



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Financial Reporting by Stapled Entities) Instrument 2023/673

ASIC Corporations (Repeal) Instrument 2023/674

This is the Explanatory Statement for *ASIC Corporations (Financial Reporting by Stapled Entities) Instrument 2023/673* and *ASIC Corporations (Repeal) Instrument 2023/674*.

The Explanatory Statement is approved by the Australian Securities and Investments Commission (*ASIC*).

Summary

1. *ASIC Corporations (Financial Reporting by Stapled Entities) Instrument 2023/673* (the **Instrument**) provides relief to allow stapled entities which are disclosing entities to present combined financial statements or consolidated financial statements of the stapled group.
2. The Instrument also allows the stapled entities in a stapled group to present their respective financial statements together in a single financial report.
3. The Instrument continues the relief previously provided under *ASIC Class Order [CO 13/1050]*, which sunsets on 1 October 2023.

Purpose of the instrument

4. The purpose of the Instrument is to reduce regulatory burden by allowing stapled entities which are disclosing entities to present combined financial statements or consolidated financial statements of the stapled group, on the same basis used to prepare those combined financial statements or consolidated financial statements prior to the initial application of Accounting Standard AASB 10 *Consolidated Financial Statements* (AASB 10) for the reporting periods on or before 31 December 2012.
5. In these instances, the Instrument also allows the stapled entities relief similar to that provided by *ASIC Corporations (Stapled Group Reports) Instrument 2015/838*. The stapled entities in a stapled group will continue to be allowed to present their respective financial statements together in a single financial report.

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6. A stapled group which has not previously prepared a financial report under Chapter 2M can present consolidated financial statements under the Instrument.

Background

7. Stapled entities are listed entities whose securities are traded together such that each investor has the same proportionate interest in each entity.
8. AASB 10 requires an entity that controls one or more other entities to present consolidated financial statements. For the purposes of AASB 10, an investor controls an investee if and only if the investor has all of the following:
 - (a) power over the investee;
 - (b) exposure, or rights, to variable returns from its involvement with the investee; and
 - (c) the ability to use its power over the investee to affect the amount of the investor's returns.
9. The terms "investor" and "investee" are not defined in AASB 10, nor in any other accounting standard. In applying AASB 10 questions arise as to whether an investor must have an ownership or other financial interest in an investee to give it power or exposure or rights to variable returns.
10. In a stapling arrangement, it might not be possible under AASB 10 for one stapled entity to consolidate other stapled entities for one or more of the following reasons:
 - (a) none of the stapled entities typically has an ownership or other financial interest in any of the other stapled entities;
 - (b) none of the stapled entities may have power over the other stapled entities, particularly where a third party manages all of the entities;
 - (c) there may be no variable returns between the stapled entities; and
 - (d) if a stapled entity meets the definition of "investment entity" in AASB 10 it may not be able to prepare consolidated financial statements that cover the other stapled entities.
11. As a trustee/manager does not normally control a managed investment scheme under AASB 10 in the absence of an ownership or other financial interest, it may be unclear as to why control would exist merely because the two entities are stapled.
12. In previous reporting periods, stapled entities presented combined financial statements or consolidated financial statements covering all of the stapled entities in a stapled group.
13. It is likely to be useful to investors in stapled entities to be provided with combined financial statements or consolidated financial statements covering all

of the stapled security issuers in a stapled group. Where there are financial interrelationships between the entities, combined financial statements or consolidated financial statements may be necessary to meet the true and fair view requirement in Chapter 2M of the Act.

14. Consolidated or combined financial statements provide useful and meaningful information on investors' interest in the overall stapled arrangement, and may be necessary to give a true and fair view of the individual entity financial reports. Transactions between the entities are eliminated in preparing consolidated or combined financial statements.
15. *ASIC Corporations (Stapled Group Reports) Instrument 2015/838* allows the stapled entities in a stapled group to present their respective financial statements together in a single financial report.

Consultation

16. Before making the Instrument, ASIC consulted publicly. One submission was received, which agreed that *ASIC Class Order [CO 13/1050]* has operated effectively.

Operation of the instrument

17. Section 5 of the Instrument provides relief to enable a combined or consolidated financial report to be prepared for stapled entities.
18. Section 6 of the Instrument provides relief to enable the stapled entities in a stapled group to present their respective financial statements together in a single financial report.
19. The Instrument commences on 1 October 2023.
20. *ASIC Corporations (Repeal) Instrument 2023/674* repeals *ASIC Class Order [CO 13/1050]*, which is otherwise scheduled to sunset on 1 October 2023.

Legislative instrument and primary legislation

21. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because the instrument provides administrative relief in circumstances where strict compliance with the primary legislation produces an unintended or unforeseen result. If the matters in the instrument were to be inserted into the primary legislation, they would insert, into an already complex statutory framework, a set of specific provisions that would apply only to a relatively small group of entities. This would result in additional cost and unnecessary complexity for other users of the primary legislation.
22. The Instrument preserves the effect of *ASIC Class Order [CO 13/1050]*, which is otherwise due to sunset on 1 October 2023. Following consultation, ASIC considered that *CO 13/1050* was operating effectively and efficiently to achieve

its objectives and continued to form a necessary and useful part of the legislative framework.

23. It will be a matter for the Government and for Parliament as to whether the Act or Regulations may be amended in future to include the relief in the Instrument.

Duration of the instrument

24. ASIC considers that five years is the appropriate duration for the Instrument as this will provide certainty for entities relying on the relief and minimise regulatory burden associated with compliance changes.

Legislative authority

25. The Instrument is made under subsection 341(1) of the *Corporations Act 2001*.
26. Subsection 341(1) provides that ASIC may make an order in respect of a specified class of companies, registered schemes or disclosing entities that relieves the entities in question, their directors and/or auditors from specified requirements of Parts 2M.2, 2M.3 or 2M.4 (other than Division 4) of the Act.

Statement of Compatibility with Human Rights

27. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

ASIC Corporations (Financial Reporting by Stapled Entities) Instrument 2023/673
and ***ASIC Corporations (Repeal) Instrument 2023/674***

Overview

1. *ASIC Corporations (Financial Reporting by Stapled Entities) Instrument 2023/673* provides relief to allow stapled entities which are disclosing entities to present combined financial statements or consolidated financial statements of the stapled group.
2. *ASIC Corporations (Repeal) Instrument 2023/674* repeals *ASIC Class Order [CO 13/1050]*, which previously provided relief similar to that now provided by *ASIC Corporations (Financial Reporting by Stapled Entities) Instrument 2023/673*.

Assessment of human rights implications

3. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

4. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.