

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

Enabling legislation

1. The Australian Securities and Investments Commission (*ASIC*) 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 07/428].

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/>.

Modification of section 716

4. Chapter 6D of the Act applies to a person who offers securities under a disclosure document as if section 716 were modified or varied by:
 - (a) in subsection (2) omitting “A” (first occurring) and substituting:

“Subject to this section, a”;

and
 - (b) after subsection (2) inserting the following:

“Inclusion of credit ratings without consent

 - (3) A disclosure document may include a credit rating reference without meeting the requirements of subsection (2) where all of the following apply:
 - (a) the disclosure document is for an offer of:
 - (i) shares (*ADI equities*) in an Australian ADI or units (*ADI equities*) of, or options (*ADI equities*) to acquire by way of issue, shares in an Australian ADI; or
 - (ii) debentures of a body; or
 - (iii) redeemable preference shares in a body;
 - (b) the credit rating to which the credit rating reference relates is:
 - (i) issued by one of the following:

- (A) Moody's Investors Service Pty Limited ACN 003 399 657;
- (B) Standard & Poor's (Australia) Pty Limited ACN 007 324 852;
- (C) Fitch Australia Pty Limited ACN 081 339 184;
- (D) Rapid Ratings Pty Limited ACN 096 967 485,

(each a *credit rating agency*); and

- (ii) information that investors and their professional advisers would reasonably require to make an informed assessment of:

- (A) where the disclosure document is for an offer of debentures or redeemable preference shares:

- (I) the ability of the issuer of the securities to meet its obligations under the securities; or
- (II) the creditworthiness of the issuer of the securities; or

- (B) where the disclosure document is for an offer of ADI equities—the creditworthiness of the Australian ADI to which the ADI equities relate;

- (c) the disclosure document:

- (i) sets out, close to the credit rating reference:

- (A) the name of the credit rating agency that issued the credit rating to which the credit rating reference relates; and
- (B) a statement that the credit rating is current; and
- (C) a statement that the credit rating reference is not a recommendation by the credit rating agency to apply for the securities offered under the disclosure document; and
- (D) a statement that the credit rating agency may revise or withdraw the credit rating at any time; and
- (E) a statement that the credit rating agency has not consented to the use of the credit rating reference in the disclosure document; and

- (ii) includes credit rating references for all current credit ratings known to the person offering the securities of the kind referred to in paragraph (b).

If the disclosure document includes more than one credit rating reference that relates to the same credit rating subparagraph (c)(i) only has to be complied with in relation to the first occurring reference provided that it is apparent that the subsequent references are from the same source.

Inclusion of historical geological data without consent

- (4) A disclosure document may include a historical geological report reference without meeting the requirements of subsection (2) where all of the following apply:
- (a) the historical geological report reference is included in a geological report (the *current report*) set out in the disclosure document;
 - (b) the report (the *previous report*) to which the historical geological report reference relates is available for inspection or acquisition by any person, with or without payment of a fee, at or from:
 - (i) a governmental department, authority or agency of an Australian State or Territory or of the Commonwealth; or
 - (ii) ASX Limited;
 - (c) the previous report was not prepared in connection with the offer of securities under the disclosure document;
 - (d) the previous report was not prepared or commissioned by a person:
 - (i) with whom the person offering securities, or an associate, has shared an interest in a tenement that is covered by the current report; or
 - (ii) from whom the person offering securities, or an associate, has purchased the tenement; or
 - (iii) where the person offering securities is not the issuer:
 - (A) with whom the issuer, or an associate, has shared an interest in a tenement that is covered by the current report; or
 - (B) from whom the issuer, or an associate, has purchased the tenement; or
 - (iv) who is or is an associate of:
 - (A) the person offering the securities; or
 - (B) where the person offering the securities is not the issuer—the issuer; or
 - (v) where the securities are a legal or equitable right or interest in a share or a debenture:

- (A) who is the issuer of the share or debenture, or an associate;
or
 - (B) with whom the issuer of the share or debenture, or an associate, has shared an interest in a tenement that is covered by the current report; or
 - (C) from whom the issuer of the share or debenture, or an associate, has purchased the tenement;
- (e) the current report states, close to the historical geological report reference:
- (i) the name of the person who prepared the previous report; and
 - (ii) that the person who prepared the previous report has not consented to the use of the historical geological report reference in the disclosure document.

If the current report includes more than one historical geological report reference which relates to the previous report, paragraph (e) only has to be complied with in relation to the first occurring reference provided that it is apparent that the subsequent references are from the same source.

