

**Australian Securities and Investments Commission  
Corporations Act 2001 – Paragraphs 741(1)(a) and 1020F(1)(a) –  
Exemption and Revocation**

**Enabling provisions**

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

**Title**

2. This instrument is ASIC Class Order [CO 09/425].

**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/>.

**Exemption from Chapter 6D**

4. A body (*issuer*) which is admitted to the official list of ASX does not have to comply with Part 6D.2 or 6D.3 of the Act (other than sections 736 and 738) for an offer of shares for issue under a purchase plan.

**Exemption from Part 7.9**

5. A responsible entity (*issuer*) of a registered scheme which is admitted to the official list of the ASX does not have to comply with section 1012B or Division 4 of Part 7.9 of the Act in relation to an offer of interests in the scheme for issue, or an issue of interests in the scheme, under a purchase plan.
6. Any other regulated person (within the meaning of section 1011B of the Act) does not have to comply with Divisions 2 and 4 of Part 7.9 of the Act in relation to a purchase plan.

**Where relief applies**

7. The exemptions in paragraphs 4 and 5 apply to a written offer for the issue of shares or interests and to the issue of interests under such an offer where the following requirements are met at the time that the offer is made:
  - (a) the shares or interests are in a class (the *class*) which:
    - (i) is quoted on the financial market operated by ASX; and

- (ii) is not suspended from trading and was not suspended from trading on that market for more than a total of 5 days during the shorter of the period during which the class was quoted, and the period of 12 months before the day on which the offer is made;
- (b) a determination under subsection 708AA(3), 708A(2), 1012DAA(3) or 1012DA(2) of the Act is not in force in relation to the issuer;
- (c) no exemption under section 111AS or 111AT of the Act covered the issuer, or any person as director or auditor of the issuer, at any time in the shorter of the period during which the class was quoted, and the period of 12 months before the day on which the offer is made;
- (d) no order under section 340 or 341 of the Act (other than an excluded order) covered the issuer, or any person as director or auditor of the issuer, at any time in the shorter of the period during which the class was quoted, and the period of 12 months before the day on which the offer is made;
- (e) the written offer document contains the following information:
  - (i) the method used to calculate the issue price and the time when this price will be determined; and
  - (ii) a statement describing the relationship between the issue price and the market price; and
  - (iii) disclosure of the risk that the market price may change between the date of the offer and the date when the shares or interests are issued to an applicant under the purchase plan, and the effect this would have on the price or value of the shares or interests which the applicant would receive; and
- (f) the issuer has either:
  - (i) not more than 30 days before the offer, given a notice to ASX that complies with subsection 708A(6) or 1012DA(6) of the Act in relation to an issue of shares or interests in the class made otherwise than under a purchase plan; or
  - (ii) within the 24 hour period before the offer, given a notice to ASX that:
    - (A) states that the issuer will make offers to issue shares and/or interests (as applicable) under a purchase plan without disclosure to investors under Part 6D.2 and/or without giving a Product Disclosure Statement under Division 2 of Part 7.9 of the Act (as applicable); and
    - (B) states that the notice is being given in accordance with this instrument; and

- (C) states that, as at the date of the notice, the issuer has complied with the provisions of Chapter 2M of the Act as they apply to the issuer and section 674 of the Act; and
- (D) sets out any information that is excluded information as at the date of the notice (in accordance with the requirements of subsections 708A(7) and (8) or subsections 1012DA(7) and (8) of the Act as if the notice were a notice under paragraph 708A(5)(e) or 1012DA(5)(e) of the Act).

### Conditions

8. Subject to paragraph 9, the issuer must not issue shares or interests to a registered holder under the purchase plan unless the holder has, on application for the shares or interests, provided the issuer with a certificate to the effect that the total of the application price for the following does not exceed \$15,000:
  - (a) the shares or interests the subject of the application; and
  - (b) any other shares or interests in the class issued to the holder under the purchase plan or any similar arrangement in the 12 months before the application; and
  - (c) any other shares or interests in the class which the holder has instructed a custodian to acquire on their behalf under the purchase plan; and
  - (d) any other shares or interests in the class issued to a custodian in the 12 months before the application as a result of an instruction given by the holder to the custodian to apply for shares or interests on their behalf under an arrangement similar to the purchase plan.
9. If the purchase plan involves custodian offers, the issuer must not issue shares or interests to a custodian with a total application price exceeding \$15,000 in any 12 month period unless on application for the shares or interests, the custodian certifies the following in writing to the issuer:
  - (a) that the custodian holds shares or interests in the class on behalf of one or more other persons (each a *participating beneficiary*) on the date referred to in paragraph (a) of the definition of *purchase plan* who have subsequently instructed the custodian to apply for shares or interests on their behalf under the purchase plan;
  - (b) the number of participating beneficiaries;
  - (c) the name and address of each participating beneficiary;
  - (d) in respect of each participating beneficiary, the number of shares or interests in the class that the custodian holds on their behalf;
  - (e) in respect of each participating beneficiary, the number or the dollar amount of shares or interests they instructed the custodian to apply for on their behalf;

