

Attachment 3 to CP 239: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Consents to Statements) Instrument 2015/XX

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

Date 2015

<signature>

<insert name>

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Part 1—Preliminary

1 Name of legislative instrument

This instrument is *ASIC Corporations (Consents to Statements) 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 sections 655A, 741 and 1020F of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

Part 2—Declarations

5 Bidder's statements: Statements for which consent not required

Chapter 6 of the Act applies to all persons as if section 636 were modified or varied by, after subsection (3), inserting:

“Statements by official persons, or in books, journals etc

(3A) Subsection (3) does not apply to a statement that:

- (a) fairly represents what purports to be a statement made by an official person; or
- (b) is a correct and fair copy of, or extract from, what purports to be a public official document; or
- (c) is a correct and fair copy of, or extract from, a statement which has already been published in a book, journal or comparable publication;

provided the statement was not made, or published, in connection with the takeover bid or the bidder or target or any business, property or person the subject of the bidder's or target's statement.

Historical geological data

(3B) Subsection (3) does not apply to a historical geological report reference that is included in a bidder's statement or an accompanying document provided all of the following are satisfied:

- (a) the historical geological report reference is included in a geological report (the **current report**) set out in the statement or document;
- (b) the report (the **previous report**) to which the historical geological report reference relates is available for inspection or acquisition by any person, with or without payment of a fee, at or from:
 - (i) a governmental department, authority or agency of an Australian State or Territory or of the Commonwealth; or
 - (ii) ASX Limited;
- (c) the previous report was not prepared in connection with the takeover bid;

- (d) the previous report was not prepared or commissioned by a person:
 - (i) who is the bidder or an associate; or
 - (ii) with whom the bidder, or an associate, has shared an interest in a tenement the subject of the current report; or
 - (iii) from whom the bidder, or an associate, has purchased the tenement; or
 - (iv) where securities are offered as consideration under the bid and the bidder, or an associate, is not the body that has issued or will issue the securities:
 - (A) with whom the issuer, or an associate, has shared an interest in a tenement that is covered by the current report; or
 - (B) from whom the issuer, or an associate, has purchased the tenement;
- (e) the current report states, close to the historical geological report reference:
 - (i) the name of the person who prepared the previous report; and
 - (ii) that the person who prepared the previous report has not consented to the use of the historical geological report reference in the bidder's statement or in the accompanying document (as applicable).

If the current report includes more than one historical geological report reference which relates to the previous report, paragraph (e) only has to be complied with in relation to the first occurring reference provided it is apparent that the subsequent references are from the same source.

Trading data

- (3C) Subsection (3) does not apply to a trading data reference that is included in a bidder's statement or an accompanying document provided both of the following are satisfied:
- (a) the trading data to which the trading data reference relates reflects trading on an approved financial market;
 - (b) the bidder's statement or the accompanying document states, close to the trading data reference:

- (i) the name of the person who prepared the trading data; and
- (ii) that the person who prepared the trading data has not consented to the use of the reference in the bidder's statement or the accompanying document (as applicable).

If the statement or document includes more than one trading data reference relating to trading data prepared by the same person, paragraph (b) only has to be complied with in relation to the first occurring reference provided it is apparent that the subsequent references are from the same source.

(3D) In this section:

approved financial market means a prescribed financial market or any of the following financial markets:

- (a) American Stock Exchange;
- (b) Borsa Italiana;
- (c) Bursa Malaysia Main Board or Second Board;
- (d) Chicago Board of Trade;
- (e) Euronext Amsterdam;
- (f) Euronext.liffe;
- (g) Euronext Paris;
- (h) Frankfurt Stock Exchange;
- (i) Hong Kong Stock Exchange;
- (j) ICE Futures;
- (k) JSE (also known as the Johannesburg Stock Exchange);
- (l) Kansas City Board of Trade;
- (m) London Metal Exchange;
- (n) London Stock Exchange;
- (o) NASDAQ Global Market or the NASDAQ Global Select Market;
- (p) New York Board of Trade (including the New York Futures Exchange);

- (q) New York Mercantile Exchange (including COMEX);
- (r) New York Stock Exchange;
- (s) New Zealand Exchange;
- (t) Philadelphia Stock Exchange (including the Philadelphia Board of Trade);
- (u) Singapore Exchange;
- (v) SWX Swiss Exchange;
- (w) Tokyo Stock Exchange;
- (x) Toronto Stock Exchange.

geological report means a report dealing with the estimation, assessment or evaluation of minerals that has been prepared by a person who:

- (a) is a Member or Fellow of:
 - (i) the Australian Institute of Mining and Metallurgy; or
 - (ii) the Australian Institute of Geoscientists; and
- (b) has not less than five years' experience relevant to the estimation, assessment and evaluation of minerals of the kind that are the subject of the report.

historical geological report reference means a copy of, or extract from, or accurate representation of, a geological report.

trading data means quantitative data on the prices at which financial products are traded and the volume of that trading.

trading data reference means a copy of, or extract from, accurate representation or analysis of, trading data.”.

