



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 30

Paperless issues under a global debenture

Chapter 7 — Securities

Issued 17/8/1992

From 5 July 2007, this document may be referred to as Regulatory Guide 30 (RG 30) or Policy Statement 30 (PS 30). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 30.1) or their policy statement number (e.g. PS 30.1).

Contents

Purpose	1
Background	2
Relevant provisions of the Law	3
Section 1023.....	3
Section 1096.....	3
Section 1045.....	4
Applications	4

Purpose

RG 30.1 In this guide, the ASC sets out its policy on granting relief from s1023 and s1096 of the Corporations Law (Law) in relation to an issue or sale of debentures where the debentures are created under a global debenture or bond to facilitate a paperless issue of debentures. Standard terms of relief are set out in the attached Pro Forma instrument (see Pro Forma 2).

Background

RG 30.2 The definition of “debenture” in s9 of the Law is “a document issued by the body [corporate] that evidences or acknowledges indebtedness of the body in respect of money that is or may be lent to the body ... and includes a unit of a debenture”. A “unit” of a debenture is defined in s9 as “a right or interest, whether legal or equitable, in the ... debenture ... by whatever term called, and includes an option to acquire such a ... debenture”. The corresponding definition of debenture in the Companies Code did not include a reference to a unit of a debenture.

RG 30.3 A global debenture is a document executed by a corporation issuing or raising debt (by deed poll, trust deed etc) which evidences or acknowledges indebtedness to each person named for the amounts noted in a register. Interests created under a global debenture and recorded in the register fall within the definition of a debenture as a “unit of a debenture”, whether or not there is a “document acknowledging indebtedness” in respect of each debenture holder’s interest (or unit). By using a global debenture in this way, debentures may be issued and sold without reliance on a document which represents title to, or ownership of, the relevant debenture. Such an issue is generally referred to as a “paperless” issue of debentures.

RG 30.4 Global debt instruments which use the paperless method of raising and transferring debt obligations are a popular means of fundraising in the European bond market. This method of fundraising has been used in the retail market in Australia only for issues of inscribed government and semi-government stock where there is no formal document of title but title to stock is evidenced by inscription on a register maintained by the Reserve Bank or the body issuing the stock. Secondary trading is effected by the use of instruments of transfer. A special system of “marked” transfers which are normally valid for a fixed period only, may also be provided to facilitate settlement of sales and to provide security under financing arrangements.

RG 30.5 The obligations imposed by the Law on debenture issuers, particularly those which have a large retail investor base, involve significant time and expense in preparing, issuing, moving and storing large volumes of paper. However, the ASC considers that the Law was not intended to prohibit alternative methods of documenting or transferring debt obligations, provided investor protection is not diminished. In view of its role in facilitating the reduction of costs and increasing efficiencies in the securities market, the ASC may grant relief so that alternative methods can be used.

Relevant provisions of the Law

RG 30.6 Sections 1023, 1045 and 1096 deal with the administration of debenture issues and sales (including in particular the despatch of acknowledgments, certificates of title and related matters).

Section 1023

RG 30.7 Section 1023 requires a primary prospectus in relation to debentures to contain an undertaking that the issuing corporation will, within two months after acceptance of any money, issue a document acknowledging the indebtedness of the corporation to each person accepting the offer.

RG 30.8 Section 1023 is not satisfied by the creation of a global debenture because it requires the issue of a document to each investor acknowledging his or her individual entitlement.

RG 30.9 Despite the reference in that section to “a document that acknowledges, evidences or constitutes an acknowledgment of indebtedness”, in the light of the extension of the definition of a debenture to include a unit of a debenture, the ASC considers that the purpose of s1023 can be carried into effect without restricting the manner in which title to debentures may be established or transferred.

RG 30.10 Where the ASC considers that relief from s1023 for a paperless issue or offer of debentures is appropriate that relief will usually be on the terms set out in the Pro Forma instrument mentioned above.

Section 1096

RG 30.11 Section 1096 sets out the duties of a company concerning the issue of “appropriate certificates, debentures or other documents” on the allotment, issue and transfer of debentures and specifies a time period within which these obligations must be fulfilled.

RG 30.12 Subsection 1096(2) is ancillary to s1023, providing that transferees of debentures must be given documents corresponding to those issued to subscribers. In a paperless issue the registrar should record in a timely manner in the register of debenture holders the interests of investors and any transfers of such interests so that information on ownership of debentures is available by reference to the register.

RG 30.13 The issue of a global debenture and establishment of a paperless system of debenture issue and transfer in certain circumstances will provide debenture holders with adequate protection and will make the transfer of securities more efficient. Where the ASC considers that relief from s1096 for a paperless issue or offer of debentures is appropriate that relief will usually be on the terms set out in the Pro Forma instrument mentioned above.

Section 1045

RG 30.14 Section 1045 sets out requirements relating to the appropriate description in prospectuses and other documents of debentures.

RG 30.15 The policy of this section is clear. The ASC will not grant relief from s1045 merely because debentures are offered or issued under a global debenture. A global debenture should comply with these nomenclature requirements. Issues or sales of debentures issued or sold under a global debenture and which fall within Div 4 of Pt 7.12 of the Law should also comply with these nomenclature requirements.

RG 30.16 If the issuer complies with s1045 and does not breach the prohibition against misleading or deceptive conduct in s995 an investment product may have a specific marketing name.

Applications

RG 30.17 Applications should be lodged at the local Regional Office of the ASC accompanied by the appropriate fee.