Inclusion of trading data without consent

- (5) A disclosure document may include a trading data reference without meeting the requirements of subsection (2) where both of the following apply:
- (a) the trading data to which the trading data reference relates reflects trading on a prescribed financial market or on any of the following financial markets:
 - (i) American Stock Exchange;
 - (ii) Borsa Italiana;
 - (iii) Bursa Malaysia Main Board and Bursa Malaysia Second Board;
 - (iv) Chicago Board of Trade;
 - (v) Euronext Amsterdam;
 - (vi) Euronext.liffe;
 - (vii) Euronext Paris;
 - (viii) Frankfurt Stock Exchange;
 - (ix) Hong Kong Stock Exchange;
 - (x) ICE Futures;
 - (xi) JSE;
 - (xii) Kansas City Board of Trade;
 - (xiii) London Metal Exchange;

- (xiv) London Stock Exchange;
- (xv) NASDAQ Stock Market;
- (xvi) New York Board of Trade (including the New York Futures Exchange);
- (xvii) New York Mercantile Exchange (including COMEX);
- (xviii) New York Stock Exchange;
- (xix) New Zealand Exchange;
- (xx) Philadelphia Stock Exchange (including the Philadelphia Board of Trade);
- (xxi) Singapore Exchange;
- (xxii) SWX Swiss Exchange;
- (xxiii) Tokyo Stock Exchange;
- (xxiv) Toronto Stock Exchange;

(b) the disclosure document states, close to the trading data reference:

- (i) the name of the person who prepared the trading data; and
- (ii) that the person who prepared the trading data has not consented to the use of the trading data reference in the disclosure document.

If the disclosure document includes more than one trading data reference relating to trading data prepared by the same person, paragraph (b) only has to be complied with in relation to the first occurring reference provided it is apparent that the subsequent references are from the same source.

(6) In this section:

credit rating means a statement, opinion or research dealing with:

- (a) the creditworthiness of a body; or
- (b) the ability of an issuer of securities to meet its obligations under the securities.

credit rating reference means a copy of, or extract from, or accurate representation of, a credit rating.

geological report means a report dealing with the estimation, assessment or evaluation of a geological resource that has been prepared by a person who:

- (a) is a Member or Fellow of:

- (i) the Australian Institute of Mining and Metallurgy; or
 - (ii) the Australian Institute of Geoscientists; and
- (b) has not less than five years' experience relevant to the estimation, assessment and evaluation of geological resources of the same kind.

historical geological report reference means a copy of, or extract from, or accurate representation of, a geological report.

trading data means quantitative data on the prices at which financial products are traded and the volume of that trading.

trading data reference means a copy of, or extract from, accurate representation or analysis of, trading data.”.

Modification of section 1013K

5. Part 7.9 of the Act applies in relation to a responsible person as if section 1013K were modified or varied by:

- (a) in subsection 1013K(1) omitting “A” (first occurring) and substituting:

“Subject to this section, a”; and

- (b) after subsection 1013K(2) inserting the following subsections:

“Inclusion of credit ratings without consent

- (3) A Product Disclosure Statement may include a credit rating reference without meeting the requirements of subsection (1) where all of the following apply:

- (a) the Product Disclosure Statement is for an offer of financial products that are ADI equities warrants;

- (b) the credit rating to which the credit rating reference relates is:

- (i) issued by one of the following:

(A) Moody’s Investors Service Pty Limited ACN 003 399 657;

(B) Standard & Poor’s (Australia) Pty Limited ACN 007 324 852;

(C) Fitch Australia Pty Limited ACN 081 339 184;

(D) Rapid Ratings Pty Limited ACN 096 967 485,

(each a *credit rating agency*); and

- (ii) information that a person would reasonably require to make an informed assessment, as a retail client, of the creditworthiness of the Australian ADI to which the ADI equities warrants relate.
- (c) the Product Disclosure Statement:
- (i) sets out, close to the credit rating reference:
 - (A) the name of the credit rating agency that issued the credit rating to which the credit rating reference relates; and
 - (B) a statement that the credit rating is current; and
 - (C) a statement that the credit rating reference is not a recommendation by the credit rating agency to apply for the ADI equities warrants offered under the Statement; and
 - (D) a statement that the credit rating agency may revise or withdraw the credit rating at any time; and
 - (E) a statement that the credit rating agency has not consented to the use of the credit rating reference in the Statement; and
 - (ii) includes credit rating references for all current credit ratings known to the person offering the ADI equities warrants of the kind referred to in paragraph (b).

If the Statement includes more than one credit rating reference that relates to the same credit rating, subparagraph (c)(i) only has to be complied with in relation to the first occurring reference provided it is apparent that the subsequent references are from the same source.

