

# ASIC Class Order [CO 04/671]

## Disclosure for on-sale of securities and other financial products

*Issued 1/7/2004  
Effective 1/7/2004*

*Related document: [PS 188]*

*Class Order [CO 04/671] provides relief from the on-sale provisions of the Corporations Act ( s707(3) and (4) and s1012C(6) and (7)) for the on-sale of financial products in relation to:*

- *certain stapled securities; and*
- *financial products that were issued to persons under certain statutory or ASIC class order exemptions from disclosure requirements.*

This instrument has effect under s741(1) of the *Corporations Act 2001*.

This compilation was prepared on 23 June 2009 taking into account amendments up to [CO 09/462]. See the table at the end of this class order.

Prepared by the Australian Securities and Investments Commission.

### **Australian Securities and Investments Commission Corporations Act 2001 — Subsections 741(1) and 1020F(1) — Declaration and Revocation**

#### **Securities**

Under subsection 741(1) of the *Corporations Act 2001* (the *Act*) the Australian Securities and Investments Commission (*ASIC*) declares that Chapter 6D applies to the class of persons specified in Schedule A in the case specified in Schedule C as if section 707 were modified or varied by omitting subsections 707(3) and (4) and substituting:

- “(3) An offer of a body’s securities for sale within 12 months after their issue needs disclosure to investors under this Part if the body issued the securities:
- (a) without disclosure to investors under this Part; and
  - (b) with the purpose of the person to whom they were issued:
    - (i) selling or transferring them; or
    - (ii) granting, issuing or transferring interests in, or options or warrants over, them;

and section 708 or 708A does not say otherwise.

- (4) Unless the contrary is proved, a body is taken to issue securities with the purpose referred to in paragraph 3(b) if any of the securities are subsequently sold, or offered for sale, within 12 months after their issue.”.

### Managed investment products

And under subsection 1020F(1) ASIC declares that Part 7.9 applies in relation to the classes of persons specified in Schedules A and B in the case specified in Schedule C as if section 1012C were modified or varied by omitting subsections 1012C(6) and (7) and substituting:

“(6) This subsection covers the circumstances in which:

- (a) the offer is made within 12 months after the issue of the financial product;
  - (b) the product was issued without a Product Disclosure Statement for the product being prepared; and
  - (c) the issuer issued the product with the purpose of the person to whom it was issued selling or transferring the product, or granting, issuing or transferring interests in, or options or warrants over, the product.
- (7) Unless the contrary is proved, financial products are taken to be issued with the purpose referred to in paragraph 6(c) if any of the products are subsequently sold, or offered for sale, within 12 months after their issue.”.

### Stapled securities

And under subsections 741(1) and 1020F(1) ASIC declares that:

- (a) Chapter 6D applies to all persons as if section 708A were modified or varied by inserting after subsection (12):

“(13) In this section, if under the terms on which a security (the *component security*) is traded on a prescribed financial market it can only be transferred together with one or more other securities or other financial products (together the *stapled security*) then:

- (a) the component security is taken to be in a class of quoted securities that is different from any other class of quoted securities it is in, or is taken to be in, when at any other time it is able to be transferred on that market by itself or as part of a different stapled security; and

- (b) trading in the class of quoted securities that the component security is taken to be in on the market is taken to be suspended when trading in the class of stapled securities on the market is suspended.”.
- (b) Part 7.9 applies in relation to all persons as if section 1012DA were modified or varied by inserting after subsection (12):
- “(13) In this section, if under the terms on which a financial product (the *component product*) is traded on a prescribed financial market it can only be transferred together with one or more securities or other financial products (together the *stapled security*) then:
- (a) the component product is taken to be in a class of quoted securities that is different from any other class of quoted securities it is in, or is taken to be in, when at any other time it is able to be transferred on the market by itself or as part of a different stapled security; and
- (b) trading in the class of quoted securities that the component product is taken to be in on the market is taken to be suspended when trading in the class of stapled securities on the market is suspended.”.

[*Historical note:* Paragraphs (a) and (b) under the heading “Stapled securities” replaced 16/5/2008. Paragraphs (a) and (b) formerly read:

‘(a) Chapter 6D applies to all persons as if section 708A were modified or varied by adding after subsection (12):

“(13) In this section, if at any time under the terms on which a security (the *component security*) is traded on a prescribed financial market it can only be transferred together with one or more other securities or other financial products (together the *stapled security*) then in relation to that time:

- (a) the component security is taken to be in a class of quoted securities that is different from any other class of quoted securities to which the component security belongs at any other time;
- (b) the component security is taken to be suspended from trading on the prescribed financial market on which it was quoted when trading in the class of stapled securities on that prescribed financial market is suspended.”.

