

# Attachment 6 to CP 239: Draft instrument



**ASIC**

Australian Securities & Investments Commission

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## **ASIC Corporations (Debenture Prospectuses) Instrument 2015/XX**

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

Dated 2015

<signature>

<insert name>

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## **Part 1—Preliminary**

### **1 Name of legislative instrument**

This instrument is *ASIC Corporations (Debenture Prospectuses) 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](http://www.comlaw.gov.au).

### **3 Authority**

This instrument is made under section 741 *Corporations Act 2001*.

### **4 Definitions**

In this instrument:

*Act* means the *Corporations Act 2001*.

## Part 2—Declaration

### 5 Debenture prospectuses—interest rate and term information

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

- (a) after subsection 712(6) insert:

*“Prospectus for an offer of debentures may simply refer to an application form lodged with ASIC*

- (7) Subsections (8), (9) and (10) apply to an offer of a body’s debentures for issue in the ordinary course of its business where a prospectus for the offer is lodged with ASIC.
- (8) Instead of setting out information about the interest rate and term relevant to the offer, the prospectus may simply refer to an application form which is used for the offer containing that information and which has been lodged with ASIC under this subsection from time to time. The reference must:
- (a) state that the interest rate and the term of the debentures offered is subject to change from time to time;
- (b) state that:
- (i) information about the current interest rate and term for the debentures offered will be set out in the application form most recently lodged with ASIC; and
- (ii) a copy of that application form will be given by the body to any person who asks for it during the application period of the prospectus; and
- (c) explain that a person that applies for the debentures may have rights to be repaid application monies if the application is made on an application form that is not the application form most recently lodged with ASIC.
- (9) The application form referred to under subsection (8) is taken to be included in the prospectus.
- (10) If the prospectus is taken to include an application form under subsection (8), the body making the offer must give a copy of the application form free of charge to any person who asks for it during the application period of the prospectus.”;

(b) after section 712 insert:

**“712A Prospectus content for debentures—interest rate and term information otherwise available**

- (1) This section applies to an offer of a body’s debentures for issue in the ordinary course of its business where:
  - (a) the debentures have a term of no more than 5 years; and
  - (b) a prospectus for the offer is lodged with ASIC.
- (2) Despite sections 710, 711 and 713, the prospectus need not specify the interest rate or the term of the debentures.
- (3) Subsection (2) applies where all of the following are satisfied:
  - (a) the prospectus clearly and prominently:
    - (i) explains how an applicant may ascertain the interest rate and term of each debenture offered at any time; and
    - (ii) advises the applicant to confirm the currency of any interest rate for the debentures prior to completing an application; and
    - (iii) states that a person that applies for the debentures may have rights to be repaid application monies if the application form does not specify an interest rate, an amount or a term, or specifies an interest rate which is not the current interest rate for debentures of the amount and term specified by the applicant;
  - (b) the application form makes provision for the applicant to specify or select the interest rate and term applicable to the debenture for which the application is made;
  - (c) the means by which an applicant may ascertain the interest rate and term are easily accessible and free of charge, having regard to the kinds of persons likely to consider applying for the debentures;
  - (d) any change in the interest rate or term of a debenture is advertised in any media in which interest rates and changes in interest rates have been regularly advertised and notified promptly to each person from whom a copy of the prospectus is available and who regularly processes applications for debentures under the prospectus.”;

(c) after section 725 insert:

**“725A Out-of-date, incorrect or incomplete applications for debentures**

- (1) This section applies to a body relying on subsection 712(8) or section 712A in relation to an offer of debentures and who receives an application using an incorrect application form.
- (2) The body must deal with the application under subsection (3) unless subsection (4) says otherwise.
- (3) The body must:
  - (a) repay the money received by it from the applicant; or
  - (b) give the applicant:
    - (i) a notice that informs them that their application was made using an incorrect application form and of their rights under this section; and
    - (ii) for a body relying on subsection 712(8)—a copy of the application form most recently lodged with ASIC; and
    - (iii) for a body relying on section 712A—details of the current interest rate for debentures of the amount and the term specified by the applicant in the application form; and
    - (iv) 1 month to withdraw their application and be repaid; or
  - (c) issue the debentures to the applicant at the current interest rate and give them:
    - (i) the notice referred to in subparagraph (b)(i); and
    - (ii) 1 month to withdraw their application and be repaid.
- (4) Subsection (3) does not apply if:
  - (a) the interest rate specified in the incorrect application form is higher than the current interest rate for debentures of the amount and term specified in the application; and
  - (b) the body elects to issue the debentures the subject of the application to the applicant at that higher interest rate.

- (5) For the purposes of this section:

**current interest rate** means the interest rate offered by the body for debentures of the specified amount and term on the day that the application is received by it.

**incorrect application form** means either of the following:

- (a) for a body relying on subsection 712(8)—an application form in relation to which the body does not have reasonable grounds to believe is a copy of the application form most recently lodged by the body with ASIC;
- (b) for a body relying on section 712A—an application form that:
  - (i) does not specify an interest rate, an amount or a term; or
  - (ii) specifies an interest rate which is not the current interest rate for debentures of the amount and term specified by the applicant.”;
- (d) after subsection 727(2) of the Act insert:

“(2A)If a body relies on subsection 712(8) to make an offer of its debentures for issue, the body must not make an offer of debentures, or distribute a prospectus for an offer of debentures, unless:

- (a) an application form for the offer has been lodged with ASIC; and
- (b) the offer or prospectus is accompanied by a copy of the application form most recently lodged with ASIC.”.