

# Attachment 13 to CP 239: Draft instrument



**ASIC**

Australian Securities & Investments Commission

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## **ASIC Corporations (On-sales of Convertible Notes) 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 (On-sales of Convertible Notes) 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 sections 741 and 1020F of the *Corporations Act 2001*.

### **4 Definitions**

In this instrument:

*Act* means the *Corporations Act 2001*.

## Part 2—Declaration

### 5 Definitions of “continuously quoted securities” and “convertible note”

Chapter 6D and Part 7.9 of the Act respectively apply to, and in relation to, all persons as if section 9 of the Act were modified or varied as follows:

- (a) in the definition of *continuously quoted securities* omit “prospectus or Product Disclosure Statement” (twice occurring), substitute “prospectus, Product Disclosure Statement or notice given under paragraph 708A(12C)(e) or 1012DA(12C)(e)”;
- (b) in the definition of *convertible note* after “*Income Tax Assessment Act 1936*”, insert “and, in sections 708A and 1012DA, includes a converting note”.

### 6 Sale offer of underlying securities issued on conversion of convertible notes

Chapter 6D of the Act applies to all persons as if section 708A were modified or varied as follows:

- (a) in paragraph (1)(a) omit “(11), (12) or (12A),”, substitute “(11), (12), (12A) or (12C),”;

Note: Subsection 708A(12A) is notionally inserted into the Act by ASIC Corporations (Non-Traditional Rights Issues) Instrument 2015/XX.

- (b) after subsection (12B) insert:

*“Sale offer of underlying securities issued on conversion of convertible notes—case 5*

(12C)The sale offer does not need disclosure to investors under this Part if:

- (a) the relevant securities were issued by a body by reason of the conversion of convertible notes issued by that body; and
- (b) on the day on which a notice in relation to the convertible notes was given under paragraph (e):
  - (i) securities in the same class as the relevant securities were continuously quoted securities; and
  - (ii) there was no determination under subsection 713(6) in force in respect of the body; and

- (c) trading in securities in the class of relevant securities on the prescribed financial market on which they are quoted was not suspended for more than a total of 5 days during the shorter of the period during which the class of relevant securities were quoted, and the period of 12 months before the first day on which the convertible notes were issued; and
- (d) the conversion of the convertible notes did not involve any further offer; and
- (e) the body that issued the convertible notes gave the relevant market operator for the body a notice that complied with subsection (12D) on the same day as, or within 2 business days before, the first day on which the convertible notes were issued.

(12D) A notice complies with this subsection if:

- (a) the notice contains the following information:
  - (i) for the convertible notes—the information required by subsection 713(2); and
  - (ii) for securities in the class of relevant securities—the information required by subsections 713(2) to (5),as if the notice were a prospectus, and
- (b) the information in the notice is worded and presented in a clear, concise and effective manner; and
- (c) where the notice includes a statement by a person, or a statement said in the notice to be based on a statement by a person:
  - (i) the person has consented to the statement being included in the notice in the form and context in which it is included;
  - (ii) the notice states that the person has given this consent; and
  - (iii) the person has not withdrawn this consent before the notice is given to the relevant market operator.

(12E) If a body gives a notice under paragraph (12C)(e) in relation to convertible notes, each financial report or directors' report of the body required under section 298 in relation to a financial

year of the body during which those convertible notes were on issue must contain the following information:

- (a) the number of convertible notes in that class that have not converted as at the end of the financial year;
- (b) the number of securities in the class of relevant securities into which the convertible notes will convert;
- (c) the price (if any) to be paid on conversion;
- (d) the circumstances in which conversion may occur;
- (e) the remaining liability of the body to make payments under convertible notes in that class as at the end of the financial year;
- (f) the average conversion price (if any) paid for any convertible notes in that class that were converted during the financial year and the number of securities in the class of relevant securities into which they converted;
- (g) any other matters relating to the convertible notes that holders of ED securities of the body would reasonably require to make an informed assessment of the financial position of the body and its prospects for future financial years.

