

Attachment to CP 344: Draft instrument



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Describing Debentures— Secured Notes) Instrument 2022/<Number>

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

Date 2022

[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 (Describing Debentures—Secured Notes) Instrument 2022/<Number>*.

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 paragraph 283GA(1)(b) of *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

advertisement or publication in relation to an offer, or intended offer, of debentures that needs a disclosure document, means:

- (a) an advertisement for the offer or intended offer; or
- (b) a publication of a statement that:
 - (i) directly or indirectly refers to the offer or intended offer; or
 - (ii) is reasonably likely to induce people to apply for the debentures.

related party has the meaning given by section 228 of the Act.

Part 2—Declaration

5 When debentures may be described as secured notes

(1) Chapter 2L of the Act applies to all persons as if section 283BH were modified or varied as follows:

(a) in the table in subsection (1), after item 2, insert:

2A	secured note	only if the circumstances set out in subsection (4) are satisfied
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(b) after subsection (3) insert:

“When debentures can be called secured notes

(4) The borrower may describe or refer to the debentures as secured notes if:

(a) the repayment of all money that has been, or may be, deposited or lent under the debentures has been secured by a first ranking security interest in favour of the trustee over the whole or any part of the property of the borrower or of any of the guarantors; and

(b) the property that constitutes the security for the security interest is sufficient and is reasonably likely to be sufficient to meet the liability for the repayment of all such money and all other liabilities that:

(i) have been or may be incurred; and

(i) rank in priority to, or equally with, that liability.

(5) A borrower that describes or refers to the debentures as secured notes in any disclosure, other document or the debentures themselves as set out in subsection (1) must ensure that:

(a) where the borrower is describing or referring to the debentures in an advertisement or publication in relation to an offer, or intended offer, of debentures that needs a disclosure document—the advertisement or publication includes the following statements:

(i) a statement that the secured note is not a bank deposit;

- (ii) a statement that there is a risk that investors could lose some or all of their money; and
- (b) where the borrower is describing or referring to the debentures in a disclosure document or a quarterly report prepared under section 283BF—the document or report includes the following information:
 - (i) the key features of the security interest, including but not limited to:
 - (A) a statement that the security interest is first ranking; and
 - (B) the type of security interest; and
 - (C) the identity of the person providing the security interest; and
 - (D) information about the property constituting the security for the security interest;
 - (ii) a statement to the effect that, in the borrower’s assessment, the property that constitutes the security for the security interest is sufficient and is reasonably likely to be sufficient to meet the liability for the repayment of all such money and all other liabilities that:
 - (A) have been or may be incurred; and
 - (B) rank in priority to, or equally with, that liability;
 - (iii) if the value of any property secured by the security interest may be affected by the financial position or performance of a related body corporate or related party of the borrower—a statement that the value of property secured by the security interest may be affected by the financial position or performance of the related body corporate or related party (as applicable); and
- (c) where the borrower is describing or referring to the debentures on its website—the following reports, documents and notices are included on the website from the following times:
 - (i) for the most recent quarterly report prepared under section 283BF—as soon as practicable after a

copy of the report is required to be lodged with ASIC;

- (ii) for any disclosure document (including any replacement or supplementary document) lodged with ASIC in the previous 13 months—as soon as practicable after a copy of the document is lodged with ASIC;
- (iii) for any continuous disclosure notice required to be lodged with ASIC under section 675 in the previous 12 months—immediately after the notice is required to be lodged with ASIC.

Note: An advertisement or publication covered by paragraph (5)(a) must also comply with section 734.