



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 63

Access to debenture and prescribed interest registers

Chapter 7 — Securities (Part 7.12)

Issued 30/8/1993

From 5 July 2007, this document may be referred to as Regulatory Guide 63 (RG 63) or Policy Statement 63 (PS 63). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 63.1) or their policy statement number (e.g. PS 63.1).

Editor's note: See RG 136.30–RG 136.66 for information about how this guide applies to managed investment schemes.

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Purpose

RG 63.1 This guide sets out the ASC's policy in exercising its discretionary powers under s1084 of the Corporations Law (Law) concerning the public's right to inspect and copy the contents of registers of debenture and prescribed interest holders (referred to in this guide as "access to debenture and prescribed interest registers"). This guide supersedes NCSC Release 138. (See also Pro Formas 69 and 70 in 1995 *ASC Digest* at pages PF 793 and 805.)

Background

RG 63.2 The ASC notes that there is a current law reform review process relating to share, debenture and prescribed interest registers. This review process aims to make the Law applying to all three registers consistent. There are several inconsistencies in the Law. For example, the ASC has no discretionary power over share register provisions.

RG 63.3 Since the commencement of the Law, the ASC has administered the policy established by the NCSC (as set out in Release 138) concerning access to debenture and prescribed interest registers.

RG 63.4 The ASC has adopted this interim policy consistent with Release 138. This is because:

- (a) the direction of that policy is appropriate under the Law; and
- (b) the ASC prefers not to revise the policy in detail shortly before possible amendments to the Law which are likely to require reconsideration of the policy.

The Law

RG 63.5 A debenture register must be open for inspection by debenture and shareholders of the company (except when duly closed) without charge (s1047(3)(b)(i)). It must also be open for inspection by any other person (except when duly closed) subject to the payment of any charge which is not more than the prescribed fee (s1047(3)(b)(ii)). (See Sch 4 of the Corporations Regulations for prescribed fees.) A person who has the right to inspect a register can also make copies personally or take extracts from the register (s1300(3)). Only share and debenture holders of a company have the right to request and

obtain from the company a copy of the register (or any part of it) (s1047(5) and s1047(7)).

RG 63.6 The share register provisions in Div 5 of Pt 2.4 of the Law (except s214 which deals with branch registers) apply to prescribed interest registers with appropriate modifications (s1070(2)). Accordingly, s210(2), which regulates access to share registers, applies to prescribed interest registers. This provision requires that a prescribed interest register must be open for inspection by prescribed interest holders (except when duly closed) without charge (s210(2)(a)). It must also be open for inspection by any other person subject to the payment of any charge which is not more than the prescribed fee (see Sch 4 of the Corporations Regulations for prescribed fees). A person who has the right to inspect the register can also make copies personally or take extracts from the register (s1300(3)). Any person has the right to request and obtain from the management company a copy of the register (or any part of it) (s210(3)).

RG 63.7 The management company of a prescribed interest scheme must make the prescribed interest register available for inspection by prescribed interest holders without charge (except when the register is duly closed) (prescribed covenant in reg 7.12.15(6)(a)).

Policy considerations

RG 63.8 The ASC is of the view that there are a number of legitimate purposes for which access to debenture and prescribed interest registers is required (see para 13 below). Any restriction of the right to access the registers for those legitimate purposes would be contrary to the objective of promoting market efficiency and public interests which underlie the register access provisions in the Law.

RG 63.9 However, the ASC recognises that the Law provisions relating to access to debenture and prescribed interest registers were not intended to be used by competitors of debenture issuers and management companies for commercial uses unrelated to investors' holdings or the management of the company or the prescribed interest scheme.

Unrestricted access to registers would enable competitors to compile mailing lists to access investors for purposes not directly related to their existing interests, such as offering other investments and services to investors.

RG 63.10 The ASC also accepts that investors may not wish to have their privacy disturbed by abuses such as unsolicited calls.

RG 63.11 The ASC believes that in order to balance these competing interests, conditions should be imposed on access to debenture and prescribed interest registers. These conditions are designed to promote market efficiency and safeguard investor privacy to some extent.

Relief

RG 63.12 The ASC may grant relief to debenture issuers and management companies (unless access is sought by a debenture or prescribed interest holder to that part of the register which contains information relating to that person's holding) from the access requirements relating to:

- (a) debenture registers (s1047(3)(b), 1047(5) and 1047(7)); and
- (b) prescribed interest registers (reg 7.12.15(6)(a), s210(2) and 210(3), as applied by virtue of s1070(2)).

This relief permits debenture issuers and management companies to refuse access to debenture and prescribed interest registers unless a person seeking access to the register gives a signed written undertaking to the debenture issuer or the management company. The undertaking must state that:

- (a) the information obtained from an inspection of, or copy of the register:
 - (i) will not be provided to any person other than the person or persons named in the contract; and
 - (ii) will only be used by those persons for a purpose or purposes specified in para 13 below; and
- (b) he or she will inform any person to whom the information so obtained is provided of the terms on which the information has been obtained.

RG 63.13 The purposes (see para 12(a)(ii) above) are:

- (a) for calling a meeting of investors (including making an application for a general meeting for the purposes of the covenant in s1069(1)(m) in the case of prescribed interest schemes);
- (b) for making offers to acquire prescribed interests or debentures to which the register relates;
- (c) for examining or dealing with matters relating to the management or trusteeship of the trust or company;
- (d) for undertaking statistical or analytical research; or

(e) for any other purpose approved by the ASC.

RG 63.14 The debenture issuer or the management company must not refuse access to the register if:

- (a) the person has requested access to that part of the register that contains particulars of debentures or prescribed interests held by that person; or
- (b) the person requesting access to the register has provided to the debenture issuer or the management company a written undertaking in the terms specified in para 12 and 13 above.

RG 63.15 Any relief granted under this guide will operate only where access to the register is provided to the person seeking access to the register within a reasonable time after the lodgement by that person with the debenture issuer or the management company of an undertaking in the terms specified in para 12 and 13 above. This is to ensure that access to debenture and prescribed interest registers is not unnecessarily restrictive to any person seeking access to such registers for any purpose specified in para 13 above.

RG 63.16 The ASC's policy set out in this guide does not affect the obligations imposed by the Law on debenture issuers and management companies to maintain debenture and prescribed interest registers.

Existing relief

RG 63.17 The ASC will not revoke or modify the instruments granted under NCSC Release 138 but will continue to administer that relief as if granted under this guide.

Applications

RG 63.18 A debenture issuer or a management company may apply for relief under s1084(2) (and, in the case of a management company only, in regard to trust deed covenants under s1069(3)). Applications may be made at any ASC Regional Office and should be accompanied by the appropriate fee.