(b) Part 7.9 applies in relation to all persons as if section 1012DA were modified or varied by adding after subsection 1012DA(12):

“(13) In this section, if at any time under the terms on which a financial product (the *component product*) is traded on a prescribed financial market it can only be transferred together with one or more securities or other financial products (together the *stapled security*) then:

- (a) the component product is taken to be in a class of quoted securities that is different from any other class of quoted securities to which the component product belongs at any other time; and
- (b) the component product is taken to be suspended from trading on the prescribed financial market on which it was quoted when trading in the class of stapled securities on that prescribed financial market is suspended.”.]

## **Revocation (Transitional)**

And under subsections 741(1) and 1020F(1) ASIC revokes Class Order [CO 02/1180] with effect from 1 July 2005.

### **Schedule A**

Any person who makes an offer of a body's securities or managed investment products (*products*) for sale of the kind referred to in Schedule C.

### **Schedule B**

Any person who makes a recommendation to acquire products of the kind referred to in Schedule C by way of transfer.

### **Schedule C**

This Class Order applies only to an offer of securities or products for sale where those securities or products are:

- (a) issued by the body (the *Issuer*) or responsible entity (the *Issuer*) on or after 1 July 2004; and
- (b) covered by at least one of the categories of relief set out in Schedule D.

### **Schedule D**

#### **Category 1: Employee share schemes**

- (1) The securities or products were issued without disclosure to investors under Part 6D.2 or without a Product Disclosure Statement for the product being prepared, as is applicable, because the Issuer relied on one or more of:
  - (a) ASIC Class Order [CO 03/184] or ASIC Class Order [CO 05/1270] to the extent that it relates to ASIC Class Order [CO 03/184]; or
  - (b) an individual instrument of relief granted by ASIC to the Issuer which provided relief from Part 6D.2 or Part 7.9 with respect to an employee share scheme, or a like scheme, in terms similar to ASIC Class Order [CO 03/184]; or
- (2) The securities or products were issued by reason of the exercise of options issued or granted:
  - (a) without disclosure to investors under Part 6D.2 or without a Product Disclosure Statement for the options being prepared, as is applicable, because the Issuer relied upon any one or

more of the instruments of relief referred to in paragraph (1) above; or

- (b) without a prospectus under Division 2 of Part 7.12 of the old Corporations Law because the Issuer relied upon any one or more former instruments of relief which correspond to an instrument of relief referred to in paragraph (1) above.

*[Historical note: Schedule D amended 2/3/2007 [CO 07/42] by replacing the text under the heading 'Category 1: Employee share schemes'. The text formerly read:*

- '(1) The securities were issued without disclosure to investors under Part 6D.2 because the Issuer relied upon any one or more of:
  - (a) ASIC Class Orders [CO 00/220], [CO 00/223], [CO 02/264] or [CO 03/184]; or
  - (b) an individual instrument of relief granted by ASIC to the Issuer which provided relief from Part 6D.2 with respect to an employee share scheme, or a like scheme, in terms similar to one of those Class Orders; or
- (2) The securities were issued by reason of the exercise of options issued or granted:
  - (a) without disclosure to investors under Part 6D.2 because the Issuer relied upon any one or more of the instruments of relief referred to in paragraph (1) above; or
  - (b) without a prospectus under Division 2 of Part 7.12 of the old Corporations Law because the Issuer relied upon any one or more former instruments of relief which correspond to an instrument of relief referred to in paragraph (1) above. '

### **Category 2: Share purchase plans and interest purchase plans**

The securities or products were issued without disclosure to investors under Part 6D.2 or without a Product Disclosure Statement for the product being prepared, as is applicable, because the Issuer relied upon any one or more of:

- (1) ASIC Class Orders [CO 00/194], [CO 02/831], [CO 02/832] or [CO 09/425]; or
- (2) an individual instrument of relief granted by ASIC to the Issuer which provided relief from Part 6D.2 or Part 7.9 with respect to a share purchase plan or a like plan in terms similar to one of those Class Orders.

*[Historical note: Schedule D amended 18/6/2009 [CO 09/465] by inserting reference to [CO 09/425 in subparagraph (1) under the heading 'Category 2: Share purchase plans and interest purchase plans'.]*

### **Category 3: Options, convertible securities or products etc**

- (1) The securities or products were issued by reason of the exercise of options or the conversion of convertible notes, converting notes, convertible preference shares or converting preference shares; and
- (2) those options, convertible or converting securities or products were issued with disclosure to investors under Part 6D.2, under a prospectus under Division 2 of Part 7.12 of the old Corporations Law or with a Product Disclosure Statement for the product being prepared, as is applicable; and

- (3) the exercise of the option, or the conversion, did not involve any further offer.

