one of the entities occurs.

ASIC has also granted relief to extend the definition of “prescribed occurrence” in section 603 of the Corporations Law to changes in the structure or circumstances of both the company whose shares are the subject of takeover offers and the entity whose securities are stapled to them.

All modifications relating to stapled securities should be sought from ASIC before a bid is announced.

This is to ensure that the documentation clearly outlines the modifications and their effects, particularly in relation to the modification of the definition of “prescribed occurrence” which may be necessary.

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