



ASIC

Australian Securities & Investments Commission

[CO 02/313]

Part 7.11 — Transfers of securities under Division 3

Issued 9/3/2002

Class Order [CO 02/313] applies Div 3 of Part 7.11 of the Corporations Act and the regulations made for the purposes of that Division to transfers of specified financial products that are securities as defined in s761A, but are not covered by s1073A(1)(a)–(d) of the Act. This enables the specified financial products to be transferred with the benefit of the statutory warranties and indemnities contained in the regulations made for the purposes of Div 3 of Pt 7.11. Transfers under Div 3 are usually paper-based.

Class Order [CO 02/313] has the effect that the National Guarantee Fund provisions, contained in Div 4 of Pt 7.5 of the Act and related regulations, apply to transfers of the specified financial products that are effected under Div 3 of Pt 7.11 by an ASX participant.

This class order also modifies the way the regulations made under s1073D of the Act and the transfer forms apply to rights.

This class order comes into effect on 11 March 2002 upon commencement of Schedule 1 to the Financial Services Reform Act 2001: see s4(2A)(c) of the Acts Interpretation Act 1901.

Australian Securities and Investments Commission
Corporations Act 2001 — Subsections 1073E(1) and (2) Declaration
Under subsections 1073E(1) and (2) of the *Corporations Act 2001* (the “Act”) the Australian Securities and Investments Commission hereby declares that:

- (a) the classes of securities referred to in Schedule A are securities to which Division 3 of Part 7.11 of the Act and regulations made for the purposes of section 1073D of the Act apply (as referred to

paragraph 1073A(1)(e) of the Act);

- (b) the regulations made for the purposes of section 1073D apply to the classes of securities mentioned in Schedule B as if the provisions of the regulations referred to in that Schedule were modified as specified in that Schedule.

SCHEDULE A

Shares in, or debentures of, a foreign company that are quoted on the financial market operated by Australian Stock Exchange Limited.

SCHEDULE B

- 1 For the securities mentioned in Schedule A:
 - (a) insert in regulation 7.11.01 of the Corporations Regulations 2001 (the "Regulations"), in the appropriate alphabetical order, the following definitions:

“absolute beneficial owner, in relation to Division 3 securities, means one or more beneficiaries of a trust to which a Division 3 security is subject, who has or who together have a presently enforceable and unconditional right to require the trustee of the trust to transfer the Division 3 security to them.”; and

“securities loan means an agreement or arrangement under which:

 - (i) a person (“lender”) undertakes to transfer or otherwise make available to another person (“borrower”) Division 3 securities; and
 - (ii) the borrower undertakes to transfer or otherwise restore to the lender those Division 3 securities or the same quantity of equivalent Division 3 securities at an identifiable time in the future.”;
 - (b) insert in subregulation 7.11.17(4) of the Regulations after paragraph 7.11.17(4)(a) the following paragraph:

“(ba) if a broker is given authority by or on behalf of the absolute beneficial owner of Division 3 securities to sell or transfer those Division 3 securities, the broker is taken to have authority from the transferor to:

- (i) sell or transfer those Division 3 securities;
and
 - (ii) execute an instrument of transfer of those
Division 3 securities,

on the transferor's behalf, even if no authority is
given by the transferor;";
 - (c) insert in paragraph 7.11.19(2)(f) of the Regulations after the
words "paragraph 7.11.17(4)(a)" the words "or (ba)";
 - (d) omit subregulation 7.11.40(1) of the Regulations and
substitute the following subregulation:
 - "(1) A broker must not stamp with a broker's stamp a
document (a *transfer document*) that relates to
Division 3 securities and may be used as a sufficient
transfer under this Part, unless the transfer
document relates to:
 - (a) a sale or purchase of the Division 3
securities, in the ordinary course of the
broker's business, for a consideration of
not less than their unencumbered market
value at the time of the sale or purchase;
 - (b) the performance of obligations under a
securities loan; or
 - (c) a transfer from or to a broker's clearing
account in accordance with the operating
rules of the financial market in which the
broker is a participant."; and
 - (e) insert in paragraph 7.11.40(2)(b) of the Regulations after
the words "paragraph 7.11.17(4)(a)" the words "or (ba)".
- 2 For Division 3 rights as defined in subregulation 1.0.02 of the
Regulations:
- (a) insert in regulation 7.11.01 of the Regulations, in the
appropriate alphabetical order, the following definition:

"company option means a Division 3 right that is an
assignable option to acquire by way of issue shares or
debentures in a company upon payment of an exercise
price.";

- (b) insert after subregulation 7.11.10 of the Regulations the following regulation:

“7.11.10A Company options

For the purposes of regulations 7.11.11 to 7.11.14, and of the forms in Schedule 2A to the Regulations, a Division 3 right that is a company option shall be taken to be a Division 3 asset and not to be a Division 3 right.”;

- (c) insert before paragraph 7.11.16(1)(a) of the Regulations the following paragraph:

“(aa) to have agreed at the execution time to accept the rights subject to the terms and conditions on which the transferor held them immediately before that time, being the terms and conditions that are applicable as between the issuer in relation to, and the holder for the time being of, the rights;”;

- (d) insert at the beginning of paragraph 7.11.16(1)(a) of the Regulations the words:

“at the time at which the transferee subsequently makes payment to the issuer in relation to the Division 3 assets of the application monies or, in the case of company options, the exercise price (the payment time),”; and

- (e) omit wherever appearing in paragraphs 7.11.16(1)(a) and(b) and subregulation (2) of the Regulations the words “at the execution time”, and substitute the words “at the payment time”.

Commencement

This instrument takes effect on the commencement of Schedule 1 to the *Financial Services Reform Act 2001*.

Dated this 9th day of March 2002

Signed by Brendan Byrne
as a delegate of the Australian Securities and Investments Commission