#### **Category 4: Dividend or distribution reinvestment or bonus plans**

The securities or products were issued without disclosure to investors under Part 6D.2 or without a Product Disclosure Statement for the product being prepared, as is applicable, because subsections 708(13) or 1012D(3) applied.

#### **Category 5: Compromises and arrangements**

The securities or products were issued without disclosure to investors under Part 6D.2 or without a Product Disclosure Statement for the product being prepared, as is applicable, because:

- (1) subsection 708(17) applied; or
- (2) the Issuer relied on ASIC Class Order [CO 07/9].

*[Historical note: Schedule D amended 2/3/2007 [CO 07/42] by replacing the text under the heading 'Category 5: Compromises and arrangements'. The text formerly read:*

*'The securities were issued without disclosure to investors under Part 6D.2 because subsection 708(17) applied.'*]

#### **Category 6: Takeovers**

The securities or products were issued without disclosure to investors under Part 6D.2 or without a Product Disclosure Statement for the product being prepared, as is applicable, because:

- (1) subsections 708(18) or 1012D(7) applied; or
- (2) the Issuer relied on ASIC Class Order [CO 09/68].

*[Historical note: Schedule D amended 23/6/2009 [CO 09/69] by replacing the text under the heading 'Category 6: Takeovers'. The text formerly read:*

*'The securities or products were issued without disclosure to investors under Part 6D.2 or without a Product Disclosure Statement for the product being prepared, as is applicable, because subsections 708(18) or 1012D(7) applied.'*]

#### **Category 7: Securities of exempt public authorities**

The securities were issued without disclosure to investors under Part 6D.2 because subsection 708(21) applied.

#### **Category 8: Executive officers — transitional relief**

- (1) The securities or products are in a class of quoted securities of a body listed on the financial market operated by ASX Limited; and
- (2) there is a completed contract for the issue of the securities or products; and

- (3) the securities or products were issued after 11 December 2002 by reason of the exercise of options issued or granted on or before 29 November 2002 without:
- (a) disclosure to investors under Part 6D.2 because subsection 708(12) applied; or
  - (b) a prospectus under Division 2 of Part 7.12 of the old Corporations Law because paragraph 66(3)(e) of that old Law applied.

[*Historical note:* Schedule D amended 23/6/2009 [CO 09/69] by replacing the term 'the ASX;' with the term 'ASX Limited;' under the heading 'Category 8: Executive officers — transitional relief'.]

### Interpretation

In this instrument:

1. (deleted)
2. **completed contract** means a contract where consideration for the issue of the securities or products has been fully paid;
3. **old Corporations Law** means the Corporations Law as in force from time to time before 13 March 2000;
4. the references to **managed investment products** and **products** in Schedules A to C and Category 6 of Schedule D include references to interests in managed investment schemes (that are not managed investment products) where paragraph (2) of that category applies;
5. references to a person offering securities or products includes a reference to the person inviting applications for the securities or products; and
6. except where otherwise stated, references to provisions are references to provisions of the Act.

[*Historical note:* Interpretation amended 23/6/2009 [CO 09/69] by:

- deleting paragraph 1. Paragraph 1 formerly read:  
'1. **ASX** means Australian Stock Exchange Limited;'; and
- replacing paragraph 4. Paragraph 4 formerly read:  
'4. **products** means managed investment products; and' .]

### Commencement

This instrument commences on 1 July 2004.

Dated this 1st day of July 2004

Signed by Brendan Byrne

as a delegate of the Australian Securities and Investments  
Commission

## Notes to ASIC Class Order [CO 04/671]

### Note 1

ASIC Class Order [CO 04/671] (in force under s741(1) of the *Corporations Act 2001*) as shown in this compilation comprises that Class Order amended as indicated in the Tables below.

### Table of Instruments

Instrument number	Date of making or FRLI registration	Date of commencement	Application, saving or transitional provisions
[CO 04/671]	1/7/2004	1/7/2004	-
[CO 07/42]	2/3/2007	2/3/2007	-
[CO 08/171]	12/5/2008	16/5/2008	-
[CO 09/465]	18/6/2009	18/6/2009	-
[CO 09/69]	18/6/2009	23/6/2009	-

### Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
Paras (a) and (b) under the heading 'Stapled securities'.	rs. [CO 08/171]
Sch D	am. [CO 07/42]; am [CO 09/69]; am. [CO 09/465]
Interpretation	am. [CO 09/69]