

# [CO 03/1102] Singapore MAS regulated financial service providers

## Policy Statement 176

*Issued 22/12/2003*

*Effective 23/12/2003: ASIC Special Gazette 50A/03*

*Class Order [CO 03/1102] conditionally exempts foreign companies regulated by the Monetary Authority of Singapore from the need to hold an Australian financial services licence for certain financial services.*

*This relief is provided under ASIC Policy Statement 176 Licensing: Discretionary Powers — wholesale foreign financial services providers [PS 176].*

*Foreign financial services providers relying on this class order are permitted to provide financial services to wholesale clients in Australia in a manner that, if the financial services were provided to clients in their home jurisdiction in like circumstances, would comply as far as is possible with their home regulatory requirements, subject to the conditions described below.*

<i>Amending Class Order</i>	<i>Date of operation</i>
[CO 04/100]	17/2/2004
[CO 05/308]	17/5/2005
[CO 05/957]	28/9/2005

For details of amendments see historical notes in this class order.

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### Australian Securities and Investments Commission Corporations Act 2001 — Paragraph 911A(2)(l) — Exemption

Under paragraph 911A(2)(l) of the *Corporations Act 2001* (the *Act*) the Australian Securities and Investments Commission (*ASIC*) exempts the persons referred to in Schedule A from the requirement to hold an Australian financial services licence in the case referred to in Schedule B.

#### Schedule A

A foreign company (the *body*) to which all of the following apply:

- (a) the body:
  - (i) has a current capital market services licence; or
  - (ii) has a current banking licence; or

- (iii) is a merchant bank approved as a financial institution;
- (aa) the body is either a body corporate incorporated in Singapore or a partnership formed in Singapore;
- (b) the body:
  - (i) is registered under Division 2 of Part 5B.2 of the Act; or
  - (ii) has not failed for more than the last 10 business days to have an Agent;
- (c) the body's primary business is the provision of financial services;
- (d) neither the body nor its Agent has been notified by ASIC that the body is excluded from relying on this instrument;
- (e) if the body becomes aware or should reasonably have become aware of matters that give it reason to believe that it has failed, other than in an immaterial respect, to comply with a requirement set out in Schedule C:
  - (i) 15 business days have not passed since the body became so aware or should reasonably have become so aware without the body providing full particulars of the failure to ASIC (to the extent that the body knows those particulars or would have known them if it had undertaken reasonable enquiries); and
  - (ii) 30 business days have not passed from ASIC receiving those particulars from the body without ASIC notifying the body that it may continue to rely on this instrument; and
- (f) the body has not notified ASIC that it will not rely on this instrument.

*[Historical note: Sch A amended 17/2/2004 [CO 04/100] by:*

1. in the introductory words replacing 'body corporate' with 'foreign company';
2. inserting new paragraph (aa);
3. in paragraph (b) deleting the words 'is a foreign company incorporated in Singapore that either' after the words 'the body'.

Sch A further amended 17/5/2005 [CO 05/308] by replacing para (e). Para (e) formerly read:

'(e) 10 business days have not elapsed since the body became or should reasonably have become aware of matters that give it reason to believe that it has failed, other than in an immaterial respect, to comply with a requirement set out in Schedule C without full particulars of the failure having been provided to ASIC (to the extent that the body knows those particulars or would have known them if it had undertaken reasonable enquiries) and ASIC having notified the body or its Agent

that the body may continue to rely on this instrument’.

Further amended 28/9/2005 [CO 05/957] by replacing para 1(a) which formerly read ‘(a) the body has a current capital markets services licence’.]

