



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Regulatory Capital Securities) Instrument 2016/71

I, Grant Moodie, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 9 March 2016

Grant Moodie

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Part 1—Preliminary

1 Name of legislative instrument

This instrument is *ASIC Corporations (Regulatory Capital Securities) Instrument 2016/71*.

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 section 741 of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

Part 2—Declaration

5 Definitions of “regulatory capital security” and “underlying securities”

Chapter 6D of the Act applies to all persons as if section 9 of the Act were modified or varied as follows:

- (a) insert the following definition:

“**notional underlying securities**, in relation to regulatory capital securities, means securities that would be issued on conversion or exchange if the conversion or exchange occurred at the time of issue of the regulatory capital securities.”;

- (b) insert the following definition:

“**regulatory capital security** means a security that satisfies all of the following:

- (a) the security is issued by any of the following entities:
- (i) an authorised deposit-taking institution, a subsidiary of an authorised deposit-taking institution or an authorised NOHC for the purposes of the *Banking Act 1959*;
 - (ii) a general insurer, a subsidiary of a general insurer or an authorised NOHC for the purposes of the *Insurance Act 1973*;
 - (iii) a life company, a subsidiary of a life company or a registered NOHC for the purposes of the *Life Insurance Act 1995*;
- (b) either:
- (i) under the terms of the security, it must or may be converted into, or exchanged for, ordinary shares in:
 - (A) the issuer of the security; or
 - (B) an entity that is both:
 - (I) an authorised deposit-taking institution, a general insurer, a life company, an authorised NOHC or a registered NOHC for the purposes of any of those Acts; and
 - (II) the ultimate holding company of the issuer; or

(C) an entity (including an entity that, at the time the security is issued, does not exist) that, as a result of a restructure (however described) will be, at the time of conversion or exchange, both:

(I) an authorised NOHC or a registered NOHC for the purposes of any of those Acts; and

(II) the ultimate holding company of the issuer;

in the circumstances permitted or required by prudential standards made for the purposes of any of those Acts; or

(ii) under the terms of the security, it must or may be converted into, or exchanged for, ordinary shares in any of the entities referred to in subparagraph (i), where the proceeds from the issue of the security is to be used to acquire a regulatory capital security of a subsidiary of the issuer the terms of which satisfy subparagraph (i);

(c) if, at the time the security is issued, the conversion or exchange occurred, the ordinary shares to be issued on conversion or exchange would be in a class of continuously quoted securities.”;

(c) in the definition of *underlying securities*, after paragraph (a), insert:

“(ab) in relation to regulatory capital securities—the securities that are issued on conversion or exchange of the regulatory capital securities.”.

6 Offers of regulatory capital securities that are convertible or exchangeable into continuously quoted securities

Chapter 6D of the Act applies to all persons as if section 713 were modified or varied as follows:

(a) after paragraph (1)(a) insert:

“(ab) regulatory capital securities; or”;

(b) after paragraph (2)(c) insert:

“(cb) if the securities are regulatory capital securities—the rights and liabilities attaching to:

(i) the regulatory capital securities themselves; and

(ii) the notional underlying securities; and”;

(c) after subsection (2) insert:

“Issuer of notional underlying securities must consent to statements

(2A) To avoid doubt, and without limiting subsection 716(2), if the securities are regulatory capital securities, and the body that is to issue those securities is not the body that is to issue the notional underlying securities:

- (a) the body that is to issue the notional underlying securities must consent to all statements in the prospectus about the notional underlying securities and the body; and
- (b) the prospectus must state that that body has given this consent; and
- (c) that body must not have withdrawn this consent before the prospectus is lodged with ASIC.”;

(d) after subsection (7) insert:

“Third party acquisition scenarios

(8) This section does not apply in relation to an offer of regulatory capital securities if, under the terms of the securities, they must or may be converted into, or exchanged for, ordinary shares in an entity (including an entity that, at the time the securities are issued, does not exist) that, as a result of a restructure (however described) initiated by persons other than the directors of the issuer of the securities or the ultimate holding company of the issuer, will be, at the time of exchange or conversion, the ultimate holding company of the issuer.”.

7 Sale offers of underlying securities issued on conversion or exchange of regulatory capital securities

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), (12A) or (12C),”, substitute “(11), (12), (12A), (12C), (12G) or (12H),”;

Note: Subsections 708A(12A) and 708A(12C) are notionally inserted into the Act by *ASIC Corporations (Non-Traditional Rights Issues) Instrument 2016/84* and *ASIC Corporations (Sale Offers: Securities Issued on Conversion of Convertible Notes) Instrument 2016/82* respectively.

(b) after subsection (12) insert:

“Sale offer of securities issued on conversion or exchange of regulatory capital securities—case 6

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

- (a) the relevant securities were issued by reason of the conversion or exchange of regulatory capital securities in accordance with their terms of issue; and
 - (b) the regulatory capital securities were issued under a prospectus; and
 - (c) the conversion or exchange did not involve any further offer.
- (12GA) Subsection (12G) does not apply in relation to relevant securities that were issued by reason of the conversion or exchange of regulatory capital securities if, under the terms of the regulatory capital securities at the time they were issued, they must or may be converted into, or exchanged for, ordinary shares in an entity (including an entity that, at the time the regulatory capital securities were issued, does not exist) that, as a result of a restructure (however described) initiated by persons other than the directors of the issuer of the regulatory capital securities or the ultimate holding company of the issuer, will be, at the time of exchange or conversion, the ultimate holding company of the issuer.

Sale offer of securities issued on conversion or exchange of regulatory capital securities—case 7

- (12H) The sale offer does not need disclosure to investors under this Part if:
- (a) the relevant securities were issued by reason of the conversion or exchange of regulatory capital securities in accordance with their terms of issue; and
- Note: The relevant securities are the underlying securities issued on conversion or exchange of the regulatory capital securities.
- (b) on the day on which a notice in relation to the regulatory capital securities was given under paragraph (e), there was no determination under subsection 713(6) in force in respect of either:
 - (i) the issuer of the regulatory capital securities; or
 - (ii) if the issuer of the regulatory capital securities is not the issuer of the notional underlying securities—the issuer of the notional underlying securities; and
 - (c) trading in securities in the class of notional underlying 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 notional underlying securities were quoted, and the

- period of 12 months before the first day on which the regulatory capital securities were issued; and
- (d) the conversion or exchange of the regulatory capital securities did not involve any further offer; and
 - (e) a notice that complies with subsection (12I) on the same day as, or within 2 business days before, the first day on which the regulatory capital securities were issued was given to the relevant market operator:
 - (i) if the body that issued the regulatory capital securities is also the issuer of the notional underlying securities—by the body;
 - (ii) if the body that issued the regulatory capital securities is not the issuer of the notional underlying securities—jointly by both the issuer of the regulatory capital securities and the issuer of the notional underlying securities.
- (12I) A notice complies with this subsection if:
- (a) the notice contains the following information:
 - (i) for the regulatory capital securities—the information required by subsection 713(2); and
 - (ii) for securities in the class of notional underlying 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.