

Attachment 5 to CP 234: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Minimum Bid Price) Instrument 2015/XX

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

Dated 2015

[Name]

Contents

Part 1—Preliminary	iii
1 Name of legislative instrument	iii
2 Commencement	iii
3 Authority	iii
4 Definitions	iii
Part 2—Declaration	4
5 Minimum bid price	4

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Part 1—Preliminary

1 Name of legislative instrument

This instrument is *ASIC Corporations (Minimum Bid Price) 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 www.comlaw.gov.au.

3 Authority

This instrument is made under section 655A of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

Part 2—Declaration

5 Minimum bid price

Chapter 6 of the Act applies to all persons as if the following provisions were modified or varied:

(a) after paragraph 619(2)(d), insert:

“(da) any differences in the offers attributable to the fact that the bidder may offer a lower amount or value of consideration to a person mentioned in any of the paragraphs in section 621(3B) that would otherwise be required to be offered;”;

(b) after subsection 621(3) insert:

“(3A) Despite subsection (3), if the securities in the bid class under a takeover bid are quoted securities, the consideration offered for securities in the bid class may be less than the maximum consideration under a purchase or agreement during the 4 months before the date of the bid to the extent of a decrease in the value of securities in the bid class provided both of the following are satisfied:

(a) the decrease resulted from the target:

(i) declaring a cash dividend; or

(ii) converting its shares into a larger number under section 254H;

(b) the date on which the operator of the market on which the bid class securities are quoted changes the basis of quotation of the securities to signify that trading in that class no longer carries the entitlement to the dividend or larger number of shares, is:

(i) after the date the relevant purchase or agreement is made; and

(ii) on or before the date of the bid.

Note: If bid class securities are quoted on more than one approved financial market, paragraph (b) applies in relation to whichever market operator first changes the basis of quotation.

(3B) Despite subsection (3) the bidder may offer consideration for securities in the bid class under a takeover bid that is less than the maximum consideration under a purchase or agreement

made during the 4 months before the date of the bid if the consideration is offered to any of:

- (a) a wholly-owned subsidiary of the bidder;
- (b) where the bidder is a wholly-owned subsidiary—its holding company or the holding company’s wholly-owned subsidiaries; or
- (c) a nominee or bare trustee of bid class securities for the bidder or bodies referred to in paragraphs (a) or (b),

provided that, if the offer is made to a body referred to in paragraphs (a) or (b) or to its nominee or bare trustee—the bidder has first obtained the written consent of the body for it or its nominee or bare trustee to receive the offer, and such consent acknowledges that the value of the consideration being offered is less than the value that would otherwise be required by subsection (3).”;

- (c) after subsection 621(4), insert:

“(4A) Despite subsection (4), if the consideration offered for securities in the bid class under a takeover bid includes quoted securities, the bidder may ascertain the value of the quoted securities as at any time of its choosing within the 5 business days before the date of the bid, provided all of the following are satisfied:

- (a) the quoted securities are valued by calculating the volume weighted average market price of those securities in the ordinary course of trading on the approved financial market during the 2 full trading days before the chosen time;
- (b) the period of trading on which the valuation is based does not start until at least 5 trading days have elapsed after the first day that the bidder has sent a copy of the bidder’s statement and offer document:
 - (i) to the target under item 3 of subsection 633(1); and
 - (ii) to each approved financial market on which the target’s securities are quoted;
- (c) the bidder’s statement required to be sent by item 6 of subsection 633(1) includes the following information:
 - (i) the value of the quoted securities ascertained under paragraph (a);

- (ii) details of the valuation method required to be applied by paragraph (a), including the trading days on which the valuation is based.

(4B) For the purposes of subsections (3) to (4A):

approved financial market means:

- (a) a prescribed financial market; and
- (b) the main board of any of the following financial markets:
 - (i) Borsa Italiana;
 - (ii) Bursa Malaysia;
 - (iii) Euronext Amsterdam;
 - (iv) Euronext Paris;
 - (v) Frankfurt Stock Exchange;
 - (vi) Hong Kong Stock Exchange;
 - (vii) JSE (also known as the Johannesburg Stock Exchange);
 - (viii) London Stock Exchange;
 - (ix) NASDAQ Global Market or the NASDAQ Global Select Market;
 - (x) New York Stock Exchange;
 - (xi) NYSE MKT;
 - (xii) NZX;
 - (xiii) Singapore Exchange;
 - (xiv) SIX Swiss Exchange;
 - (xv) Tokyo Stock Exchange;
 - (xvi) Toronto Stock Exchange.

quoted security means a security in a class of securities that is quoted on an approved financial market.”