

Attachment 3 to CP 233: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Stapled Group Reports) Instrument 2015/XX

I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Dated 2015

<signature>

<insert name>

Contents

Part 1—Preliminary	3
1 Name of legislative instrument.....	3
2 Commencement	3
3 Authority.....	3
4 Definitions	3
Part 2—Order	5
5 Relief for the presentation of financial reports of stapled groups	5

Part 1—Preliminary

1 Name of legislative instrument

This instrument is *ASIC Corporations (Stapled Group Reports) Instrument 2015/XX*.

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 subsection 341(1) of the *Corporations Act 2001*.

4 Definitions

(1) In this instrument:

Act means the *Corporations Act 2001*.

combined financial statements means, in relation to a stapled group, financial statements that aggregate two or more entities that are members of the group, eliminating inter-entity transactions and balances, but without:

- (a) identifying an acquirer or one or more acquirees; and
- (b) eliminating equity or reserves of the acquirees that existed when the terms on which the securities of the entities were traded on a prescribed financial market first required the securities to be transferred together.

control has the same meaning as in Accounting Standard *AASB 10 Consolidated Financial Statements*.

relevant entity means a company, registered scheme or disclosing entity which is a stapled issuer.

stapled group means the group of entities consisting of:

- (a) a stapled issuer and each other stapled issuer a security of which under the terms on which it is traded on a prescribed financial market must be transferred with a security of the first-mentioned stapled issuer; and

- (b) all other entities controlled by the stapled issuers referred to in paragraph (a).

stapled issuer means an entity to which both of the following apply:

- (a) a security of the entity under the terms on which it is traded on a prescribed financial market, must be transferred together with a security of one or more other entities;
 - (b) there are no securities in the same class as the security first mentioned in paragraph (a) which may be transferred separately.
- (2) A person is a director of a registered scheme at a particular time if the person is a director of the responsible entity of the registered scheme at that time.

Part 2—Order

5 Relief for the presentation of financial reports of stapled groups

Relief

- (1) A relevant entity and its directors do not have to comply with Part 2M.3 of the Act in relation to a half-year (the **relevant period**) or a financial year (the **relevant period**) to the extent that that Part prevents:
 - (a) the inclusion in the financial report (the **relevant entity report**) or concise report (the **relevant entity report**) of the relevant entity of the single entity or consolidated financial statements, notes to those statements and directors' declaration of other entities (the **other group members**) that are stapled issuers in the same stapled group as the relevant entity; and
 - (b) the inclusion in the directors' report of the relevant entity of the directors' report of other group members.

Where relief applies

- (2) The relief in subsection (1) is available where all of the following apply:
 - (a) all of the other group members:
 - (i) are required to prepare financial reports for the relevant period under Chapter 2M of the Act; and
 - (ii) rely on the relief in subsection (1);
 - (b) one of the following applies in relation to the financial statements for the relevant period:
 - (i) the financial statements of the relevant entity and all other group members (including any single entity financial statements presented where ASIC Class Order [CO 10/654] is relied on) are presented in adjacent columns in the relevant entity report;
 - (ii) the financial statements are presented as follows in separate sections of the relevant entity report:
 - (A) in the first section—the consolidated financial statements or combined financial statements that cover all entities in the stapled group and, where ASIC Class Order [CO 10/654] is relied on, the single entity financial statements of the relevant entity; and

- (B) in the second section in adjacent columns—all other consolidated financial statements of the relevant entity and all other group members and any single entity financial statements (including those presented where ASIC Class Order [CO 10/654] is relied on); or
 - (iii) in the case of a financial report for a half-year or a concise report—one of the sets of financial statements permitted under subparagraphs (i) or (ii) (excluding any single entity financial statement that is not required under the Act and the accounting standard applicable to the report) is presented in adjacent columns in the relevant entity report where, if the set includes consolidated or combined financial statements covering all of the entities in the stapled group, those financial statements are presented first.
- (c) a directors' declaration covers more than one stapled issuer only where:
 - (i) each person who was a director of an issuer covered by the declaration at any time during the relevant period or when the declaration is made was also a director of each other issuer covered by the declaration at all times during the relevant period and when the declaration is made;
 - (ii) each declaration required by subsection 295(4) or 303(4) of the Act (as relevant) is presented in a way that enables each issuer to which it relates to be readily identified;
- (d) where the relevant entity or one or more of the other group members is a registered scheme, the financial report contains a prominent statement to the effect that only the responsible entity of a scheme takes responsibility for the financial report for the scheme;
- (e) a directors' report covers more than one stapled issuer only where:
 - (i) each person who was a director of an issuer covered by the report at any time during the relevant period or when the report is made was also a director of each other issuer covered by the report at all times during the relevant period and when the report is made; and
 - (ii) the information included in the report is presented in a way that enables each issuer for which any aspect is relevant to be readily identified.

Note: The relief in subsection (1) does not cover the inclusion of combined financial statements. Such financial statements may only be presented where doing so is otherwise permitted under Chapter 2M of the Act and applicable accounting standards.