

# ASIC CLASS ORDER [CO 09/425]

## EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (ASIC) makes ASIC Class Order [CO 09/425] *Share and interest purchase plans* under s741(1)(a) and s1020F(1)(a) of the *Corporations Act 2001* (the Act).

Paragraph 741(1)(a) provides that ASIC may exempt a class of persons from the provisions of Chapter 6D of the Act. Paragraph 1020F(1)(a) provides that ASIC may exempt a class of persons from the provisions of Part 7.9 of the Act.

### 1. Background

A share or interest purchase plan is a plan for the offer to existing investors of share or interests by a corporation or responsible entity of a managed investment scheme listed on the Australian Securities Exchange Limited (ASX).

### 2. Purpose of the class order

#### What is the problem addressed by the class order?

Share and interest purchase plans generally provide existing securityholders with a convenient means of obtaining additional shares or interests, often at a discount to the market and without brokerage fees or stamp duty.

Without relief from the prospectus and product disclosure statement provisions of the Act, it is unlikely that such schemes would be offered, disadvantaging the smaller investors who are the most likely to participate in them and obtain the most benefit from them.

#### Why is a class order necessary to address this problem?

The purpose of CO 09/425 is to facilitate the operation of share and interest purchase plans where ASIC is satisfied that:

- the risk to the securityholder is limited because the amount which may be invested by each investor in a 12-month period under the scheme is restricted; and
- the benefit to investors (such as savings on brokerage) outweigh the disadvantages and risks of not having full prospectus disclosure.

### **3. Operation of the class order**

#### **Exemptions**

Paragraph 4 of CO 09/425 provides an exemption to issuers of shares who offer a share purchase plan from the disclosure provisions of Chapter 6D of the Act (other than sections 736 or 738).

Paragraph 5 of CO 09/425 provides an exemption to issuers of interests who offer an interest purchase plan from Divisions 2 and 4 of Part 7.9 of the Act.

#### **Where relief applies**

These exemptions will apply to a share purchase plan or interest purchase plan broadly where:

- trading in the relevant class of interests have not been suspended (beyond a minimum period) from ASX;
- ASIC has not made certain determinations to prevent an issuer from relying on its relief;
- there are no existing exemptions from particular provisions of the Corporations Act.

#### **Conditions of the relief**

The relief in CO 09/425 is subject to various conditions. These are designed to ensure that while investors under a share or unit purchase plan will not receive a prospectus or Product Disclosure Statement (PDS):

- they will have access to information about their investment through continuous disclosure (supplemented by additional disclosures in 'cleansing statements') and market pricing due to quotation of the issuer;
- the offer will be at a discount to market price during a given period before the offer or issue; and
- there is generally a \$15,000 limit worth of shares or units that can be issued to investors without a prospectus or PDS in a rolling 12 month period. However in some cases custodians or nominees can invest more than \$15,000 if they are acting on behalf of their clients and each client does not invest more than \$15,000. This is particularly relevant to retail investors in Australia who own shares or units through investment platforms (such as master trusts) and who wish to participate in share or unit purchase plan offers.

#### **4. Consultation**

Before making CO 09/425, ASIC consulted generally with relevant industry stakeholders. The consultation process included the publication of Consultation Paper 103 *Review of share purchase plan threshold* in December 2008, which outlined ASIC's proposals for this class order relief and sought comments from stakeholders. Further specific consultation with interested bodies occurred in regard to the proposals for custodians and nominees.