

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

Enabling provision

1. The Australian Securities and Investments Commission makes this instrument under paragraph 911A(2)(l) of the *Corporations Act 2001*.

Title

2. This instrument is ASIC Class Order [CO 05/308].

Commencement

3. This instrument commences on the later of:
 - (a) the date of its gazettal; and
 - (b) 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 www.frli.gov.au.

Variation

4. ASIC Class Orders [CO 03/1099], [CO 03/1100], [CO 03/1101], [CO 03/1102], [CO 03/1103], [CO 04/829] and [CO 04/1313] are varied as follows:
 - (a) in Schedule A of ASIC Class Orders [CO 03/1099], [CO 03/1100], [CO 03/1101], [CO 03/1102] and [CO 03/1103] omit paragraph (e), substitute:
 - “(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”;

- (b) in Schedule A of ASIC Class Orders [CO 04/829] and [CO 04/1313] omit paragraph (f), substitute:
- “(f) 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”;
- (c) in Schedule C of ASIC Class Orders [CO 03/1099], [CO 03/1100], [CO 03/1102], [CO 03/1103], [CO 04/829] and [CO 04/1313]:
- (i) at the end of subparagraph 2(a)(i) add “and”;
- (ii) omit subparagraph 2(a)(ii);
- (iii) in subparagraph 2(a)(iii) omit “requirements;”, substitute “requirements relevant to the financial services the body provides or intends to provide in this jurisdiction;”; and
- (iv) omit subparagraph 2(a)(iv);
- (d) in Schedule C of ASIC Class Order [CO 03/1101] omit subparagraph 2(a), substitute:
- “(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 each significant particular exemption or other relief which the body obtains from the US regulatory requirements relevant to the financial services the body provides or intends to provide in this jurisdiction; and”;
- (e) in Schedule C of ASIC Class Order [CO 03/1099], insert after subparagraph 2(a):
- “(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 UK regulatory requirements (including in the power or authority of the FSA to supervise, monitor or procure compliance by the body with the UK 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 the FSA 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”;
- (f) in Schedule C of ASIC Class Order [CO 03/1100], insert after subparagraph 2(a):
 - “(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 US regulatory requirements (including in the power or authority of the SEC to supervise, monitor or procure compliance by the body with the US 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 the SEC 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”;

- (g) in Schedule C of ASIC Class Order [CO 03/1101], insert after subparagraph 2(a):

“(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 US regulatory requirements (including in the power or authority of the Federal Reserve (if the body is covered by subparagraph (a)(i) or (iii) of Schedule A) or the OCC (if the body is covered by subparagraph (a)(ii) of Schedule A) to supervise, monitor or procure compliance by the body with the US 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 the Federal Reserve, the OCC 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”;
- (h) in Schedule C of ASIC Class Order [CO 03/1102], insert after subparagraph 2(a):
- “(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”;
- (i) in Schedule C of ASIC Class Order [CO 03/1103], insert after subparagraph 2(a):

“(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 HK regulatory requirements (including in the power or authority of the SFC to supervise, monitor or procure compliance by the body with the HK 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 the SFC 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”;

(j) in Schedule C of ASIC Class Order [CO 04/829], insert after subparagraph 2(a):

“(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 US regulatory requirements (including in the power or authority of the CFTC to supervise, monitor or procure compliance by the body with the US 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 the CFTC 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”; and

(k) in Schedule C of ASIC Class Order [CO 04/1313], insert after subparagraph 2(a):

“(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 German regulatory requirements (including in the power or authority of BaFin to supervise, monitor or procure compliance by the body with the German 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 BaFin 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”.

Dated this 12th day of May 2005

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