

Attachment 11 to CP 239: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Sale Offers That Do Not Need Disclosure) 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 (Sale Offers That Do Not Need Disclosure) 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 and 1020F of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

Part 2—Declaration

5 Sale offers that do not need disclosure

- (1) Chapter 6D of the Act applies to all persons as if subsections 707(3) and (4) were omitted and substituted with:
- “(3) An offer of a body’s securities for sale within 12 months after their issue needs disclosure to investors under this Part if the body issued the securities:
- (a) without disclosure to investors under this Part; and
- (b) with the purpose of the person to whom they were issued:
- (i) selling or transferring them; or
- (ii) granting, issuing or transferring interests in, or options or warrants over, them;
- and section 708 or 708A does not say otherwise.”;
- (2) Part 7.9 of the Act applies in relation to all persons as if subsections 1012C(6) and (7) were omitted and substituted with:
- “(6) This subsection covers the circumstances in which:
- (a) the offer is made within 12 months after the issue of the financial product;
- (b) the product was issued without a Product Disclosure Statement for the product being prepared; and
- (c) the issuer issued the product with the purpose of the person to whom it was issued selling or transferring the product, or granting, issuing or transferring interests in, or options or warrants over, the product.”.
- (3) Subsections (1) and (2) apply in relation to:
- (a) offers of securities or interests in a managed investment scheme for sale; and
- (b) recommendations to acquire interests in a managed investment scheme by way of transfer;
- where the securities or interests are covered by an exempt category.

- (4) In this section, securities or interests are covered by an *exempt category* if they are covered by at least one of the following categories:

Category 1: Share or interest purchase plans

The securities or interests were issued without disclosure to investors under Part 6D.2 of the Act or without a Product Disclosure Statement for the interest being prepared because the offer or issue of the securities or interests was covered by:

- (a) ASIC Class Order [CO 09/425]; or
- (b) an individual instrument made by ASIC which provided relief from Part 6D.2 or Part 7.9 of the Act with respect to a share purchase plan, interest purchase plan or a like plan in terms similar to that class order.

Category 2: Options, convertible or converting securities

All of the following apply:

- (a) The securities or interests were issued by reason of the exercise of options or the conversion of convertible or converting notes or convertible or converting preference shares;
- (b) those options or convertible or converting securities were issued under a disclosure document under Part 6D.2 of the Act or with a Product Disclosure Statement for the options being prepared;
- (c) the exercise of the option, or the conversion, did not involve any further offer.

Category 3: Dividend or distribution reinvestment or bonus plans

The securities or interests were issued without disclosure to investors under Part 6D.2 of the Act or without a Product Disclosure Statement for the interest being prepared because of subsections 708(13) or 1012D(3) of the Act.

Category 4: Compromises and arrangements

The securities or interests were issued without disclosure to investors under Part 6D.2 of the Act or without a Product Disclosure Statement for the interest being prepared because of:

- (a) subsection 708(17) of the Act; or
- (b) ASIC Class Order [CO 07/9].

Category 5: Deeds of Company Arrangement

The securities were issued without disclosure to investors under Part 6D.2 of the Act because of subsection 708(17A) of the Act.

Category 6: Takeovers

The securities or interests were issued without disclosure to investors under Part 6D.2 of the Act or without a Product Disclosure Statement for the interest being prepared because of:

- (a) subsections 708(18) or 1012D(7) of the Act; or
- (b) ASIC Class Order [CO 09/68].

Category 7: Securities of exempt public authorities

The securities were issued without disclosure to investors under Part 6D.2 of the Act because of subsection 708(21) of the Act.

6 Stapled securities

- (1) Chapter 6D of the Act applies to all persons as if section 708A were modified or varied by, after subsection (12), inserting:

“(13) In this section, if under the terms on which a security (the ***component security***) is traded on a prescribed financial market it can only be transferred together with one or more other securities or other financial products (together the ***stapled security***) then:

- (a) the component security is taken to be in a class of quoted securities that is different from any other class of quoted securities it is in, or is taken to be in, when at any other time it is able to be transferred on that market by itself or as part of a different stapled security; and
- (b) trading in the class of quoted securities that the component security is taken to be in on the market is taken to be suspended when trading in the class of stapled securities on the market is suspended.”.

- (2) Part 7.9 of the Act applies in relation to all persons as if section 1012DA were modified or varied by, after subsection (12), inserting:

“(13) In this section, if under the terms on which a financial product (the ***component product***) is traded on a prescribed financial market it can only be transferred together with one or more securities or other financial products (together the ***stapled security***) then:

- (a) the component product is taken to be in a class of quoted securities that is different from any other class of quoted securities it is in, or is taken to be in, when at any other time it is able to be transferred on the market by itself or as part of a different stapled security; and
- (b) trading in the class of quoted securities that the component product is taken to be in on the market is taken to be suspended when trading in the class of stapled securities on the market is suspended.”.