6 Target's statements: Statements for which consent not required

Chapter 6 of the Act applies to all persons as if section 638 were modified or varied by, after subsection (5), inserting:

“Statements by official persons, or in books, journals etc

(5A) Subsection (5) does not apply to a statement that:

- (a) fairly represents what purports to be a statement made by an official person; or

- (b) is a correct and fair copy of, or extract from, what purports to be a public official document; or
- (c) is a correct and fair copy of, or extract from, a statement which has already been published in a book, journal or comparable publication;

provided the statement was not made, or published, in connection with the takeover bid or the bidder or target or any business, property or person the subject of the bidder's or target's statement.

Historical geological data

- (5B) Subsection (5) does not apply to a historical geological report reference that is included in a target's statement or an accompanying document provided all of the following are satisfied:
- (a) the historical geological report reference is included in a geological report (the **current report**) set out in the statement or document;
 - (b) the report (the **previous report**) to which the historical geological report reference relates is available for inspection or acquisition by any person, with or without payment of a fee, at or from:
 - (i) a governmental department, authority or agency of an Australian State or Territory or of the Commonwealth; or
 - (ii) ASX Limited;
 - (c) the previous report was not prepared in connection with the preparation of the target's statement;
 - (d) the previous report was not prepared or commissioned by a person:
 - (i) who is the target or an associate; or
 - (ii) with whom the target, or an associate, has shared an interest in a tenement the subject of the current report; or
 - (iii) from whom the target, or an associate, has purchased the tenement; or
 - (iv) where securities are offered as consideration under the bid and the bidder, or an associate, is not the body that has issued or will issue the securities;

- (A) with whom the issuer, or an associate, has shared an interest in a tenement that is covered by the current report; or
 - (B) from whom the issuer, or an associate, has purchased the tenement;
- (e) the current report states, close to the historical geological report reference:
- (i) the name of the person who prepared the previous report; and
 - (ii) that the person who prepared the previous report has not consented to the use of the historical geological report reference in the target's statement or in the accompanying document (as applicable).

If the current report includes more than one historical geological report reference which relates to the previous report, paragraph (e) only has to be complied with in relation to the first occurring reference provided it is apparent that the subsequent references are from the same source.

Trading data

- (5C) Subsection (5) does not apply to a trading data reference that is included in a target's statement or an accompanying document provided both of the following are satisfied:
- (a) the trading data to which the trading data reference relates reflects trading on an approved financial market;
 - (b) the target's statement or the accompanying document states, close to the trading data reference:
 - (i) the name of the person who prepared the trading data; and
 - (ii) that the person who prepared the trading data has not consented to the use of the reference in the target's statement or the accompanying document (as applicable).

If the statement or document includes more than one trading data reference relating to trading data prepared by the same person, paragraph (b) only has to be complied with in relation to the first occurring reference provided it is apparent that the subsequent references are from the same source.

(5D) In this section:

approved financial market, geological report, historical geological report reference, trading data and trading data reference have the same respective meanings as in subsection 636(3D).”.

7 Disclosure documents: Statements for which consent not required

Chapter 6D of the Act applies to all persons as if section 716 were modified or varied by, after subsection (2), inserting:

“Statements by official persons, or in books, journals etc

(2A) Subsection (2) does not apply to a statement that:

- (a) fairly represents what purports to be a statement made by an official person; or
- (b) is a correct and fair copy of, or extract from, what purports to be a public official document; or
- (c) is a correct and fair copy of, or extract from, a statement which has already been published in a book, journal or comparable publication;

provided the statement was not made, or published, in connection with any or all of the persons, their business, or the promotion the subject of the disclosure document or any property to be acquired by the body which is the subject of the disclosure document.

Historical geological data

(2B) Subsection (2) does not apply to a historical geological report reference that is included in a disclosure document provided all of the following are satisfied:

- (a) the historical geological report reference is included in a geological report (the *current report*) set out in the disclosure document;
- (b) the report (the *previous report*) to which the historical geological report reference relates is available for inspection or acquisition by any person, with or without payment of a fee, at or from:
 - (i) a governmental department, authority or agency of an Australian State or Territory or of the Commonwealth; or