Inclusion of historical geological data without consent

- (4) A Product Disclosure Statement may include a historical geological report reference without meeting the requirements of subsection (1) where all of the following apply:
- (a) the historical geological report reference is included in a geological report (the ***current report***) set out in the Statement;
 - (b) the report (the ***previous report***) to which the historical geological report reference relates is available for inspection or acquisition by any person, with or without payment of a fee, at or from:
 - (i) a governmental department, authority or agency of an Australian State or Territory or of the Commonwealth; or

- (ii) ASX Limited;
- (c) the previous report was not prepared in connection with the offer of financial products to which the Statement relates;
- (d) the previous report was not prepared or commissioned by a person:
 - (i) with whom the person offering the financial products, or an associate, has shared an interest in a tenement that is covered by the current report; or
 - (ii) from whom the person offering the financial products, or an associate, has purchased the tenement; or
 - (iii) where the person offering the financial products is not the issuer:
 - (A) with whom the issuer, or an associate, has shared an interest in a tenement that is covered by the current report; or
 - (B) from whom the issuer, or an associate, has purchased the tenement; or
 - (iv) who is or is an associate of:
 - (A) the person offering the financial products; or
 - (B) where the person offering the financial products is not the issuer—the issuer; or
 - (v) where the financial products are warrants or legal or equitable rights or interests mentioned in subparagraph 764A(b)(ii) or 764A(ba)(ii) that are not warrants:
 - (A) who is the issuer of the warrants, rights or interests, or an associate; or
 - (B) with whom the issuer of the securities, managed investment products or interests in the managed investment scheme to which the warrants, rights or interests relate, or an associate, has shared an interest in a tenement that is covered by the current report; or
 - (C) from whom the issuer of the securities, managed investment products or interests in the managed investment scheme to which the warrants, rights or interests relate, or an associate, has purchased the tenement;
- (e) the current report states, close to the historical geological report reference:
 - (i) the name of the person who prepared the previous report; and

- (ii) that the person who prepared the previous report has not consented to the use of the historical geological report reference in the Statement.

If the current report includes more than one historical geological report reference which relates to the previous report, paragraph (e) only has to be complied with in relation to the first occurring reference provided it is apparent that the subsequent references are from the same source.

Inclusion of trading data without consent

- (5) A Product Disclosure Statement may include a trading data reference without meeting the requirements of subsection (1) where both of the following apply:
 - (a) the trading data to which the trading data reference relates reflects trading on a prescribed financial market or on any of the following financial markets:
 - (i) American Stock Exchange;
 - (ii) Borsa Italiana;
 - (iii) Bursa Malaysia Main Board and Bursa Malaysia Second Board;
 - (iv) Chicago Board of Trade;
 - (v) Euronext Amsterdam;
 - (vi) Euronext.liffe;
 - (vii) Euronext Paris;
 - (viii) Frankfurt Stock Exchange;
 - (ix) Hong Kong Stock Exchange;
 - (x) ICE Futures;
 - (xi) JSE;
 - (xii) Kansas City Board of Trade;
 - (xiii) London Metal Exchange;
 - (xiv) London Stock Exchange;
 - (xv) NASDAQ Stock Market;
 - (xvi) New York Board of Trade (including the New York Futures Exchange);
 - (xvii) New York Mercantile Exchange (including COMEX);
 - (xviii) New York Stock Exchange;
 - (xix) New Zealand Exchange;

- (xx) Philadelphia Stock Exchange (including the Philadelphia Board of Trade);
- (xxi) Singapore Exchange;
- (xxii) SWX Swiss Exchange;
- (xxiii) Tokyo Stock Exchange;
- (xxiv) Toronto Stock Exchange;
- (b) the Statement states, close to the trading data reference:
 - (i) the name of the person who prepared the trading data; and
 - (ii) that the person who prepared the trading data has not consented to the use of the trading data reference in the Statement.

If the Statement includes more than one trading data reference relating to trading data prepared by the same person, paragraph (b) only has to be complied with in relation to the first occurring reference provided it is apparent that the subsequent references are from the same source.

(6) In this section:

ADI equities warrant means a warrant the terms of which require the issuer to transfer shares in an Australian ADI to the holder of the warrant when the issuer has received all the consideration that is payable to it under the terms of the warrant.

credit rating means a statement, opinion or research about the creditworthiness of a body.

credit rating reference means a copy of, or extract from, or accurate representation of, a credit rating.

geological report means a report dealing with the estimation, assessment or evaluation of geological resources that has been prepared by a person who:

- (a) is a Member or Fellow of:
 - (i) the Australian Institute of Mining and Metallurgy; or
 - (ii) the Australian Institute of Geoscientists; and
- (b) has not less than five years' experience relevant to the estimation, assessment and evaluation of geological resources of the same kind.

historical geological report reference means a copy of, or extract from, or accurate representation of, a geological report.

trading data means quantitative data on the prices at which financial products are traded and the volume of that trading.

trading data reference means a copy of, or extract from, accurate representation or analysis of, trading data.

warrant means a financial product:

(a) that is:

- (i) a derivative; or
- (ii) a financial product that would, apart from the effect of paragraph 761D(3)(c), be a derivative and is excluded by that paragraph only because:
 - (A) it is a security under paragraph (c) of the definition of **security** in section 761A; or
 - (B) it is a legal or equitable right or interest mentioned in subparagraph 764A(1)(b)(ii); or
 - (C) it is a legal or equitable right or interest mentioned in subparagraph 764A(1)(ba)(ii); and

(b) that is transferable.”.

Interpretation

6. In this instrument:

responsible person has the meaning given in section 1013A of the Act.

Dated this 27th day of June 2007

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