

Attachment 12 to CP 239: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Sale Offers By Controllers) Instrument 2015/XX

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 (Sale Offers By Controllers) 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 741 and 1020F of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

Part 2—Declaration

4 Sale offers of securities by a controller

- (1) Chapter 6D of the Act applies to all persons as if subsection 707(5) were modified or varied by omitting “section 708” and substituting “section 708 or 708A”.
- (2) Chapter 6D of the Act applies to all persons as if section 708A were modified or varied as follows:
 - (a) in paragraph (1A)(c) omit “when the relevant securities were issued.”, substitute “when the relevant securities were sold by the controller.”;
 - (b) omit paragraph (5)(a), substitute:

“(a) the relevant securities are in a class of securities that were quoted securities at all times in the following period:

 - (i) if this section applies because of subsection (1)—
3 months before the day on which the relevant securities were issued; or
 - (ii) if this section applies because of subsection (1A)—
3 months before the day on which the relevant securities were sold by the controller; and” ;
 - (c) omit paragraph (5)(b), substitute:

“(b) trading in that class of securities on a prescribed financial market on which they were quoted was not suspended for more than a total of 5 days during:

 - (i) if this section applies because of subsection (1)—
the shorter of the period during which the class of securities were quoted, and the period of 12 months before the day on which the relevant securities were issued; or
 - (ii) if this section applies because of subsection (1A)—
the shorter of the period during which the class of securities were quoted, and the period of 12 months before the day on which the relevant securities were sold by the controller; and” ;
 - (d) omit paragraph (6)(a), substitute:

“(a) is given:

- (i) if this section applies because of subsection (1)—within 5 business days after the day on which the relevant securities were issued by the body; or
 - (ii) if this section applies because of subsection (1A)—within 5 business days after the day on which the relevant securities were sold by the controller; and”;
- (e) omit paragraph (6)(b), substitute:
 - “(b) states that:
 - (i) if this section applies because of subsection (1)—the body issued the relevant securities without disclosure to investors under this Part; or
 - (ii) if this section applies because of subsection (1A)—the controller sold the securities without disclosure to investors under this Part; and ”;
- (f) omit subsection (9), substitute:
 - “*Obligation to correct defective notice*
 - (9) A person contravenes this subsection if:
 - (a) where the person is the body:
 - (i) the notice given under paragraph (5)(e) is defective; and
 - (ii) the body becomes aware of the defect in the notice within the following period:
 - (A) if this section applies because of subsection (1) —12 months after the relevant securities are issued; or
 - (B) if this section applies because of subsection (1A)—12 months after the relevant securities are sold by the controller; and
 - (iii) the body does not, within a reasonable time after becoming aware of the defect, give the relevant market operator a notice that sets out the information necessary to correct the defect;
 - (b) where the person is the controller:
 - (i) the notice given under subparagraph (5)(e)(ii) is defective; and

- (ii) the controller becomes aware of the defect in the notice within 12 months after the relevant securities are sold by the controller; and
- (iii) the controller does not, within a reasonable time after becoming aware of the defect, make the body aware of the defect.”.

5 Sale offers of financial products by a controller

- (1) Part 7.9 of the Act applies in relation to all persons as if paragraph 1012C(9)(b) were modified or varied by omitting “within 12 months after issue,” and substituting “within 12 months after their sale by the controller,”.
- (2) Part 7.9 of the Act applies in relation to all persons as if section 1012DA were modified or varied as follows:
 - (a) in paragraph (1A)(d) omit “when the relevant product was issued.”, substitute “when the relevant product was sold by the controller.”;
 - (b) omit paragraph (5)(a), substitute:
 - “(a) the relevant product is in a class of financial products that were quoted securities at all times in the following period:
 - (i) if the regulated person is not required under subsection (1) to give a Product Disclosure Statement—3 months before the day on which the relevant product was issued; or
 - (ii) if the regulated person is not required under subsection (1A) to give a Product Disclosure Statement—3 months before the day on which the relevant product was sold by the controller; and” ;
 - (c) omit paragraph (5)(b), substitute:
 - “(b) trading in that class of financial products on a prescribed financial market on which they were quoted was not suspended for more than a total of 5 days during:
 - (i) if the regulated person is not required under subsection (1) to give a Product Disclosure Statement—the shorter of the period during which the class of financial products was quoted, and the period of 12 months before the day on which the relevant product was issued; or
 - (ii) if the regulated person is not required under subsection (1A) to give a Product Disclosure

Statement—the shorter of the period during which the class of financial products was quoted, and the period of 12 months before the day on which the relevant financial product was sold by the controller; and”;

(d) omit paragraph (6)(a), substitute:

“(a) is given:

- (i) if the regulated person is not required under subsection (1) to give a Product Disclosure Statement—within 5 business days after the day on which the relevant financial product was issued; or
- (ii) if the regulated person is not required under subsection (1A) to give a Product Disclosure Statement—within 5 business days after the day on which the relevant financial product was sold by the controller; and”;

(e) omit paragraph (6)(b), substitute:

“(b) states that:

- (i) if the regulated person is not required under subsection (1) to give a Product Disclosure Statement—the relevant financial product was issued without a Product Disclosure Statement for the relevant product being prepared; or
- (ii) if the regulated person is not required under subsection (1A) to give a Product Disclosure Statement—the relevant financial product was sold by the controller without a Product Disclosure Statement for the relevant product being prepared; and”;

(f) omit subsection (9), substitute:

“Obligation to correct defective notice

(9) A person contravenes this subsection if:

- (a) where the person is the issuer:
 - (i) the notice given under paragraph (5)(e) is defective; and
 - (ii) the issuer becomes aware of the defect in the notice within the following period:
 - (A) if the regulated person is not required under subsection (1) to give a Product Disclosure

Statement—12 months after the relevant product is issued; or

- (B) if the regulated person is not required under subsection (1A) to give a Product Disclosure Statement—12 months after the relevant product is sold by the controller; and
 - (iii) the issuer does not, within a reasonable time after becoming aware of the defect, give the relevant market operator a notice that sets out the information necessary to correct the defect;
- (b) where the person is the controller:
- (i) the notice given under subparagraph (5)(e)(ii) is defective; and
 - (ii) the controller becomes aware of the defect in the notice within 12 months after the relevant product is sold by the controller; and
 - (iii) the controller does not, within a reasonable time after becoming aware of the defect, make the issuer aware of the defect.”.