- (f) there are no participating beneficiaries in respect of which the total of the application price for the following exceeds \$15,000:
    - (i) the shares or interests applied for by the custodian on their behalf under the purchase plan; and
    - (ii) any other shares or interests in the class issued to the custodian in the 12 months before the application as a result of an instruction given by them to the custodian to apply for shares or interests on their behalf under an arrangement similar to the purchase plan.
10. The issuer must not issue shares or interests under the purchase plan unless the issuer is reasonably satisfied that the total of the application price for the following will not exceed \$15,000 in relation to any person as a result of issuing the shares or interests:
- (a) the shares or interests issued to the person under the purchase plan; and
  - (b) any other shares or interests in the class issued to the person under an arrangement similar to the purchase plan in the 12 months before the date of issue under the purchase plan; and
  - (c) any other shares or interests in the class issued to a custodian as a result of an instruction given by the person to the custodian to apply for shares or interests on their behalf under the purchase plan; and
  - (d) any other shares or interests in the class issued to a custodian in the 12 months before the date of issue under the purchase plan as a result of an instruction given by the person to the custodian to apply for shares or interests on their behalf under an arrangement similar to the purchase plan,
- except to the extent that the person is issued with shares or interests as a custodian under a custodian offer.
11. If:
- (a) a notice given under subsubparagraph 7(f)(ii) is defective; and
  - (b) the issuer becomes aware of the defect in the notice within 12 months after the shares or interests are issued under the offer,
- the issuer must, within a reasonable time after becoming aware of the defect, give ASX a notice that sets out the information necessary to correct the defect.
12. A person may only rely on paragraph 6 if the person has no reason to suspect that the issuer has not complied with the requirements of this instrument.

### **Revocation**

13. ASIC Class Orders [CO 02/831] and [CO 02/832] are revoked with effect from 1 September 2009.

## Interpretation

14. For the purposes of this instrument:

- (a) **ASX** means ASX Limited ACN 008 624 691.

**custodial or depositary service** has the meaning given by section 766E of the Act.

**custodian** means a registered holder:

- (a) that holds an Australian financial services licence that:
- (i) covers the provision of a custodial or depositary service; or
  - (ii) includes a condition requiring the holder to comply with the requirements of ASIC Class Order [CO 02/294]; or
- (b) that is exempt under:
- (i) paragraph 7.6.01(1)(k) of the *Corporations Regulations 2001*; or
  - (ii) ASIC Class Order [CO 05/1270] to the extent that it relates to ASIC Class Order [CO 03/184],

from the requirement to hold an Australian financial services licence for the provision of a custodial or depositary service.

**custodian offer** means an offer to a registered holder to the extent that it is of the kind referred to in paragraph (b) of the definition of **purchase plan**.

**excluded order** means ASIC Class Orders [CO 98/100], [CO 98/101], [CO 98/104], [CO 98/1418], [CO 98/2395], [CO 99/90], [CO 00/2449], [CO 05/642], [CO 05/644] and [CO 06/441].

**purchase plan** means an arrangement under which:

- (a) an offer is made to each registered holder of shares or interests in the class on a date determined by the issuer, and whose address (as recorded in the register of members) is in a place in which, in the reasonable opinion of the issuer, it is lawful and practical for the issuer to offer and issue shares or interests to that person;
- (b) an offer may enable a registered holder who is a custodian to acquire shares or interests on behalf of a person (the **beneficiary**) on whose behalf the custodian is holding shares or interests in the class;
- (c) each offer is made on:
- (i) the same terms and conditions:
    - (A) to the extent it is an offer to a registered holder to acquire shares or interests on their own behalf; and

- (B) to the extent (if any) it is an offer to a registered holder to acquire shares or interests as a custodian on behalf of a beneficiary; and
  - (ii) a non-renounceable basis;
- (d) if offers of the kind referred to in subparagraph (c)(i)(B) are made—the terms and conditions on which a registered holder may acquire shares or interests on their own behalf or as a custodian on behalf of a beneficiary are as nearly as practicable the same;
- (e) the issue price is less than the market price during a specified period in the 30 days before either the date of the offer or the date of the issue; and
- (f) the total application price for the shares or interests acquired by a person on their own behalf and by a custodian on behalf of the person in any 12 month period does not exceed \$15,000.

**registered holder** means:

- (a) a person recorded in the register of members of a body as a member of the body; or
  - (b) a person recorded in the register of members of a registered scheme as a member of the scheme.
- (b) if 2 or more persons are recorded in the register of members as jointly holding shares or interests in the body or scheme they are taken to be a single registered holder and a certificate given by any of them for the purposes of paragraph 8 is taken to be a certificate given by all of them.
  - (c) if a custodian holds shares or interests jointly on behalf of 2 or more persons:
    - (i) the \$15,000 limit applies jointly in relation to those persons as if the custodian held the shares or interests on behalf of a single person; and
    - (ii) the custodian is taken to have been instructed to apply for shares or interests on behalf of those persons if:
      - (A) the custodian has received such an instruction in accordance with the terms on which the shares or interests are held; or
      - (B) where the terms on which the shares or interests are held do not cover the giving of instructions of this kind—the custodian has received such an instruction from any of those persons.
  - (d) references to an issuer offering shares or interests include the issuer inviting applications for the issue of the shares or interests.

- (e) if a share or interest must under the terms on which it is traded only be transferred together with one or more other shares or interests or other financial products (together a *stapled security*):
  - (i) the \$15,000 limit in paragraphs 8 to 10 (wherever occurring), and in the definition of *purchase plan*, applies to the stapled security as if its component shares or interests constituted a single share or interest and not to any of those components separately;
  - (ii) the share or interest is taken to be in a class which is quoted on the financial market operated by ASX if the stapled security is quoted on that market.
- (f) a notice is *defective* if the notice:
  - (i) does not comply with sub-subsubparagraph 7(f)(ii)(D); or
  - (ii) is false in a material particular; or
  - (iii) has omitted from it a matter or thing the omission of which renders the notice misleading in a material respect.
- (g) an arrangement covered by ASIC Class Orders [CO 02/831] or [CO 02/832] is taken to be similar to a purchase plan.
- (h) an arrangement is not to be taken not to be similar to a purchase plan merely because:
  - (i) only one of them involves custodian offers; or
  - (ii) they involve different maximum levels of applications by registered holders.

Dated the 15th day of June 2009

Signed by John Price  
as a delegate of the Australian Securities and Investments Commission