



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Disclosing Entities) Instrument 2016/190

I, Stephen Yen PSM, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date: 15 August 2016

Stephen Yen

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Disclosing Entities) Instrument 2016/190*.

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 <http://www.legislation.gov.au>.

3 Authority

This instrument is made under subsection 341(1) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means *Corporations Act 2001*.

directors' report means the directors' report referred to in section 298 of the Act.

Part 2—Orders

5 Bodies or schemes that stop being disclosing entities before the reporting deadline

Relief

- (1) A company (the *entity*) or registered scheme (the *entity*) that is a disclosing entity at the end of its financial year (the *relevant financial year*) does not have to comply with the requirements of Chapter 2M of the Act to the extent that those requirements apply to the entity as a disclosing entity if the entity stops being a disclosing entity:
 - (a) in the case of a company—before the earlier of:
 - (i) the day 3 months after the end of the relevant financial year; and
 - (ii) if the company is required to have an AGM, 21 days before the date of the next AGM after the end of that year.
 - (b) in the case of a scheme—before the day 3 months after the end of the relevant financial year.

Where relief applies

- (2) The relief in subsection (1) is available where:
 - (a) the entity complies with Chapter 2M of the Act as if it had not been a disclosing entity at the end of the relevant financial year; and
 - (b) the directors of the entity resolve before the earlier of the days in paragraph (1)(a) or the day in paragraph (1)(b) (as relevant) that there are no reasons to believe that the entity may become a disclosing entity before the end of the financial year immediately after the relevant financial year.
- (3) For the purposes of working out whether the condition in paragraph 2(a) is satisfied, ignore any non-compliance that has resulted merely from any or all of the following:
 - (a) a person being an affected auditor (as defined in ASIC Class Order [CO 14/757]) rather than a registered company auditor;
 - (b) an act, matter or thing being done by an affected auditor rather than a registered company auditor;
 - (c) a company being an affected audit company (as defined in ASIC Class Order [CO 14/757]) rather than an authorised audit company;

- (d) an act, matter or thing being done by an affected audit company rather than an authorised audit company.

6 Disclosing entities with short first financial years

Relief

- (1) A disclosing entity does not have to comply with sections 302 or 306 of the Act for a half-year within the entity's first financial year (the **relevant financial year**) where that year lasts for 8 months or less.

Where relief applies

- (2) The relief in subsection (1) is available where:
 - (a) either:
 - (i) the entity:
 - (A) is a listed disclosing entity; and
 - (B) gives to the operator of each prescribed financial market of which the entity is included on the official list a notice which explains the effect of this section and states that the entity intends to rely on it; or
 - (ii) the entity:
 - (A) is an unlisted disclosing entity; and
 - (B) gives to ASIC a notice which states that the entity intends to rely on this section; and
 - (b) the directors' report for the relevant financial year of the entity explains the effect of this section and states that the entity relied on it.

The notice referred to in sub-subparagraph (a)(i)(B) or (a)(ii)(B) must be given to the operator or ASIC (as relevant) on or before the deadline for lodging the reports which would have been required to be prepared by section 302 of the Act but for this section.