

Attachment 1 to CP 312: Draft instrument



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Stub Equity in Control Transactions) Instrument 2019/XX

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

Date 2019

[DRAFT ONLY – NOT FOR SIGNATURE]

<signature>

<insert name>

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Stub Equity in Control Transactions) Instrument 2019/XX*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under sections 655A and 741 of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

Part 2—Declaration

5 Mandatory custody arrangements in control transactions

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

- (a) in items 1 to 4 and 17 in the table in section 611, add on a new line:

“See also section 615A.”

- (b) after section 615, insert:

“615A Mandatory custody arrangements—exceptions 1 to 4 and 17

The exceptions in items 1 to 4 (in relation to an off-market bid) and item 17 (in relation to a compromise or arrangement) do not apply where all of the following are satisfied:

- (a) the compromise or arrangement or offers under the off-market bid require that some or all securities (the *consideration securities*) issued or transferred as consideration are registered in the name of a trustee or custodian (whether or not this requirement applies to all persons who are issued or transferred consideration securities);
- (b) the right of a beneficial holder of consideration securities to call for those securities to be registered in their name is restricted by any of the following:
- (i) the compromise or arrangement or the offer under the off-market bid;
 - (ii) the constitution of the body (the *issuer*) who issued the consideration securities;
 - (iii) any other agreement between all or some of the holders of securities issued by the issuer;
- (c) because of paragraphs (a) and (b) being satisfied:
- (i) the issuer does not become a disclosing entity, despite consideration securities being issued to, on behalf of, or on account of, 100 or more persons; or
 - (ii) paragraph 606(1)(a) is not satisfied in relation to the issuer, despite consideration securities being issued or transferred to, on behalf of, or on account of, more than 50 persons; or
 - (iii) the issuer does not have more than 50 non-employee shareholders for the purposes of subsection 113(1), despite consideration securities being issued or transferred to,

on behalf of, or on account of, more than 50 persons who are non-employee shareholders.”.

6 Proprietary scrip in control transactions

Chapter 6D of the Act applies to all persons as if section 708 were modified or varied by, after subsection (18), inserting the following subsection:

“Limitations

(18A) Subsections (17) and (18) do not apply to an offer of securities in a proprietary company.”