### Schedule B

Where:

1. the body provides any of the following financial services (the *financial services*) in this jurisdiction to wholesale clients:

- (a) providing financial product advice;
- (b) dealing in a financial product;
- (c) making a market for a financial product; or
- (d) providing a custodial or depository service;

in respect of any of the following financial products:

- (e) derivatives;
- (f) foreign exchange contracts;
- (g) securities;
- (h) debentures, stocks or bonds issued by a government;
- (i) interests in a managed investment scheme that is not required to be registered under Chapter 5C of the Act; or
- (j) managed investment products; and

2. the body has provided ASIC with:

- (a) either:
  - (i) a copy of the capital market services licence or banking licence granted to it by MAS; or
  - (ii) evidence that ASIC has stated in writing is adequate that it is a merchant bank approved as a financial institution;
- (b) a notice that it will provide financial services in this jurisdiction in reliance on this instrument;
- (c) a deed of the body for the benefit of and enforceable by ASIC and the other persons referred to in subsection

659B(1) of the Act that applies notwithstanding that the body may have ceased to rely, or never have relied, on this instrument, which deed provides that:

- (i) the deed is irrevocable except with the prior written consent of ASIC;
  - (ii) the body submits to the non-exclusive jurisdiction of the Australian courts in legal proceedings conducted by ASIC (including under section 50 of the ASIC Act) and, in relation to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Act and whether brought in the name of ASIC or the Crown or otherwise;
  - (iii) the body covenants to comply with any order of an Australian court in respect of any matter relating to the provision of the financial services;
  - (iv) if the body is not registered under Division 2 of Part 5B.2 of the Act, service of process on the body in relation to legal proceedings conducted by ASIC (including under section 50 of the ASIC Act) and, in relation to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Act and whether brought in the name of ASIC or the Crown or otherwise can be effected by service on the Agent; and
  - (v) the body covenants that, on written request of either MAS or ASIC, it will give or vary written consent and take all other practicable steps to enable and assist MAS to disclose to ASIC and ASIC to disclose to MAS any information or document that MAS or ASIC has that relates to the body; and
- (d) written consents to the disclosure by MAS to ASIC and ASIC to MAS of any information or document that MAS or ASIC has that relates to the body. The consents must be in such form (if any) as ASIC specifies in writing.

Schedule B amended 28/9/2005 [CO 05/957] by replacing para 2(a) which formerly read '(a) a copy of the capital markets services licence granted to it by MAS'.]

### Schedule C

1. The body must provide each of the financial services in this jurisdiction in a manner which would comply, so far as is possible, with the Singaporean regulatory requirements if the financial service were provided in Singapore in like circumstances.
2. The body must:
  - (a) notify ASIC, as soon as practicable and in such form if any as ASIC may from time to time specify in writing, of the details of:
    - (i) each significant change to, including the termination of, the capital markets services licence, banking licence or approval of the merchant bank as a financial institution applying to the body relevant to the financial services the body provides or intends to provide in this jurisdiction; and
    - (ii) [deleted];
    - (iii) each significant particular exemption or other relief which the body may obtain from the Singaporean regulatory requirements relevant to the financial services the body provides or intends to provide in this jurisdiction; and
    - (iv) [deleted];
  - (aa) notify ASIC by 31 March and 30 September of each year in such form if any as ASIC may from time to time specify in writing:
    - (i) either:
      - (A) of the details of each significant change (a *notifiable regulatory change*) to the Singaporean regulatory requirements (including in the power or authority of MAS to supervise, monitor or procure compliance by the body with the Singaporean regulatory requirements with respect to the provision of the financial services) in the 6 months (the *notification period*) ending on the 15th day of the month by the end of which

- the notification is required that is relevant to the financial services the body provides or intends to provide in this jurisdiction and is not a change that ASIC has stated in writing is not required to be notified for the purpose of this instrument; or
- (B) where there have been no notifiable regulatory changes—that there have been no notifiable regulatory changes; and
- (ii) either:
- (A) of the details of each enforcement or disciplinary action (a ***notifiable regulatory action***) taken by MAS or any other overseas regulatory authority against the body during the notification period; or
- (B) where there have been no notifiable regulatory actions—that there have been no notifiable regulatory actions; and
- (b) provide written disclosure to all persons to whom the financial services are provided in this jurisdiction (before the financial services are provided) containing prominent statements to the following effect:
- (i) the body is exempt from the requirement to hold an Australian financial services licence under the Act in respect of the financial services; and
- (ii) the body is regulated by MAS under Singaporean laws, which differ from Australian laws.

