

ASIC CLASS ORDER [CO 12/417]

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 12/417] under paragraph 951B(1)(c) of the *Corporations Act 2001* (the *Act*).

Paragraph 951B(1)(c) provides that ASIC may declare that Part 7.7 of the Act applies in relation to a person or class of persons as if specified provisions were omitted, modified or varied as specified in the declaration.

1. Background

A Financial Services Guide (FSG) is a key disclosure document under the Act that sets out the terms and basis on which a financial services licensee or an authorised representative of a such a licensee, will provide a financial service.

The FSG is provided to retail clients to assist them to make an informed decision on whether to acquire a financial service from the licensee or authorised representative.

In a time critical situation, such as during the provision of a financial service over the telephone, it may not be reasonably practicable to provide an FSG before the financial service is provided. Instead, section 941D of the Act permits a statement of certain key information to be given at the time, with the FSG given to the retail client within five days, or sooner if practicable, after the financial service is provided.

However, as section 941E of the Act requires an FSG to be “up to date” at the time it is given to the client, the information in the FSG provided later may contain different information to an FSG that would be given in normal circumstances. This may mean that an FSG needs to contain tailored information that is known after the financial service is provided, resulting in an increased compliance burden in having to provide customised information in the FSG.

ASIC Class Order [CO 04/1055]

ASIC Class Order [CO 04/1055] (the *original class order*), which took effect on 30 August 2004, provided relief that is identical to the relief provided by this class order.

The original class order was inadvertently not registered on the Federal Register of Legislative Instruments (*FRLI*) within the meaning of section 4 of the *Legislative Instruments Act 2003* (the *LI Act*) by the last day for lodging the instrument as originally made for registration under Division 3 of Part 4 of the LI Act. As a

consequence, the original class order ceased to be enforceable by or against the Commonwealth, or by or against any other person or body, from 1 October 2006. Both ASIC and the financial services industry had been erroneously proceeding on the basis that the original class order continued to have effect in accordance with its terms.

ASIC Class Order [CO 12/418]

This class order is being made in conjunction with ASIC Class Order [CO 12/418] (the *retrospective class order*). The retrospective class order provides the same relief as this class order but with retrospective effect from 1 October 2006 to the date of commencement of this class order.

2. Purpose of the class order

The purpose of the class order is to prospectively reinstate the effect of the original class order.

The purpose of the original class order and this class order is to reduce the potential for a significantly increased compliance burden in having to provide customised information in an FSG in a time critical situation, without reducing the level of information provided to retail clients to assist them to decide whether to acquire a financial service.

3. Operation of the class order

This class order has the effect that information in an FSG given in a time critical situation need only be up to date as at the time the earlier statement of key information was given to a retail client. In other words, an FSG given after the provision of a financial service in a time critical case will be the same as an FSG that is given before the provision of a financial service in normal cases.

4. Statement of Compatibility with Human Rights

This statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* because it does not engage any of the applicable rights or freedoms.

5. Consultation

As this class order prospectively reinstates the effect of the original class order on which the financial services industry had been relying, ASIC considers the making of this class order to be of a minor and technical nature which does not require consultation.