(12F) The financial report and directors' report may omit material that would otherwise be required to be included under paragraph (12E)(g) if it is likely to result in unreasonable prejudice to:

- (a) the body; or
- (b) if consolidated financial statements are required—the consolidated entity or any entity (including the body) that is part of the consolidated entity.

If material is omitted, the report must say so.”.

Note: Subsection 708A(12B) is notionally inserted into the Act by ASIC Corporations (Non-Traditional Rights Issues) Instrument 2015/XX.

## **7 Transfer or sale of underlying products issued on conversion of convertible notes**

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 (1)(a) omit “(11), (12) or (12A),”, substitute “(11), (12), (12A) or (12C),”;

Note: Subsection 1012DA(12A) is notionally inserted into the Act by *ASIC Corporations (Non-Traditional Rights Issues) Instrument 2015/XX*.

- (b) after subsection (12B) insert:

*“Transfer or sale of underlying products issued on conversion of convertible notes*

(12C) The regulated person does not have to give the client a Product Disclosure Statement if:

- (a) the relevant product was issued by the issuer of the convertible notes by reason of the conversion of those convertible notes; and
- (b) on the day on which a notice in relation to the convertible notes was given under paragraph (e):
  - (i) financial products in the same class as the relevant product were continuously quoted securities; and
  - (ii) there was no determination in force under subsection 1013FA(3) in respect of the relevant product; and
- (c) trading in financial products in the class of relevant products on the prescribed financial market on which they were quoted was not suspended for more than a total of 5 days during the shorter of the period during which the class of relevant product was quoted, and the period of 12 months before the first day on which the convertible notes were issued; and
- (d) the conversion of the convertible notes did not involve any further offer; and
- (e) the issuer of the convertible notes gave the relevant market operator for the issuer a notice that complied with subsection (12D) on the same day as, or within 2 business days before, the first day on which the convertible notes were issued.

(12D) A notice complies with this subsection if:

- (a) the notice contains the following information:
  - (i) for the convertible notes—the information required by subsection 713(2); and

- (ii) for financial products in the class of relevant products—the information required to be included in a Product Disclosure Statement for continuously quoted securities,

as if the notice were a Product Disclosure Statement, and

- (b) the information in the notice is worded and presented in a clear, concise and effective manner; and
- (c) where the notice includes a statement by a person, or a statement said in the notice to be based on a statement by a person:
  - (i) the person has consented to the statement being included in the notice in the form and context in which it is included;
  - (ii) the notice states that the person has given this consent; and
  - (iii) the person has not withdrawn this consent before the notice is given to the relevant market operator.

(12E) If the issuer gives a notice under paragraph (12C)(e) in relation to convertible notes, each financial report or directors' report of the issuer (or if the issuer is the responsible entity of a registered scheme, the registered scheme) required under section 298 in relation to a financial year of the issuer (or scheme) during which those convertible notes were on issue must contain the following information:

- (a) the number of convertible notes in that class that have not converted as at the end of the financial year;
- (b) the number of financial products in the class of relevant products into which the convertible notes will convert;
- (c) the price (if any) to be paid on conversion;
- (d) the circumstances in which conversion may occur;
- (e) the remaining liability of the issuer to make payments under convertible notes in that class as at the end of the financial year;
- (f) the average conversion price (if any) paid for any convertible notes in that class that were converted during the financial year and the number of financial



products in the class of relevant products into which they converted;

- (g) any other matters relating to the convertible notes that holders of ED securities of the issuer would reasonably require to make an informed assessment of the financial position of the issuer (or if the issuer is the responsible entity of a registered scheme, the registered scheme) and its prospects for future financial years.

(12F) The financial report and directors' report may omit material that would otherwise be required to be included under paragraph (12E)(g) if it is likely to result in unreasonable prejudice to:

- (a) the issuer (or, if the issuer is the responsible entity of a registered scheme, the registered scheme); or
- (b) if consolidated financial statements are required – the consolidated entity or any entity (including the issuer or, if the issuer is the responsible entity of a registered scheme, the registered scheme) that is part of the consolidated entity.

If material is omitted, the report must say so.”.

Note: Subsection 1012DA(12B) is notionally inserted into the Act by ASIC Corporations (Non-Traditional Rights Issues) Instrument 2015/XX.