[*Historical note:* Sch C amended 17/2/2004 [CO 04/100] by:

1. in para (b)(ii) replacing ‘financial services are’ with ‘body is’;

2. deleting para (b)(iii) which read:

‘(iii) any offer or other documentation provided in the course of providing the financial services will be prepared in accordance with Singaporean regulatory requirements (and not Australian laws)’.

Sch C further amended 17/5/2005 [CO 05/308] by:

1. deleting para 2(a)(ii) which formerly read ‘each significant change to the Singaporean regulatory requirements (including in the power or authority of MAS to supervise, monitor or procure compliance by the body with the Singaporean

regulatory requirements with respect to the provision of the financial services) that is relevant to the financial services the body provides or intends to provide in this jurisdiction unless ASIC has stated in writing that notice of that change is not required for the purpose of this instrument’;

2. inserting in para 2(a)(iii) the words ‘relevant to the financial services the body provides or intends to provide in this jurisdiction’ after the word ‘requirements’;
3. deleting para 2(a)(iv) which formerly read ‘each enforcement or disciplinary action taken by MAS or any other overseas regulatory authority against the body’;
4. inserting para 2(aa).

Further amended 28/9/2005 [CO 05/957] by replacing in para 2(a)(i) the word ‘licence’ with the words ‘licence, banking licence or approval of the merchant bank as a financial institution’.]

### **Interpretation**

In this instrument:

***address***, in relation to a company, means the address of the registered office of the company;

***Agent*** means a natural person resident in this jurisdiction or a company, whose name and address were last notified to ASIC by the body for the purposes of this instrument, and who is authorised to accept on the body's behalf, service of process from ASIC and, in relation to proceedings relating to a financial services law, from any person referred to in subsection 659B(1) of the Act;

***approval of a merchant bank as a financial institution*** means approval granted by MAS under section 28 of the Monetary Authority of Singapore Act 1970 of Singapore;

[*Historical note:* Defn ‘approval of a merchant bank as a financial institution’ inserted 28/9/2005 [CO 05/957].]

***banking licence*** means a licence granted by MAS under section 7 or section 79 of the *Banking Act 1970* of Singapore;

[*Historical note:* Defn ‘banking licence’ inserted 28/9/2005 [CO 05/957].]

***capital markets services licence*** means a capital markets services licence granted by MAS under section 86 of the SF Act;

***custodial or depository service*** has the meaning given by section 766E of the Act;

***derivative*** has the meaning given by section 761D of the Act;

***financial product advice*** has the meaning given by section 766B of the Act;

*financial services law* has the meaning given by section 761A of the Act;

*foreign exchange contract* has the meaning given by section 761A of the Act;

*making a market* has the meaning given by section 766D of the Act;

*MAS* means the Monetary Authority of Singapore;

*notice* and *notified* mean, respectively, written notice and notified in writing;

*overseas regulatory authority* means a foreign regulatory authority (other than MAS) which regulates financial services and which is established by or for the purposes of a foreign government or legislative body;

*securities* has the meaning given by section 761A of the Act;

*SF Act* means the *Securities and Futures Act 2001* of Singapore;

*Singaporean regulatory requirements* means the rules that apply in relation to the financial services including any applicable legislation, instruments made under that legislation and any relevant policies or other documents (however described) issued by MAS; and

*wholesale client* has the meaning given in section 761G of the Act.

Note: By subsection 761H(1) of the Act, the operation of this instrument in relation to partnerships is affected by section 761F and subsection 769B(4) of the Act.

[*Historical note:* Note inserted 17/2/2004 [CO 04/100].]

### **Commencement**

This instrument takes effect on gazettal.

Dated this 22nd day of December 2003

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