- (ii) ASX Limited;
- (c) the previous report was not prepared in connection with the preparation of the disclosure document;
- (d) the previous report was not prepared or commissioned by a person:
 - (i) with whom the person offering securities, or an associate, has shared an interest in a tenement the subject of the current report; or
 - (ii) from whom the person offering securities, or an associate, has purchased the tenement; or
 - (iii) where the person offering securities is not the issuer:
 - (A) with whom the issuer, or an associate, has shared an interest in a tenement that is covered by the current report; or
 - (B) from whom the issuer, or an associate, has purchased the tenement; or
 - (iv) who is an associate of:
 - (A) the person offering the securities; or
 - (B) where the person offering the securities is not the issuer—the issuer; or
 - (v) where the securities are a legal or equitable right or interest in a share or a debenture:
 - (A) who is the issuer of the share or debenture, or an associate; or
 - (B) with whom the issuer of the share or debenture, or an associate, has shared an interest in a tenement that is covered by the current report; or
 - (C) from whom the issuer of the share or debenture, or an associate, has purchased the tenement;
- (e) the current report states, close to the historical geological report reference:
 - (i) the name of the person who prepared the previous report; and

- (ii) that the person who prepared the previous report has not consented to the use of the historical geological report reference in the disclosure document.

If the current report includes more than one historical geological report reference which relates to the previous report, paragraph (e) only has to be complied with in relation to the first occurring reference provided it is apparent that the subsequent references are from the same source.

Trading data

(2C) Subsection (2) does not apply to a trading data reference that is included in a disclosure document provided both of the following are satisfied:

- (a) the trading data to which the trading data reference relates reflects trading on an approved financial market;
- (b) the disclosure document states, close to the trading data reference:
 - (i) the name of the person who prepared the trading data; and
 - (ii) that the person who prepared the trading data has not consented to the use of the reference in the disclosure document.

If the disclosure document includes more than one trading data reference relating to trading data prepared by the same person, paragraph (b) only has to be complied with in relation to the first occurring reference provided it is apparent that the subsequent references are from the same source.

(2D) In this section:

approved financial market, geological report, historical geological report reference, trading data and trading data reference have the same respective meanings as in subsection 636(3D).”.

8 PDSs: Statements for which consent not required

Part 7.9 of the Act applies in relation to all persons as if section 1013K were modified or varied by, after subsection (1), inserting:

“Statements by official persons, or in books, journals etc

(1A) Subsection (1) does not apply to a statement that:

- (a) fairly represents what purports to be a statement made by an official person; or
- (b) is a correct and fair copy of, or extract from, what purports to be a public official document; or
- (c) is a correct and fair copy of, or extract from, a statement which has already been published in a book, journal or comparable publication;

provided the statement was not made, or published, in connection with the responsible person, their business, or the promotion the subject of the Product Disclosure Statement or any property to be acquired by the responsible person which is the subject of the Product Disclosure Statement.

Historical geological data

- (1B) Subsection (1) does not apply to a historical geological report reference that is included in a Product Disclosure Statement provided all of the following are satisfied:
- (a) the historical geological report reference is included in a geological report (the **current report**) set out in the Product Disclosure Statement;
 - (b) the report (the **previous report**) to which the historical geological report reference relates is available for inspection or acquisition by any person, with or without payment of a fee, at or from:
 - (i) a governmental department, authority or agency of an Australian State or Territory or of the Commonwealth; or
 - (ii) ASX Limited;
 - (c) the previous report was not prepared in connection with the preparation of the Product Disclosure Statement;
 - (d) the previous report was not prepared or commissioned by a person:
 - (i) with whom the person offering the financial products, or an associate, has shared an interest in a tenement that is the subject of the current report; or
 - (ii) from whom the person offering the financial products, or an associate, has purchased the tenement; or

- (iii) where the person offering the financial products is not the issuer:
 - (A) with whom the issuer, or an associate, has shared an interest in a tenement that is covered by the current report; or
 - (B) from whom the issuer, or an associate, has purchased the tenement; or
- (iv) who is an associate of:
 - (A) the person offering the financial products; or
 - (B) where the person offering the financial products is not the issuer—the issuer;
- (e) the current report states, close to the historical geological report reference:
 - (i) the name of the person who prepared the previous report; and
 - (ii) that the person who prepared the previous report has not consented to the use of the historical geological report reference in the Product Disclosure Statement.

If the current report includes more than one historical geological report reference which relates to the previous report, paragraph (e) only has to be complied with in relation to the first occurring reference provided it is apparent that the subsequent references are from the same source.

Trading data

- (1C) Subsection (1) does not apply to a trading data reference that is included in a Product Disclosure Statement provided both of the following are satisfied:
- (a) the trading data to which the trading data reference relates reflects trading on an approved financial market;
 - (b) the Product Disclosure Statement states, close to the trading data reference:
 - (i) the name of the person who prepared the trading data; and
 - (ii) that the person who prepared the trading data has not consented to the use of the reference in the Product Disclosure Statement.

If the Product Disclosure Statement includes more than one trading data reference relating to trading data prepared by the same person, paragraph (b) only has to be complied with in relation to the first occurring reference provided it is apparent that the subsequent references are from the same source.

(1D) In this section:

approved financial market, geological report, historical geological report reference, trading data and trading data reference have the same respective meanings as in subsection 636(3D).”