

# [CO 07/10] Technical disclosure relief for reconstructions and capital reductions

*Issued 21/2/2007*

*Registered on Federal Register of Legislative Instruments 2/3/2007*

*Effective 2/3/2007 (date of registration)*

*Related documents: [IR 07/8], [PS 188]*

*Class Order [CO 07/10] grants relief from certain technical requirements of the prospectus and PDS provisions when there is an offer of securities or financial products made in conjunction with a reconstruction or capital reduction.*

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

## Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under subsections 741(1) and 1020F(1) of the *Corporations Act 2001* (the *Act*).

## Title

2. This instrument is ASIC Class Order [CO 07/10].

## 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/>.

## Exemptions

*Disclosure documents—application form relief*

4. A person does not have to comply with subsection 723(1) or 734(2) of the Act where the person makes or proposes to make an offer of securities for issue or sale that is either:
  - (a) made under a compromise (the *reconstruction*) or arrangement (the *reconstruction*) to which either of the following applies:

- (i) the reconstruction:
    - (A) is between a foreign company and its members or any class of them; and
    - (B) is regulated by or under a law that is in force in or in a part of an eligible foreign country;
  - (ii) the reconstruction relates to a registered scheme and is between the responsible entity of the scheme and the members of the scheme or any class of them; or
- (b) a capital reduction offer where consideration is to be provided for the issue or transfer of the securities.
5. A person may only rely on the exemption from subsection 734(2) in paragraph 4 in relation an advertisement or publication that is covered by paragraph 6 or 7.
6. Where the advertisement or publication is published before the disclosure document for the offer of securities to which it relates is lodged, the advertisement or publication:
- (a) if the offer is of securities in a class already quoted—includes a statement that a disclosure document for the offer will be made available when the securities are offered; and
  - (b) in any other case—contains the following but nothing more:
    - (i) a statement that identifies the offeror and the securities;
    - (ii) a statement that a disclosure document for the offer will be made available when the securities are offered;
    - (iii) a statement of how to arrange to receive a copy of the disclosure document.

To satisfy paragraph (b), the advertisement or publication must include all of the statements referred to in subparagraphs (i) and (ii). It may include the statement referred to in subparagraph (iii).

7. Where the advertisement or publication is published after the disclosure document for the offer of securities to which it relates is lodged, the advertisement or publication includes a statement that the offers of the securities will be made in, or accompanied by, a copy of the disclosure document.

*Product Disclosure Statements—application form relief*

8. A person does not have to comply with subsection 1016A(2) of the Act in relation to an issue or sale of a financial product that results from an offer of the financial product that is either:
  - (a) made under a reconstruction; or
  - (b) a capital reduction offer where consideration is to be provided for the issue or transfer of the product.

**Modification of Part 7.9**

9. Part 7.9 of the Act applies in relation to a financial product that is being offered under a reconstruction or is the subject of a capital reduction offer as if the provisions in that Part were omitted, modified or varied as follows:
  - (a) omit subsection 1013B(1); and
  - (b) in section 1015C, insert after subsection (5):
    - “(6) For the purpose of subparagraph (1)(a)(ii) and for the avoidance of doubt, where a Statement is in or accompanies a notice of meeting of members of a company, foreign company or registered scheme, each member of the company or scheme is taken to have nominated the address shown in:
      - (a) in the case of a company or registered scheme—the register of members maintained by the company or responsible entity of the scheme under Chapter 2C; or
      - (b) in the case of a foreign company—the register of members (however described) kept by the company under the law of its place of origin.”.

**Interpretation**

10. In this instrument:

*capital reduction offer* means an offer of securities or other financial products that is made to the members of a body in connection with a proposed reduction of the share capital of the body where the members are asked to vote on a resolution to the effect that the body reduce its share capital in accordance with:

- (a) where the body is a company—Division 1 of Part 2J.1 of the Act; or

- (b) otherwise—a law that is in force in or in a part of an eligible foreign country.

*eligible foreign country* means:

- (a) in relation to a reconstruction—each of the following:
  - (i) Canada;
  - (ii) France;
  - (iii) Germany;
  - (iv) Italy;
  - (v) Japan;
  - (vi) The Netherlands;
  - (vii) Switzerland;
  - (viii) United States of America; and
- (b) in relation to a capital reduction offer—each country mentioned in paragraph (a) and each of the following:
  - (i) Hong Kong;
  - (ii) Malaysia;
  - (iii) New Zealand;
  - (iv) Singapore;
  - (v) South Africa;
  - (vi) United Kingdom.

Note: The jurisdictions listed in paragraph 10(b) are not an eligible foreign country for the purposes of a reconstruction because ASIC Class Order [CO 07/9] provides an exemption from the obligation to provide a disclosure document or Product Disclosure Statement for offers of securities and financial products respectively in reconstructions made under the laws of those jurisdictions.

*issue*, in paragraph 5, has a meaning affected by section 761E of the Act.

*offer*:

- (a) in paragraph 4, has a meaning affected by section 700 of the Act;

(b) in paragraphs 8 and 9, has a meaning affected by sections 1010C and 1011C of the Act.

*sale*, in paragraph 8, has a meaning affected by section 1010C of the Act.

Dated this 21st day of February 2007

Signed by Stephen Yen, PSM  
as a delegate of the Australian Securities and Investments  
Commission