

[CO 06/682] Multiple derivative issuers

Issued 14/12/2006

Registered on Federal Register of Legislative Instruments 21/12/2006

Effective 21/12/2006 (date of registration)

Related documents: [IR 06/43]

Class Order [CO 06/682] modifies the requirement to prepare a Product Disclosure Statement (PDS), and the PDS content requirements, where s761E(6) of the Act deems more than one licensee to be the issuer of an exchange traded derivative. The class order places the obligation for preparing the PDS on the market participant that enters the derivative on market, and relieves the market participant from some of the PDS content requirements to the extent that those requirements relate only to another licensee that is also an issuer of the derivative and the information is otherwise available from that licensee.

Australian Securities and Investments Commission Corporations Act 2001 — Paragraph 1020F(1)(c) — Declaration

Enabling provision

1. The Australian Securities and Investments Commission makes this declaration under paragraph 1020F(1)(c) of the *Corporations Act 2001* (the *Act*).

Title

2. This instrument is ASIC Class Order [CO 06/682].

Commencement

3. This instrument commences on the date it is registered under the *Legislative Instruments Act 2003*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (*FRLI*) in electronic form: see *Legislative Instruments Act 2003*, s 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

Declaration

4. Part 7.9 of the Act applies in relation to a person who is a market participant and a person who is an intermediary licensee as if provisions of that Part were modified or varied as follows:

Main modifications

- (a) in section 1013A insert after subsection (4):

“(5) A Product Disclosure Statement for a derivative:

- (a) that is entered into, or acquired, on a financial market (the *relevant market*); and
- (b) in relation to which both of the following are, because of subsection 761E(6), taken to be the issuer:
 - (i) a financial services licensee (the *intermediary licensee*) who is not a participant in the relevant market; and
 - (ii) another financial services licensee (the *market participant*) who is a participant in the relevant market;

may be a document that has only been prepared by the market participant.

- (6) If a Product Disclosure Statement is covered by subsection (5), the market participant is, in this Division, referred to as the *responsible person* for the financial product.”; and

- (b) in section 1013D insert after subsection (4):

“(5) If the Product Disclosure Statement is covered by subsection 1013A(5), the Statement does not have to include any statement or information that would not be required by subsection (1) if the financial product to which the Statement relates were only issued by the responsible person for the product, provided it includes statements to the effect that:

- (a) a person may enter (make an *intermediary acquisition*) or acquire (make an *intermediary acquisition*) the derivative to which the Statement relates as a result of an arrangement made by an intermediary licensee (within the meaning of subsection 1013A(5)) or their authorised representative; and
- (b) a person who makes an intermediary acquisition may not have any direct contact or relationship with the market participant; and
- (c) where a person has made an intermediary acquisition of the derivative:
 - (i) there may be additional risks associated with holding the derivative; and

- (ii) additional fees and costs may apply; and
- (iii) additional rights, terms, conditions and obligations may attach to the derivative; and
- (iv) the person will have access to a dispute resolution system maintained by the intermediary licensee that covers complaints made by holders of the derivative; and
- (d) further information about the matters mentioned in paragraph (c) may be obtained from the intermediary licensee.”; and

Consequential modifications

- (c) in Subdivision B of Division 2 insert after section 1012K:

“1012L Obligation to give retail client information about intermediary licensee in relation to issue of derivative

Where a person (the *client*) is given a Product Disclosure Statement or Short-Form PDS for a derivative that is covered by subsection 1013A(5) the intermediary licensee (within the meaning of subsection 1013A(5)) that is taken to be an issuer of the derivative must ensure that the client is given, in writing, the statements and information that would have been required by subsection 1013D(1) but for subsection 1013D(5) at or before the time when:

- (a) the intermediary licensee offers to issue, offers to arrange for the issue of, or makes a recommendation to acquire, the derivative to the client; or
- (b) the derivative is issued under such an offer or as a result of such a recommendation;

if, at the relevant time, the client has not already been given such statements and information.

Note 1: The intermediary licensee may be required to give a Financial Services Guide to a person as a retail client. If the intermediary licensee is giving a Financial Services Guide to the client, the information required by this section may be included in the Financial Services Guide.

Note 2: Subsection 1013A(5) may cover a Short-Form PDS for a derivative because of section 1017K (see Part 3 of Schedule 10BA to the *Corporations Regulations 2001*).”; and

- (d) in section 1013A:
 - (i) in subsection (1) omit “A”, substitute “Subject to

subsection (5), a”; and

- (ii) in subsection (3) omit “The”, substitute “Subject to subsection (6), the”; and
- (e) in section 1013E, omit “product.”, substitute “product if it was only issued by the responsible person for the product.”; and
- (f) in section 1017I set out in Part 3 of Schedule 10BA to the *Corporations Regulations 2001*, insert after subsection (2):

“(2A) If the Short-Form PDS:

- (a) is for a derivative and is covered by subsection 1013A(5);
- (b) contains for the purposes of paragraph (1)(a) a summary of a Product Disclosure Statement from which any statement or information has been omitted in accordance with subsection 1013D(5);

the Short-Form PDS must also set out statements to the effect of those referred to in paragraphs 1013D(5)(a) to (d).

Note: Subsection 1013A(5) may cover a Short-Form PDS for a derivative because of section 1017K (see Part 3 of Schedule 10BA to the *Corporations Regulations 2001*).”.

Where relief applies

5. The relief contained in paragraph 4 only applies in relation to an intermediary licensee and a market participant who have entered into a written agreement in relation to a particular derivative (the **relevant derivative**) under which the intermediary licensee agrees to take reasonable steps to ensure that a person to whom the intermediary licensee:

- (a) offers to issue the relevant derivative; or
- (b) offers to arrange for the issue of the relevant derivative; or
- (c) makes a recommendation to acquire the relevant derivative;

as a retail client is given:

- (d) a document that includes the statements and information referred to in section 1012L of the Act set out in subparagraph 4(c); and

- (e) a Product Disclosure Statement or Short-Form PDS for the relevant derivative that has been prepared by the market participant.

Interpretation

- 6. In this instrument:

intermediary licensee has the same meaning as in subsection 1013A(5) of the Act as set out in subparagraph 4(a).

issue has a meaning affected by section 761E of the Act.

market participant has the same meaning as in subsection 1013A(5) of the Act as set out in subparagraph 4(a).

retail client has the meaning given by section 761G of the Act.

Short-Form PDS has the meaning given by section 761A of the Act (as affected by subregulation 7.9.61AA(1) of the *Corporations Regulations 2001*).

Dated this 14th day of December 2006

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