

ASIC Class Order [CO 07/429]

Consent to quote: Citing credit ratings agencies, trading data and geological reports in takeovers

This instrument has effect under s655A(1) of the *Corporations Act 2001*.

This compilation was prepared on 16 June 2009 taking into account amendments up to [CO 09/422]. 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 — Subsection 655A(1) — Declarations

Enabling legislation

1. The Australian Securities and Investments Commission (*ASIC*) makes this instrument under subsection 655A(1) of the *Corporations Act 2001* (the *Act*).

Title

2. This instrument is ASIC Class Order [CO 07/429].

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 636

4. Chapter 6 of the Act applies to a bidder as if section 636 were modified or varied by:

- (a) in subsection (3) omitting “The” (first occurring) and substituting:

“Subject to this section, the”; and

- (b) after subsection (4) inserting the following subsections:

“*Inclusion of credit ratings without consent*

(4A) A bidder’s statement, or a document (the *accompanying document*) that accompanies a bidder’s statement, may include a credit rating reference without meeting the requirements of subsection (3) where all of the following apply:

- (a) the bid class securities are, or the consideration offered under the takeover bid is or includes:

- (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 holders of bid class securities and their professional advisers would reasonably require to make an informed assessment of:
 - (A) where the bid class securities are, or the consideration offered under the bid is or includes, 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 bid class securities are, or the consideration offered under the bid is or includes, ADI equities—the creditworthiness of the Australian ADI to which the ADI equities relate; and
- (c) the bidder's statement or the accompanying 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 accept or not accept the takeover bid the subject of the bidder's 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 bidder's statement or the accompanying document (as relevant); and

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

If the statement or 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 it is apparent that the subsequent references are from the same source.

Inclusion of historical geological data without consent

(4B) A bidder's statement or an accompanying document may include a historical geological report reference without meeting the requirements of subsection (3) 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 or 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 takeover bid;
- (d) the previous report was not prepared or commissioned by a person:
 - (i) with whom the bidder, or an associate, has shared an interest in a tenement that is covered by the current report; or
 - (ii) from whom the bidder, or an associate, has purchased the tenement; or
 - (iii) who is the bidder, or an associate;
 - (iv) where securities are offered as consideration under the bid and the bidder, or an associate, is not the body that has issued or will issue the securities:
 - (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;
- (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 bidder's statement or in the accompanying document (as relevant).

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

(4C) A bidder's statement or an accompanying document may include a trading data reference without meeting the requirements of subsection (3) 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) Euronext Paris;
 - (iv) Bursa Malaysia Main Board and Bursa Malaysia Second Board;
 - (v) Chicago Board of Trade;
 - (vi) Euronext Amsterdam;
 - (vii) Euronext.liffe;
 - (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 bidder's statement or the accompanying 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 reference in the bidder's statement or the accompanying document (as relevant).

If the statement or document includes more than one trading data reference relating to trading data prepared by the same person, the statement required by 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.

(4D) 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 minerals 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 minerals of the same kind.

historical geological report reference means a copy of, 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 638

5. Chapter 6 of the Act applies to a target as if section 638 were modified or varied by:

- (a) in subsection 638(5) omitting “The” (first occurring) and substituting:

“Subject to this section, the”; and

- (b) after subsection 638(6) inserting the following subsections:

“*Inclusion of credit ratings without consent*

- (6A) A target's statement or a document (the *accompanying document*) that accompanies a target statement, may include a credit rating reference without meeting the requirements of subsection (5) where all of the following apply:
- (a) the bid class securities are, or the consideration offered under the takeover bid is or includes:
 - (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*);
 - (ii) information that holders of bid class securities and their professional advisers would reasonably require to make an informed assessment of:
 - (A) where the bid class securities are, or the consideration offered under the bid is or includes, 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 bid class securities are, or the consideration offered under the bid is or includes ADI equities—the creditworthiness of the Australian ADI to which the ADI equities relate;
 - (c) the target's statement or the accompanying 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 accept or not accept the takeover bid the subject of the target's 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 target's statement or in the accompanying document (as relevant); and
- (ii) includes credit rating references for all current credit ratings known to the target of the kind referred to in paragraph (b).

If the statement or 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 it is apparent that the subsequent references are from the same source.

Inclusion of historical geological data without consent

- (6B) A target's statement or an accompanying document may include a historical geological report reference without meeting the requirements of subsection (5) 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 or 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 preparation of the target's statement;
 - (d) the previous report was not prepared or commissioned by a person:
 - (i) with whom the target, or an associate, has shared an interest in the tenement the subject of the current report; or
 - (ii) from whom the target, or an associate, has purchased the tenement; or
 - (iii) who is the target, or an associate; or
 - (iv) where securities are offered as consideration under the bid and the bidder, or an associate, is not the body that has or will issue the securities:
 - (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;
 - (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 target's statement or in the accompanying document (as relevant).

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

(6C) A target's statement or an accompanying document may include a trading data reference without meeting the requirements of subsection (5) 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:
 - (i) American Stock Exchange;
 - (ii) Borsa Italiana SPA;
 - (iii) Euronext Paris;
 - (iv) Bursa Malaysia Main Board and Bursa Malaysia Second Board;
 - (v) Chicago Board of Trade;
 - (vi) Euronext Amsterdam;
 - (vii) Euronext.liffe;
 - (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 target's statement or the accompanying 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 reference in the target's statement or the accompanying document (as relevant).

If the statement or 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.

(6D) 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 minerals 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 minerals of the kind that are the subject of the report.

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.”.

Notes to ASIC Class Order [CO 07/429]

Note 1

ASIC Class Order [CO 07/429] (in force under s655A(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 FRLI registration	Date of commencement	Application, saving or transitional provisions
[CO 07/429]	29/6/2007 (<i>see</i> F2007L02030)	29/6/2007	
[CO 09/422]	9/6/2009 (<i>see</i> F2009L02160)	9/6/2009	-

Table of Amendments

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

Provision affected	How affected
Subpara 4(b).....	am. [CO 09/422]