

Attachment 1 to CP 239: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Minimum Subscription and Quotation Conditions) Instrument 2015/XX

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

Date 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—Declaration	4
5 Minimum subscription and quotation condition.....	4

Part 1—Preliminary

1 Name of legislative instrument

This instrument is *ASIC Corporations (Minimum Subscription and Quotation Conditions) 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 741 of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

Part 2—Declaration

5 Minimum subscription and quotation condition

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

(a) after subsection 723(2) insert:

“(2A)If:

- (a) a disclosure document, or a refresh document within the meaning of subsection 724(3F), for an offer of securities is or was subject to a condition of a kind mentioned in subsection (2); and
- (b) one or more supplementary or replacement documents (an *updating document*) or one or more refresh documents (an *updating document*) are lodged within 4 months after the date of the disclosure document or the refresh document;

then, for the purposes of that subsection and despite subsections 719(4) and (5), a person that applies for securities under the updating document is taken to have applied for the securities under the disclosure document or the refresh document being supplemented or replaced.”;

(b) after subsection 723(3) insert:

“(3A)If:

- (a) a disclosure document, or a refresh document within the meaning of subsection 724(3F), for an offer of securities is or was subject to a condition of a kind mentioned in subsection (3); and
- (b) one or more supplementary or replacement documents (an *updating document*) or one or more refresh documents (an *updating document*) are lodged within 3 months after the date of the disclosure document or the refresh document;

then, for the purposes of that subsection and despite subsections 719(4) and (5), a person that applies for securities under the updating document is taken to have applied for the securities under the disclosure document or the refresh document being supplemented or replaced.”;

(c) omit paragraphs 724(1)(a) and (b);

(d) in subsection 724(1) omit “For the purpose of working out whether a condition referred to in paragraph (a) has been satisfied, a person who has agreed to take securities as underwriter is taken to have applied for those securities”;

(e) after subsection 724(3) insert:

“(3A) If a person offers securities under a disclosure document and:

(a) the disclosure document states that the securities will not be issued or transferred unless:

(i) applications for a minimum number of the securities are received; or

(ii) a minimum amount raised; and

(b) the condition is not satisfied within 4 months (the *minimum subscription period*) after the date of the disclosure document;

the person must deal with any applications for the securities made under the disclosure document that have not resulted in an issue or transfer of the securities by, as soon as practicable after the end of the minimum subscription period, repaying the money received by the person from the applicants.

For the purpose of working out whether a condition referred to in paragraph (a) has been satisfied, a person who has agreed to take securities as underwriter is taken to have applied for those securities.

(3B) An offence based on subsection (3A) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the Criminal Code.

(3C) If a person offers securities under a disclosure document and:

(a) the disclosure document states or implies that the securities are to be quoted on a financial market (whether in Australia or elsewhere); and

(b) either:

(i) an application for the admission to quotation is not made within 7 days (the *quotation application period*) after the date of the disclosure document; or

- (ii) the securities are not admitted to quotation within 3 months (the *quotation admittance period*) after the date of the disclosure document;

the person must deal with any applications for the securities made under the disclosure document that have not resulted in an issue or transfer of the securities by, as soon as practicable after the end of the quotation application period or quotation admission period (as applicable), by repaying the money received by the person from the applicants.

Note: The monies must be repaid as soon as practicable after the end of the earliest applicable period in relation to which a condition or requirement relates that has not been satisfied.

- (3D) An offence based on subsection (3C) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the Criminal Code.

Refresh document

- (3E) A person may, before the end of minimum subscription period, the quotation application period or the quotation admittance period (as applicable):

- (a) lodge a refresh document with ASIC; and
- (b) give applicants:
 - (i) the refresh document; and
 - (ii) 1 month to withdraw their application and be repaid;

and, if lodged and given in accordance with this subsection, then:

- (c) for the purposes of subsection 723(2):
 - (i) the minimum subscription condition in relation to the disclosure document being supplemented or replaced by the refresh document is taken not to apply to any applications (whether made under the disclosure document being supplemented or replaced or the refresh document); and
 - (ii) the minimum subscription condition (if any) in relation to the refresh document is taken to apply to all applications (whether made under the disclosure document being supplemented or replaced or the refresh document); and

- (d) for the purposes of subsection 723(3):
 - (i) the quotation condition in relation to the disclosure document being supplemented or replaced by the refresh document is taken not to apply to any applications (whether made under the disclosure document being supplemented or replaced or the refresh document); and
 - (ii) the quotation condition (if any) in relation to the refresh document is taken to apply to all applications (whether made under the disclosure document being supplemented or replaced or the refresh document).

(3F) In this section:

minimum subscription condition means a condition that securities will not be issued unless applications for a minimum number of securities are received or a minimum amount is raised.

quotation condition means a condition imposed by this Part that arises because the disclosure document states or implies that the securities are to be quoted on a financial market (whether in Australia or elsewhere).

refresh document means a supplementary or replacement document that sets out the following information and statements:

- (a) in relation to a disclosure document for an offer of securities subject to a minimum subscription condition:
 - (i) the number of securities for which applications have been received or the amount raised as at the date of the refresh document;
 - (ii) details of any changes to the minimum subscription condition (including whether the terms of the offer are no longer subject to the condition); and
 - (iii) if the terms of the offer remain subject to a minimum subscription condition, the date by which that minimum subscription condition must be satisfied, being a date no later than 4 months after the date of the refresh document; and
- (b) in relation to a disclosure document for an offer of securities subject to a quotation condition:

- (i) whether an application for admission to quotation of the securities was made within 7 days after the date of the disclosure document;
 - (ii) whether the securities have been admitted to quotation as at the date of the refresh document;
 - (iii) whether the operator of the financial market has indicated the securities will not be admitted to quotation or will be admitted to quotation subject to certain conditions being satisfied;
 - (iv) if the operator of the financial market has indicated that the securities will be admitted to quotation subject to certain conditions being satisfied—a summary of the conditions that have not been satisfied as at the date of the refresh document;
 - (v) details of any changes to the quotation condition (including whether the terms of the offer are no longer subject to the condition);
 - (vi) if the terms of the offer remain subject to a quotation condition, the date by which that quotation condition must be satisfied, being a date no later than 3 months after the date of the refresh document; and
 - (vii) the number of securities for which applications have been received as at the date of the refresh document; and
- (c) a statement to the effect that applicants have 1 month to withdraw their application and be repaid.”.