

ASIC CLASS ORDER [CO 10/105]

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 10/105] *Variation of Class Orders [CO 05/26] and [CO 09/425]* under paragraphs 601QA(1)(a), 741(1)(a) and s1020F(1)(a) of the *Corporations Act 2001* (the **Act**).

Paragraph 601QA(1)(a) of the Act provides that ASIC may exempt a person or a class of persons from a provision of Chapter 5C of the Act. Paragraph 741(1)(a) of the Act provides that ASIC may exempt a person from a provision of Chapter 6D of the Act. Paragraph 1020F(1)(a) provides that ASIC may exempt a person or 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 shares or interests by a corporation or the responsible entity of a managed investment scheme listed on the Australian Securities Exchange (**ASX**).

ASIC has given class order relief in ASIC Class Order [CO 09/425] *Share and interest purchase plans* to allow share or interest purchase plan offers of up to \$15,000 in 12 months to be made without a prospectus or PDS.

ASIC Class Order [CO 05/26] *Constitutional provisions about the consideration to acquire interests* gives technical relief from the managed investment scheme provisions to allow a responsible entity of a managed investment scheme to set the price of interests to be issued under interest purchase plans.

2. Purpose of the class order

What is the problem addressed by the class order?

The ASIC relief previously provided in [CO 05/26] did not extend to allow responsible entities offering interest purchase plans to exclude foreign members or to make offers to custodians that were capable of being accepted on behalf of more than one beneficiary. These features are important in offering low-cost interest purchase plans that are made widely available to Australian members.

The relief previously provided in [CO 09/425] only permitted a limited number of investors holding securities through custodians to participate in share and interest purchase plans. It did not allow investors to participate if their shares were held through multiple levels of custodians (e.g. where a sub-custodian holds on behalf of a custodian who holds on behalf of the underlying investor). Further, investors may also not have been able to participate if their securities were held through certain common investment structures.

The relief previously provided in [CO 09/425] also required that a securityholder seeking to participate in a share or interest purchase plan must provide a certificate to the issuer confirming certain matters. Without amendments to [CO 09/425], it is unlikely that securityholders who use an electronic payment facility (such as BPay) would be able to provide the certification required without also returning a separate application form (as is common market practice).

The purpose of the Class Order is to amend [CO 09/425] and [CO 05/26] to:

- enable persons who hold securities through multiple levels of custodians and through IDPS-like schemes, superannuation master trusts and self-managed superannuation funds to participate in share and interest purchase plans;
- facilitate the use of electronic payment facilities by applicants under share and interest purchase plans;
- allow the exclusion of foreign members from an interest purchase plan offer; and
- allow custodians that are members who hold interests of the same class to be treated differently, thereby allowing them to accept offers on behalf of beneficiaries.

3. Operation of the class order

[CO 10/105] amends [CO 05/26] and [CO 09/425] to address the problems discussed above.

Conditions of the relief

The amended [CO 09/425] is subject to additional conditions, including requirements that:

- in order for a person who holds securities through multiple levels of custodians to participate in a share or interest purchase plan, the person must receive a copy of the offer document and the issuer must be provided with the names and addresses of that person and each custodian;
- the extension to persons who hold securities through an IDPS-like scheme, a self-managed superannuation fund or a superannuation master trust will only apply where the securities were acquired on the instructions of the person and are held for their economic benefit; and
- where a person applies through an electronic payment facility, the part of the offer document containing instructions on how to pay must contain a prominent statement to the effect that, by using the facility, the person represents that the matters that would otherwise need to be dealt with in the certificate are correct.

4. Consultation

Before making [CO 10/105], ASIC consulted with specific stakeholders from the custodial and depository services industry. ASIC did not specifically consult on the amendment to [CO 05/26] as this is a minor and machinery change needed to give effect to our relief on share and interest purchase plans more generally.