

ASIC CLASS ORDER [CO 13/284]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes Class Order [CO 13/284] under paragraph 911A(2)(1) of the *Corporations Act 2001* (the **Act**).

Paragraph 911A(2)(1) of the Act provides that a person is exempt from the requirement to hold an Australian financial services licence for a financial service they provide if the provision of the service is covered by an exemption specified by ASIC in writing and published in the *Gazette*.

1. Background

ASIC Regulatory Guide 176 *Licensing: Discretionary powers – wholesale foreign financial services providers* outlines when ASIC will grant conditional relief from the requirement to hold an Australian financial services licence to foreign financial services providers that provide financial services in Australia only to wholesale clients.

A foreign financial services provider that is regulated by the Financial Services Authority (the **FSA**) of the United Kingdom is one class of foreign financial services provider that falls within the policy of Regulatory Guide 176. ASIC Class Order [CO 03/1099] (the **principal class order**) gives effect to that policy in relation to providers regulated by the FSA.

As a result of legislative amendments made to the *Financial Services and Markets Act 2000* of the United Kingdom (the **FSM Act**) by the *Financial Services Act 2012* of the United Kingdom, the body corporate known as the FSA will, from 1 April 2013, be renamed as the Financial Conduct Authority (the **FCA**): section 1A of the FSM Act.

The FCA will be the same legal entity as the FSA.

2. Purpose of the class order

The purpose of this class order is to update references in the principal class order to reflect the changes to the legislative regime in the United Kingdom, in particular the renaming of the FSA to the FCA, without effecting any substantive change to the conditional relief provided by the principal class order.

3. Operation of the class order

This class order amends the principal class order.

The former definition of **FSA** in the principal class order has been replaced with a new definition of **FCA**. **FCA** is defined to include the FSA as it was previously known before 1 April 2013.

There are a number of bodies that are relying on the principal class order and will continue to be relying on it on and after 1 April 2013. The amendments to the principal class order will not cause a body that is currently eligible to rely on the relief, and is so relying on it, to cease to be eligible to rely on the relief. In particular:

- (a) a body that, before 1 April 2013, had provided to ASIC a deed containing the undertakings and covenants required by the principal class order, is not required to provide a new or amended deed to ASIC to reflect the renaming of the FSA to the FCA; and
- (b) a body that, before 1 April 2013, had provided to ASIC written consents to the sharing of information about the body between ASIC and the FSA, is not required to provide new written consents to the sharing of information about the body between ASIC and the FCA.

As the FCA will be the same legal entity as the FSA, ASIC takes the view that:

- (a) existing deeds of bodies containing undertakings and covenants that are expressed to apply in relation to the FSA will be enforceable by ASIC against the body in relation to the FCA;
- (b) existing written consents provided by the body to the sharing of information about the body between ASIC and the FSA are written consents to the sharing of information about the body between ASIC and the FCA; and
- (c) if an enforcement action, disciplinary action or investigation, of a significant kind, had been taken against the body by the FSA before 1 April 2013 and which would have required notification to ASIC but has not yet been notified, it continues to be notifiable to ASIC on and after 1 April 2013.

4. Consultation

ASIC did not engage in any consultation before making this amending class order. The amendments made are of a minor and technical nature and are merely consequential on a particular change to the name of the financial services regulator in the United Kingdom.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Class Order [CO 13/284]

This class order 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*.

Overview of the class order

This class order amends ASIC Class Order [CO 03/1099] (the *principal class order*) by updating references in the principal class order to reflect the changes to the legislative regime in the United Kingdom, in particular the renaming of the Financial Services Authority to the Financial Conduct Authority, which will take effect on 1 April 2013, without effecting any substantive change to the licensing relief provided by the principal class order.

Human rights implications

This class order does not engage any of the applicable rights or freedoms.

Conclusion

This class order is compatible with human rights as it does not raise any human rights issues.